



Digest of the Case Law of the Constitutional Court of Bosnia and Herzegovina

Second Edition (Revised and Supplemented)

**DIGEST OF THE CASE-LAW OF THE CONSTITUTIONAL COURT OF
BOSNIA AND HERZEGOVINA**

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Publisher:

CONSTITUTIONAL COURT OF BOSNIA AND HERZEGOVINA
Sarajevo, Reisa Džemaludina Čauševića 6/III

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Desktop publisher:

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Printed by:

GRAFOMARK, Laktaši

Print run:

300

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FOREWORD

Dear All,

Sensing the need and respecting the interest of, first and foremost, the professional and academic community, the Constitutional Court of Bosnia and Herzegovina published in 2009, in the local languages and in English, its first overview of the constitutional case-law titled „Digest of the Case-Law of the Constitutional Court of Bosnia and Herzegovina”, thereby achieving three very important goals.

Firstly, the Constitutional Court demonstrated in this way its commitment as well as the obligation to comply with the principle of public nature of its work as a general democratic standard, as well as the obligation stipulated by its Rules. Next, as a second goal, the Constitutional Court presented its constitutional case-law to the interested professional and academic community, and to everyone concerned, in the form of a practical book, that is a legal reference book, which is concise and easy to consult. The third goal was achieved by means of informing the international community at large of the constitutional case-law, which implies the mission, as well as the work and role of the Constitutional Court as one of the key state institutions of Bosnia and Herzegovina. This time around the Digest, which we present to the public as a second amended edition, is published in the local languages (Bosnian, Croatian and Serbian), and in the English language to be used by the international community at large.

As of 1997, the Constitutional Court of Bosnia and Herzegovina has published a bulletin in the official languages in Bosnia and Herzegovina (by and inclusive of 2015, 26 volumes were published, with two volumes being published annually during certain years) as well as a bulletin in the English language (three volumes have been published during each 2006, 2011 and 2016). Bulletins carrying integral texts of the selected decisions of the Constitutional Court, together with this Digest, and the collected papers from a number of international conferences and round tables organized by the Constitutional Court, along with a number of other sporadic and/or periodical publications, represent an already significant sample of publishing activity of the Constitutional Court.

In the form of brief positions, this publication contains a summarized description of all the important decisions, whereby the Constitutional Court of Bosnia and Herzegovina, „by upholding this Constitution”, in the period from May 1997 through to the end of 2015, has built its case-law thereby contributing to the constitutionality in general and to the protection and promotion of the fundamental human rights and freedoms in Bosnia and Herzegovina.

Considering the concept of this Digest, we are certain that, as such, it will be a useful guide to all the domestic and international institutions and individuals interested in it, and particularly to the legal representatives for victims whose human rights and fundamental freedoms have been threatened. Simply, to all those who are interested in studying, promoting and protecting these rights and values.

Indeed, in the Digest you have before you, you will not find (not always) a ready-made solutions to the questions and problems you encounter, however you will find a great number of positions and crucial segments from the decisions of the Constitutional Court of Bosnia and Herzegovina, that may lead to the desired goal and solution. Insofar as it does not prove to be a precise book of reference, this Digest will certainly serve as a sort of a legal navigator.

In this edition too we have retained the concept of the Digest set earlier as a proven efficient model of searching for and finding positions (methodology and content-wise), so that key words will guide you to the specific position/case-law, as classified under Articles of the Constitution of Bosnia and Herzegovina, the Rules of the Constitutional Court and, naturally, the European Convention for the Protection of Human Rights and Fundamental Freedoms.

All positions contained in this Digest are placed in a chronological order under each and every title, so that you may, in a way, follow the evolution of the case-law of the Constitutional Court of Bosnia and Herzegovina.

It is necessary to pay attention to the cases, they are seldom indeed, where the case-law of the Constitutional Court of Bosnia and Herzegovina has evolved or has been altered, e.g. when it comes to the applicability to civil servants of the guarantees of the right to a fair trial under Article 6 of the European Convention (*AP 121/04, AP 2231/06*), the admissibility of the appeals relating to the procedure of the registration of ownership right (*AP 854/04, AP 2706/06*), the admissibility of the appeals relating to the interim security measures (*AP 1918/05, AP 1676/10*), the issue of retroactive application of the Criminal Code of BiH in the cases of war crimes (*AP 1785/06, AP 325/08*), etc.

Bearing in mind the already confirmed expectations, as well as the perception of this publication as a sort of a legal reference book, or as an informative and educational reading piece, it appears to us as equally obligatory as useful to mention at least several important basic information on the history of the constitutional justice in Bosnia and Herzegovina and the relevant statistics for the period since the founding of the jurisdiction and the establishment of the Constitutional Court under the applicable Constitution of Bosnia and Herzegovina.

The present-day Constitutional Court of Bosnia and Herzegovina is one of the six institutions of Bosnia and Herzegovina provided for by the Constitution (the Parliamentary Assembly, the Presidency, the Council of Ministers, the Constitutional Court, the Central Bank, and up until 2006 there had existed the Standing Committee on Military Matters, which, in the meantime, during the reform processes in Bosnia and Herzegovina, had ceased to exist, although it remained formally (historical) a constitutional category).

The history of constitutional justice in Bosnia and Herzegovina dates from the middle of the 20th century. In 1963, upon the enactment of the new federal and republics' constitutions, the constitutional courts – federal and republics' courts were established in the SFRY, as well as in its federal units – republics. Bosnia and Herzegovina had been one of the six republics/federal units in the composition of the SFRY up until 1992,

when it gained the independence and international personality as 177th member of the Organization of the United Nations (OUN).

As the previous Constitutional Court of Bosnia and Herzegovina had started operating effectively already in the coming year 1964, it follows that the tradition of the constitutional justice in Bosnia and Herzegovina has continued for over half a century. However, the present-day Constitutional Court of Bosnia and Herzegovina, founded by the 1995 Constitution of Bosnia and Herzegovina (Annex 4 to the General Framework Agreement for Peace in Bosnia and Herzegovina – the so-called Dayton Agreement), was constituted on 22 May 1997, and, after it started operating effectively, adopted the first decision on 16 October 1997.

In 2014, the Constitutional Court marked the 50th anniversary of constitutional justice in Bosnia and Herzegovina, on which occasion the Monograph titled „the Constitutional Court of Bosnia and Herzegovina 1964-2014” was published (simultaneously in the local languages and in the English language). The Monograph, as befitting the concept of such a publication, provided an extensive overview of the case-law of the Constitutional Court of Bosnia and Herzegovina through all of its stages of existence, operation and development (available on the website). This made the case-law of the Constitutional Court of Bosnia and Herzegovina, in general outline and from the very outset of the constitutional justice in Bosnia and Herzegovina, accessible to the general public at large, both domestic and international.

Ever since its establishment under the applicable Constitution, namely since 1997, the Constitutional Court of Bosnia and Herzegovina has adopted over 25,000 decisions solving over 50,000 cases.

It is also important to mention that, in addition, in the period from 2004 to 2006, the Constitutional Court extended a substantial support to the Human Rights Commission, formed within the Constitutional Court as a legal successor to the Human Rights Chamber. This Commission finalized circa 9,000 pending cases of the Human Rights Chamber, after the mandate of this body had ended in 2003.

The greatest number of cases that the Constitutional Court resolved and decisions it adopted are related to the cases from within the appellate jurisdiction (over issues under the Constitution arising out of a judgment of any other court in Bosnia and Herzegovina - Article VI(3)(b)). As to the total number of the decisions adopted, the number of cases and decisions from within the abstract jurisdiction is noticeably small (the review of the constitutionality of laws or „lifting the blockage of the Parliament” under Article VI(3) (a) and (c), and Article IV(3)(f) of the Constitution of Bosnia and Herzegovina), a total of 125 decisions as of the end of 2015.

This Digest has been prepared on the basis of over 25,000 decisions. The following Digest shows the receiving dynamics and the structure of cases over the years, starting from 1997. That is at the same time a certain indicator, and a report on the work of the Constitutional Court of Bosnia and Herzegovina for almost two decades of operation under the 1995 Constitution of Bosnia and Herzegovina.

Year	Number of cases received	Number of cases solved	Number of decisions
1997	16	13	13
1998	30	8	5
1999	40	36	23
2000	114	44	30
2001	222	111	77
2002	295	61	47
2003	832	327	174
2004	1169	1321	759
2005	2707	1883	970
2006	3484	2371	1305
2007	3667	2055	1150
2008	4027	3278	2252
2009	4209	3294	2584
2010	6056	4061	3307
2011	5076	5833	2751
2012	4739	3478	2204
2013	5452	6353	3218
2014	5733	7342	2999
2015	5785	6071	2309

Considering the fact that the case-law of the Constitutional Court is constantly getting enriched and growing, it is realistic to anticipate that in due time a need may arise for a new amended edition of the Digest. Until such time, we submit this amended edition to the judgment and for the use of the general public, particularly so of the professional and academic community. We would be very grateful to each and every person who points out a possible need for and a way to improve this edition in every way possible.

Finally, the Constitutional Court of Bosnia and Herzegovina would like to thank The AIRE Centre from London and the Government of the United Kingdom of Great Britain and Northern Ireland for the financial support for the printing of this publication. This is but one form of cooperation between the Constitutional Court of Bosnia and Herzegovina and the AIRE Centre as of lately.

Sarajevo, November 2016

Mirsad Ćeman
President
Constitutional Court of Bosnia and Herzegovina

FOREWORD

FROM THE AIRE CENTRE

Dear readers,

The next few years will be decisive for Bosnia and Herzegovina (BiH) and its aspiration to join the European Union. It will need to make headway in the implementation of the reform agenda, particularly its judicial aspect, before the EU reviews its application to accede to the Union.

The project Legal Reform: Preparing State and Entity Court Systems for EU Accession, implemented by AIRE Centre with the financial support of the British Foreign and Commonwealth Office, has been cooperating with the key BiH institutions with a view to eliminating the obstacles on that road, in accordance with the Chapter 23 requirements.

The project objectives aim at strengthening human and minority rights protection and the implementation of the European Convention on Human Rights in BiH, contributing to the reform of the rule of law in BiH; and reinforcing the regional networks of judges and judicial training institutes.

The AIRE Centre has over the past few years established close cooperation with the Constitutional Court of BiH on prior project activities in the context of judicial reform. The project raises this cooperation to a higher level, with the Constitutional Court, a partner on the project, has actively and wholeheartedly engaging in all the project activities. The key activities to achieve the project goals and objectives involve training of BiH court judges and legal advisers and publishing activities.

It has been a great honour and pleasure to cooperate with the Constitutional Court on the preparation and publication of the „Digest of the Case Law of the Constitutional Court of Bosnia and Herzegovina”, an update of a publication by the same name first published in 2009. It includes summaries of all relevant Constitutional Court decisions based on which the Court has been developing its case law relating to the promotion and protection of human rights and fundamental freedoms and its interpretations of the BiH Constitution from May 1997 to December 2008. This second edition has been updated by relevant Court case law from January 2009 to December 2015 in the form of short views and legal opinions, the search of which is facilitated by the key words search system.

This publication will be of exceptional value to all judges and prosecutors, legal practitioners and other BiH and international officers, because it provides insight in the Constitutional Court’s case law in an extremely simple and user-friendly manner. Apart from contributing to the transparency of the Constitutional Court, the Digest also

facilitates access to the leading Constitutional Court case law, thus helping reinforce respect for human rights and the alignment of the case law of the regular courts in BiH.

Biljana Braithwaite
Programme Manager for the Western Balkans
AIRE Centre

DIGEST OF THE CASE-LAW

ARTICLE 2 OF THE ECHR – RIGHT TO LIFE

State's positive obligations to protect life

The state authorities' failure to take all necessary measures to meet positive obligations to protect the life of the appellant's daughter constitutes a violation of the right to life safeguarded under Article II(3)(a) of the Constitution of Bosnia and Herzegovina and Article 2 of the European Convention.

- **Decision on Admissibility and Merits No. AP 1045/04 of 17 November 2005, paragraph 54, published in the *Official Gazette of Bosnia and Herzegovina*, 20/05**

Regardless of the relevant documentation confirming that the death of the appellants' immediate relative had been caused by the use of force and given the alleged appearance and position of the remains of the appellant's relative, the competent legal authorities in the relevant case failed to take all necessary measures and to inform the prosecuting authorities about the referenced circumstances indicating that the use of force or murder had caused the death, as stipulated under all three laws on criminal procedure applicable at the relevant time and in accordance with their positive obligation to report on criminal offences and to protect the life of the appellant's immediate relative within the meaning of Article 2 of the European Convention.

- **Decision on Admissibility and Merits No. AP 1107/06 of 27 February 2008, paragraph 45, published in the *Official Gazette of Bosnia and Herzegovina*, 20/05; *the failure by the authorities to conduct an investigation into the circumstances surrounding the death of the appellants' son; a violation of Article 2 of the European Convention established***

The Constitutional Court holds that there is no violation of Article II(3)(a) of the Constitution of Bosnia and Herzegovina and Article 2 of the European Convention, as the Constitutional Court cannot find evidence of failure of either the Prosecutor or other persons in the investigation that could raise doubt as to their intent to obtain all relevant evidence and, therefore, the Constitutional Court finds that the investigation conducted in the relevant case was thorough and effective in terms of Article 2 of the European Convention.

- **Decision on Admissibility and Merits No. AP 498/08 of 26 September 2010, paragraph 46, published in the *Official Gazette of Bosnia and Herzegovina*, 37/11; *investigation into the circumstances surrounding the death of the appellants' relatives, no violation of Article 2 of the European Convention***

ARTICLE 3 OF THE ECHR – PROHIBITION OF TORTURE

As the competent authorities consciously and thoroughly examined whether or not a ground for applying the principle of *non-refoulement* (prohibition of return) existed and established that no such ground existed and provided the clear reasons for their decisions about it, the Constitutional Court concludes that the appellant's right not to be subjected

to torture, cruel, inhuman and/or degrading treatment or punishment under Article II(3)(b) of the Constitution of Bosnia and Herzegovina and Article 3 of the European Convention was not violated in the proceedings deciding on the appellant's application for international protection in the specific case.

- **Decision on Admissibility and Merits No. AP 5148/10 of 9 February 2011, paragraph 49, published in the *Official Gazette of Bosnia and Herzegovina*, 48/11; extradition and deportation, there is no violation of Article 3 of the European Convention**

„(...) in the relevant cases no prosecutions decisions have been made yet, which is actually a goal of the investigation, so, in that sense, the appellants' allegations that the investigation procedures before the Prosecutor's Office of BiH have lasted too long appear to be justified to some extent (according to the replies to the appeals by the Public Security Centre in Bijeljina and the District Prosecutor's Office in Bijeljina, the reports related to the events referred to in the appeals were forwarded to the Prosecutor's Office of BiH in June, *i.e.* in August 2007). In this context, the Constitutional Court recalls that an investigation is just one stage of criminal proceedings against persons responsible for criminal offences and that the purpose of any investigation is to make a prosecution decision, regardless of the outcome thereof. In this regard, the Constitutional Court is aware of appellants' suffering and pain for the investigation before the Prosecutor's Office of BiH have not been completed yet by an adequate prosecution decision." ...In view of the aforementioned and given the replies by the Prosecutor's Office of BiH that the investigations are underway and that, as to the State's positive obligation, the adequate measures have been taken to clarify the events referred to in the appeal irrespective of the fact that the investigations have not been completed, the Constitutional Court holds that the appellants' allegations about the competent authorities' inactivity to clarify the events referred to in the appeal and about a violation of the rights under Article II(3)(b) of the Constitution of Bosnia and Herzegovina and Article 3 of the European Convention are ill-founded."

There is no violation of the appellant's right under Article II(3)(b) of the Constitution of Bosnia and Herzegovina and Article 3 of the European Convention, where the competent authorities have taken adequate activities to clarify the events referred to in the appeal and to complete the investigation, thereby meeting their obligation in the present case in accordance with the positive legal regulations. On the other hand, the fact that no adequate prosecution decision has been rendered in the relevant proceedings, when seen in light of the above and of the allegations of the Prosecutor's Office of BiH that the cases are complex and that the investigations have entered into their final phase, cannot presently result in a different decision.

- **Decision on Admissibility and Merits No. AP 3067/09 of 20 December 2012, paragraphs 37 and 39, published in the *Official Gazette of Bosnia and Herzegovina*, 10/13;**
- **Decision on Admissibility and Merits No. AP 2156/10 of 28 February 2013, paragraph 31, published in the *Official Gazette of Bosnia and Herzegovina*, 27/13;**

- **Decision on Admissibility and Merits No. AP 3469/10 of 28 February 2013, paragraph 34;** *deprivation of liberty during the war in Bosnia and Herzegovina, there is no violation of Article 3 of the European Convention*

Inhuman treatment

The Constitutional Court concludes that there was a violation of the appellant's right not to be subjected to inhuman treatment after the car accident in which her husband had died, until the completion of the criminal proceedings against the person accused for that accident.

- **Decision on Admissibility and Merits No. AP 12/02 of 19 April 2004, paragraph 33, published in the *Official Gazette of Bosnia and Herzegovina*, 40/04;** *the authority's failure to undertake criminal prosecution against the perpetrator of the criminal offence, a violation of Article 3 of the European Convention established*

The Constitutional Court notes that the appellants' complaint of a violation of this Article is arbitrary and that the appellants have failed to present evidence substantiating their complaint. The fact that the ordinary courts dismissed their claim for compensation for damages cannot be construed as being an action subjecting the appellants to inhuman or degrading treatment within the meaning of Article 3 European Convention.

- **Decision on Admissibility and Merits No. AP 173/02 of 15 June 2004, paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina*, 40/04**

As to the appellant's objection that he had his hands tied while taken into detention, the relevant conduct, without being additionally substantiated by the appellant, can be construed as a security measure to prevent the escape of a person lawfully detained, which does not embody the use of excessive and unjustified force, nor does it, *per se*, amount to a violation of the rights safeguarded by Article 3 of the European Convention.

- **Decision on Admissibility and Merits No. AP 81/04 of 28 January 2005, paragraph 27, published in the *Official Gazette of Bosnia and Herzegovina*, 30/05**

The fact that almost ten years after the end of the war in Bosnia and Herzegovina the competent authorities failed to provide all relevant information to the appellants about the fate of their relatives, who had been reported missing during the armed conflict in Bosnia and Herzegovina, is sufficient for the Constitutional Court to conclude that the right to prohibition of inhuman treatment under Article II(3)(b) of the Constitution of Bosnia and Herzegovina and Article 3 of the European Convention as well as the right to respect for private and family life under Article 8 of the European Convention have been violated in respect of the family members of missing persons.

- **Decision on Admissibility and Merits No. AP 129/04 of 27 May 2005, paragraph 68, published in the *Official Gazette of Bosnia and Herzegovina*, 58/05;**
- **Decision on Admissibility and Merits No. AP 143/04 of 23 September 2005, paragraph 83, published in the *Official Gazette of Bosnia and Herzegovina*, 80/05;**
- **Decision on Admissibility and Merits No. AP 228/04 of 13 July 2005, paragraph 50, published in the *Official Gazette of Bosnia and Herzegovina*, 80/05;** *the missing persons*

The appellant's rights under Article II(3)(b) of the Constitution of Bosnia and Herzegovina and Article 3 of the European Convention have not been violated as the competent authorities took appropriate actions following the murder of the appellant's mother. In addition, the competent authorities are currently actively involved in the relevant investigation to locate the persons suspected of having committed the murder and, consequently, the competent authorities have complied with their obligations stipulated in the positive regulations.

- **Decision on Admissibility and Merits No. AP 2058/05 of 17 November 2006, paragraph 32, published in the *Official Gazette of Bosnia and Herzegovina*, 11/07; *the missing persons***

In the situation where the authorities of Bosnia and Herzegovina failed to take the measures relating to the examination of the circumstances under which the appellants had been arrested and detained and where the allegations stated in the appeal were not challenged in the reply to the appeal, the Constitutional Court holds that it is not necessary to conduct any further examination as to the circumstances of the appellants' detention, regardless of some reservations.

- **Decision on Admissibility and Merits No. AP 2582/05 of 16 January 2007, paragraph 86, published in the *Official Gazette of Bosnia and Herzegovina*, 38/07; *the deprivation of liberty by SFOR and the circumstances under which the appellants were taken into detention, a violation of Articles 3, 5 and 8 of the European Convention established***

In the view of the Constitutional Court, the appellants in the relevant case cannot remain unconcerned to the fact that the authorities failed to conduct an official investigation into the disappearance and violent death of their relative and to reveal relevant information in their possession. On the contrary, the public authorities' inactivity must then result in *the feeling of fear, anxiety and inferiority on the appellants' side, which humiliate or degrade the victim*, which may amount to inhuman treatment prohibited by Article 3 of the European Convention.

- **Decision on Admissibility and Merits No. AP 1107/06 of 27 February 2008, paragraph 56, published in the *Official Gazette of Bosnia and Herzegovina*, 27/08; *the authorities' failure to conduct an investigation into the circumstances of the death of the appellants' son; a violation of Articles 2 and 3 of the European Convention and Article 1 of Protocol No. 6 to the European Convention established***

The investigation did not meet requirements under Article 3 of the European Convention where the State authorities took a long time to act in the appellant's case and failed to collect tangible evidence for the purpose of identifying and apprehending the persons who had blown the appellant's house up.

- **Decision on Admissibility and Merits No. AP 3299/06 of 17 March 2009, paragraph 43, published in the *Official Gazette of Bosnia and Herzegovina*, 48/09; *the public authorities' failure to conduct an official investigation in a timely fashion, a violation of Article 3 of the European Convention and Article II(3)(b) of the Constitution of Bosnia and Herzegovina established***

There is a violation of the appellant's right not to be subjected to torture, cruel, inhuman and/or degrading treatment or punishment under Article II(3)(b) of the Constitution of Bosnia and Herzegovina and Article 3 of the European Convention, as the Court of BiH, in adopting the challenged decision failed to act in accordance with the positive obligation referred to in Article 3 of the European Convention, according to which it is obliged to examine the allegations and evidence that the appellant offered in support of his assertions that there is a real risk that by expelling him to the country of origin he would be subjected to torture or inhuman or degrading treatment or punishment within the meaning of Article 3 of the European Convention.

- **Decision on Admissibility and Merits No. AP 555/09 of 30 May 2009, paragraph 35, published in the *Official Gazette of Bosnia and Herzegovina*, 73/09; deportation of aliens, a violation of Article 3 of the European Convention and Article II(3)(b) of the Constitution of Bosnia and Herzegovina established**

Degrading treatment

The claims of degrading treatment raise a serious issue and they must be substantiated by clear evidence of violation, suffering or anguish. In addition, such a treatment must involve a high degree of suffering of a victim to establish a breach of Article 3 of the European Convention. Given that none of the appellants had provided evidence substantiating their claim of a violation of the right not to be subjected to torture, inhuman or degrading treatment, the Constitutional Court dismissed those claims as ill-founded.

- **Decision on Admissibility and Merits No. U 22/03 of 26 March 2004, paragraph 24, published in the *Official Gazette of Bosnia and Herzegovina*, 24/04; criminal proceedings – statements obtained by coercive police methods**

ARTICLE 5 OF THE ECHR – RIGHT TO LIBERTY AND SECURITY OF PERSON

The Constitutional Court concludes that there is a violation of Article II(3)(d) of the Constitution of Bosnia and Herzegovina and Article 5(1) of the European Convention where the new detention order against the appellant, who is already being held in detention in accordance with the former ruling relating to the criminal offences in other proceedings, is issued to commence on the date when the former detention expires or is terminated, and where there are neither specific legal provisions nor clear-case law about it.

- **Decision on Admissibility and Merits No. AP 1381/12 of 19 July 2012, paragraph 48, published in the *Official Gazette of Bosnia and Herzegovina*, 38/07; detention has suspensive effect, a violation of Article 5 of the European Convention and Article II(3)(d) of the Constitution of Bosnia and Herzegovina established**

The Constitutional Court concludes that there is no violation of Article II(3)(d) of the Constitution of Bosnia and Herzegovina and Article 5(1)(c) in conjunction with

paragraphs 2 and 3 of the European Convention where the decision on detention contains detailed and clear reasons in respect of the existence of the general requirement for ordering the detention under Article 132(1) of the Criminal Procedure Code of BiH and of the special requirement prescribed by item b) of the same provision, as the Court found that in addition to a grounded suspicion there existed a justified fear that the appellant, if released, would hinder the inquiry by influencing the witnesses and co-accused persons, while the circumstances of the case at issue indicated the existence of important general interests prevailing over the principle of respect for the right to liberty of the individual

- **Decision on Admissibility and Merits No. AP 1560/14 of 25 June 2014, paragraph 40;** *detention, no violation of Article 5 of the European Convention and Article II(3)(d) of the Constitution of Bosnia and Herzegovina established*

The Constitutional Court concludes that there is no violation of Article 5(1)(c) and paragraphs 3 and 4 of the European Convention where the previous measure of detention was replaced with the measures prohibiting the appellants from leaving the place of residence or traveling or performing certain business activities and where the measures were imposed as less restrictive measures in accordance with the law, in order to secure their presence and the successful conduct of the criminal proceedings, and where the decisions imposing the prohibiting measures on the appellants were reviewed by the court every two months, so to examine whether the application of the prohibiting measures was still required.

- **Decision on Admissibility and Merits No. AP 5432/14 of 15 April 2015, paragraph 44, published in the *Official Gazette of Bosnia and Herzegovina*, 40/15;** *prohibiting measures within the context of Article 5 of the European Convention, no violation of Article 5 of the European Convention and Article II(3)(d) of the Constitution of Bosnia and Herzegovina established*

The Constitutional Court concludes that there is no violation of Article 5 of the European Convention where the Court of BiH decided that the bail conditions were not met to replace the prohibiting measures imposed on the appellant, as the Court decided that the bail offered would not remove a risk that the appellant would avoid to attend further proceedings before the Court, and the Court provided the detailed and clear reasons for its decision.

- **Decision on Admissibility and Merits No. AP 4597/14 of 14 May 2015, paragraph 37;** *criminal proceedings, prohibiting measures, bail, no violation of Article 5 of the European Convention and Article II(3)(d) of the Constitution of Bosnia and Herzegovina established*

The Constitutional Court concludes that there is no violation of Article II(3)(d) of the Constitution of Bosnia and Herzegovina and Article 5(1)(c) and Article 5(3) of the European Convention where the appellant, as a minor, was imposed the detention measure, as the legal conditions to impose the said measure were met at the time when the decision on detention was passed and the Court gave the detailed and clear reasons in the challenged decisions, and where the Court concluded that the circumstances of the relevant case did not allow the use of a less restrictive measure

- **Decision on Admissibility and Merits No. AP 2010/14 of 8 December 2015, paragraph 48;** *juvenile detention, no violation of Article 5 of the European Convention and Article II(3)(d) of the Constitution of Bosnia and Herzegovina established*

Deprivation of liberty

The European Convention imposes a positive obligation on the Contracting Party to investigate thoroughly into allegations of arbitrary deprivations of liberty even in cases where it cannot be established, although it is alleged, that the deprivation of liberty is attributable to the authorities (see Decision of the Human Rights Chamber No. CH/02/9851 *et al.*; *M.Č. et al. v. the Republika Srpska*, Decision on Admissibility and Merits of 4 December 2003, paragraph 60; Judgment of the European Court of Human Rights, the case of *Ilașcu vs. Moldova and Russia*).

- **Decision on the Merits No. AP 696/04 of 23 September 2005, paragraph 53, published in the *Official Gazette of Bosnia and Herzegovina*, 86/05;**
- **Decision on Admissibility and Merits No. AP 2582/05 of 17 January 2005, paragraph 58, published in the *Official Gazette of Bosnia and Herzegovina*, 38/07;** *the deprivation of liberty by SFOR; a violation of Article 5 of the European Convention and Article II(3)(d) of the Constitution of BiH established*

The obligation to secure, for example, the right to liberty and security of the person as well as the right not to be subjected to torture, or inhuman or degrading treatment relates to the general obligations of a state under Article 1 of the European Convention according to which the High Contracting Parties will secure to everyone within their jurisdiction the rights and freedoms defined in the European Convention. Therefore, the competent domestic authorities had the obligation to conduct the investigation as regards the violation of the appellants' rights. Additionally, such investigation does not have to give positive outcome in each case. The European Convention does not impose an obligation to a state to achieve a certain result but to carry out the appropriate procedure. Since the obligation includes the procedure and not the result, it is possible that the authorities comply with their positive obligation under the European Convention even if the facts and circumstances under which a violation of the right occurred were not specifically established.

- **Decision on Admissibility and Merits No. AP 2582/05 of 17 January 2005, paragraph 58, published in the *Official Gazette of Bosnia and Herzegovina*, 38/07;** *the deprivation of liberty by SFOR; a violation of Article 5 of the European Convention and Article II(3)(d) of the Constitution of BiH established;*
- **Decision on the Merits No. AP 696/04 of 23 September 2005, paragraph 54, published in the *Official Gazette of Bosnia and Herzegovina*, 86/05**

There is a violation of the right to liberty and security of the person under Article II(3)(d) of the Constitution of Bosnia and Herzegovina and Article 5 paragraph 1 of the European Convention, in case where the person was kept in detention after the convicting judgment had become legally binding, while there was no legal basis for his detention any longer.

- **Decision on Admissibility and Merits No. AP 1426/05 of 9 November 2006, paragraphs 42 and 43, published in the *Official Gazette of Bosnia and Herzegovina*, 11/07;**
- **Decision on Admissibility and Merits No. AP 2539/06 of 29 April 2009, paragraph 41, published in the *Official Gazette of Bosnia and Herzegovina*, 50/09; detention after the judgment of conviction became final; a violation of Article 5 of the European Convention and Article II(3)(d) of the Constitution of BiH established**

Lawful arrest – in general

There is a violation of the right to liberty and security of person under Article II(3)(d) of the Constitution of Bosnia and Herzegovina and Article 5 paragraph 1 of the European Convention, in case where a detention is based on the legal provision stipulating mandatory detention and, therefore, the detention was not lawful within the meaning of the principles of Article 5 paragraph 1 of the European Convention.

- **Decision on Admissibility and Merits No. AP 573/07 of 29 April 2009, paragraph 36, published in the *Official Gazette of Bosnia and Herzegovina*, 75/09; a violation of Article 5 of the European Convention established**

The Constitutional Court concludes that there is a violation of the rights referred to in Article II(3)(d) of the Constitution of Bosnia and Herzegovina and Article 5(1) of the European Convention where the ruling ordering the detention is based on the legal provision which stipulates „mandatory detention”, that is where the court was unable to individualize the imposed measure, nor could it involve itself in examining any special circumstances which could justify the ordering of the detention for the appellant within the meaning of the guarantees under Article 5 of the European Convention. Furthermore, the Constitutional Court concludes that the law provision in question does not meet the necessary quality of law to such an extent that the standards under Article II(3)(d) of the Constitution of Bosnia and Herzegovina and Article 5(1) of the European Convention are respected.

- **Decision on Admissibility and Merits No. AP 498/11 of 15 July 2011, paragraph 35, published in the *Official Gazette of Bosnia and Herzegovina*, 104/11**

Lawful arrest of a person after conviction by a competent court

The appellant was not deprived of liberty for a failure to meet his contractual obligation but rather because he committed the criminal offence, which was clearly defined in the law at the time when the offence was committed; therefore, there is no violation of Article 5 of the European Convention and Article 1 of Protocol No. 4 to the European Convention.

- **Decision on Admissibility and Merits No. AP 227/03 of 27 October 2004, paragraph 26, published in the *Official Gazette of Bosnia and Herzegovina*, 15/05; the judgment rendered in the criminal proceedings related to the criminal offence of fraud**

Lawful order within the meaning of Article 5 of the European Convention

The Constitutional Court concludes that there is a violation of the right to liberty and security of person under Article II(3)(d) of the Constitution of Bosnia and Herzegovina and Article 5 paragraph 1(b) of the European Convention, in case where it is not possible to conclude, based on the reasons offered in the challenged rulings to impose the measure prescribed by law and resulting in a deprivation of liberty, that the ordinary courts, in accordance with the law, established that at the time the measure was imposed there existed „a lawful order by the court” not complied with by the person concerned.

- **Decision on Admissibility and Merits No. AP 409/15 of 24 April 2015, paragraph 41, published in the *Official Gazette of Bosnia and Herzegovina*, 44/15; the measure amounting to the deprivation of liberty of the appellant was imposed for the appellant had failed to pay the fine determined in the final and enforceable ruling of the competent court; a violation of Article 5 of the European Convention and Article II(3)(d) of the Constitution of BiH established;**
- **Decision on Admissibility and Merits No. AP 1651/15 of 17 June 2015, paragraph 25, published in the *Official Gazette of Bosnia and Herzegovina*, 58/15;**
- **Decision on Admissibility and Merits No. AP 1276/15 of 17 June 2015, paragraph 55**

Lawful arrest to prevent influencing witnesses

There is no violation of Article II(3)(d) of the Constitution of Bosnia and Herzegovina and Article 5 paragraph 1(c) of the European Convention, in case where the court, in the proceedings to extend the detention of the appellants, established that there existed a justified fear that the appellants, by concealing or destroying evidence, would hinder the investigation, or where particular circumstances indicated that the appellants would try to influence witnesses or accomplices and where the circumstances under which the relevant criminal offences were committed amount to extreme circumstances where there was a real threat of serious public disorder, if the appellants were released.

- **Decision on Admissibility and Merits No. AP 591/11 of 7 April 2011, paragraph 58, published in the *Official Gazette of Bosnia and Herzegovina*, 41/11;**
- **Decision on Admissibility and Merits No. AP 1560/14 of 25 June 2014**

Lawful deprivation of liberty of persons of unsound mind, alcoholics or drug addicts or vagrants

The placement of persons of unsound mind in a special unit at the prison does not satisfy the requirement of lawfulness under Article 5 paragraph 1(e) of the European Convention.

- **Decision on Admissibility and Merits No. AP 2271/05 of 21 December 2006, pp. 63 to 65, published in the *Official Gazette of Bosnia and Herzegovina*, 38/07;**
- **Decision on Admissibility and Merits No. AP 672/07 of 17 December 2009, published in the *Official Gazette of Bosnia and Herzegovina*, 20/10; criminal**

proceedings, the court ordered a security measure of mandatory psychiatric treatment in custody in a medical institution

A deprivation of liberty and placement in a detention and correctional institution of a person based on the court decision allowing forcible placement in a psychiatric institution does not satisfy the requirement of lawfulness under Article 5 paragraph 1(e) of the European Convention in respect of the institution wherein the person is forcibly placed.

- **Decision on Admissibility and Merits No. AP 65/11 of 8 June 2011, paragraph 47, published in the *Official Gazette of Bosnia and Herzegovina*, 99/11**

The Constitutional Court concludes that in the present case there is a violation of the right under Article II(3)(d) of the Constitution of Bosnia and Herzegovina and Article 5 paragraph 1(e) of the European Convention, as the appellant was involuntarily placed in the Institution, *i.e.* deprived of liberty within the meaning of Law on the Basic Social Protection, Protection of Civilian War Victims and Families with Children. Namely, the requirement of lawfulness under the European Convention was not satisfied, given the fact that the Law on the Protection of Persons with Mental Disorders defines possibilities, conditions, methods and procedures to detain *i.e.* to place in custody persons with mental disorders, which was not applied in the present case.

- **Decision on Admissibility and Merits No. AP 620/13 of 25 April 2013, paragraph 46**

Deportation and extradition within the meaning of Article 5 of the ECHR

Given that the appellant has the status of an alien who was staying unlawfully in the territory of BiH and seeking international protection, the court assessed that in the present case prerequisites for placing the appellant in the Immigration Centre were met. Therefore, the Constitutional Court holds that the present case is about a lawful deprivation of liberty of the alien awaiting a decision on his obtaining citizenship, which is provided for by Article 5 paragraph 1(f) of the European Convention.

- **Decision on Admissibility No. AP 3307/08 of 28 Mart 2008, paragraph 24; *the expulsion of aliens, the appeal is manifestly (prima facie) ill-founded in respect of Article 5 of the European Convention***

The Constitutional Court concludes that there is no violation of the appellant's right to liberty and security of person under Article II(3)(d) of the Constitution of Bosnia and Herzegovina and Article 5 paragraph 1(f) and Article 5 paragraph 4 of the European Convention, as the Court finds no element of arbitrariness in determining the detention pending extradition proceedings, *i.e.* where the appellant's detention was lawfully ordered within the meaning of the International Legal Assistance Law, and where the decisions ordering the detention were reviewed and the appellant was not deprived of procedural guarantees under Article 5 paragraph 4 of the European Convention.

- **Decision on Admissibility and Merits No. AP 5392/10 of 9 February 2011, paragraph 45, published in the *Official Gazette of Bosnia and Herzegovina*, 48/11; *the detention pending extradition, no violation of Article 5 of the European Convention***

The Constitutional Court concludes that there is a violation of the right under Article II(3)(d) of the Constitution of Bosnia and Herzegovina and Article 5 paragraph 1(f) where, in the circumstances of the present case, the measure of extraordinary extension of supervision does not satisfy the requirement of lawfulness, given that, following the decision on expulsion, the appellant was deprived of liberty for his presence constituted a threat to national security based on the Information of the BiH Intelligence-Security Agency, whereas the appellant knew nothing about the Information and the Court of BiH failed to assess the grounds thereof in an adequate manner.

- **Decision on Admissibility No. AP 4064/13 of 25 June 2014, paragraph 71;** *the expulsion of aliens, a violation of Article 5 of the European Convention*

Right to be informed promptly

There is a violation of Article 5 paragraph 2 of the European Convention in case where the appellant was not informed of the „legal” reasons for his arrest and of the factual reasons raising a reasonable doubt that he had committed certain criminal offence and where he was not able to raise the issue of „lawfulness” of his arrest and detention.

- **Decision on the Merits No. AP 696/04 of 23 September 2005, paragraph 61,** published in the *Official Gazette of Bosnia and Herzegovina*, 86/05;
- **Decision on Admissibility and Merits No. AP 2582/05 of 16 January 2007, paragraph 65,** published in the *Official Gazette of Bosnia and Herzegovina*, 38/07; *the deprivation of liberty by SFOR; a violation of Article 5 of the European Convention and Article II(3)(d) of the Constitution of BiH established*

Reasonable suspicion that an offence was committed within the meaning of Article 5 of the ECHR

The Constitutional Court concludes that there is a violation of the right under Article II(3)(d) of the Constitution of Bosnia and Herzegovina and Article 5 paragraph 1(c) of the European Convention where the Court of BiH ordered the detention against the appellant, although the challenged decisions show that the basic legal condition was not met, namely that there existed a reasonable suspicion that the appellant had committed the criminal offences charged with, as it cannot be deduced from the reasons offered in the challenged decisions that the reasonable suspicion standard, as defined by Article 20 of the BiH Criminal Procedure Code, was satisfied, nor there exist „the facts or information which would satisfy an objective observer that the person concerned may have committed the offence charged with”, as required by the standards of Article 5 paragraph 1(c) of the European Convention.

- **Decision on the Merits No. AP 1885/13 of 24 May 2013, paragraph 63;** *criminal proceedings, a violation of Article 5 of the European Convention and Article II(3)(d) of the Constitution of Bosnia and Herzegovina;*
- **Decision on the Merits No. AP 2147/13 of 12 June 2013, paragraph 48;** *criminal proceedings, a violation of Article 5 of the European Convention and Article II(3)(d) of the Constitution of Bosnia and Herzegovina*

A judge or other officer authorized by law to exercise judicial power within the context of Article 5 of the ECHR

The prosecutor's function does not satisfy the criterion set forth in Article 5 paragraph 3 of the European Convention. The European Court of Human Rights stated that the main reasons were that the prosecutor, who first carried out the investigation and subsequently participated in the trial as a prosecutor, became the party to the proceedings. Therefore, it may not be expected that the person who had such a role may be deemed to be a „person authorized by law to exercise judicial power” within the meaning of this Article.

- **Decision on the Merits No. AP976/05 of 9 February 2006, paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina*, 43/06; the prosecutor cannot be a person authorized by law to exercise judicial power; a violation of Article 5 of the European Convention and Article II(3)(d) of the Constitution of BiH established**

Right to be brought promptly before a competent judicial authority

The courts should apply directly the provisions of Article 5 paragraph 3 of the European Convention also to the cases where the Criminal Procedure Code does not provide for the strict obligation that the arrested person, *i.e.* the person in detention as determined by the judicial order, is brought promptly before a competent judicial authority to give a statement.

- **Decision on the Merits No. AP 976/05 of 9 February 2006, paragraph 29, published in the *Official Gazette of Bosnia and Herzegovina*, 43/06; the lawfulness of detention; a violation of Article 5 of the European Convention and Article II(3)(d) of the Constitution of BiH established**

There is no violation of the rights under Article 5 paragraph 3 of the European Convention on the ground that the time limit for filing a request with a judge for preliminary proceedings to determine detention was exceeded for five hours and four minutes.

- **Decision on Admissibility and Merits No. AP 2561/05 of 9 November 2006, paragraph 32, published in the *Official Gazette of Bosnia and Herzegovina*, 14/07**

There is a violation of the rights under Article 5 paragraph 3 of the European Convention in case where a detention was determined against the person deprived of liberty and where his detention was extended, and the person was not brought promptly before a judge to provide the statement on the circumstances to expand the scope of the investigation. In this regard, it is not decisive whether such a procedure was strictly prescribed by the Criminal Procedure Code of the Republika Srpska, given that the provisions of the European Convention, according to the Constitution of Bosnia and Herzegovina, have priority over all other laws and apply directly in Bosnia and Herzegovina.

- **Decision on Admissibility and Merits No. AP 1812/07 of 11 November 2009, paragraph 40, published in the *Official Gazette of Bosnia and Herzegovina*, 23/10;**

criminal proceedings, a violation of Article 5 of the European Convention and Article II(3)(d) of the Constitution of BiH established

The Constitutional Court concludes that there is a violation of the right under Article II(3)(d) of the Constitution of Bosnia and Herzegovina and Article 5 paragraph 3 of the European Convention where the requirement of „promptness” under the said provision is not met, as the appellant, while the criminal proceedings against him were underway, was not personally heard in connection with the detention determined against him, within 15 days following the detention order.

- **Decision on Admissibility and Merits No. AP 3752/12 of 17 June 2015, paragraph 44, published in the *Official Gazette of Bosnia and Herzegovina*, 58/15; criminal proceedings, a violation of Article 5 of the European Convention and Article II(3)(d) of the Constitution of BiH established**

The Constitutional Court concludes that there is a violation of the right under Article II(3)(d) of the Constitution of Bosnia and Herzegovina and Article 5 paragraph 3(c) of the European Convention in case where a detention was determined against the first defendant, as a person deprived of liberty, without bringing him promptly before a judge to be heard in respect of the reasons based on which his detention was ordered.

- **Decision on Admissibility and Merits No. AP 2930/15 of 16 September 2015, paragraph 82, published in the *Official Gazette of Bosnia and Herzegovina*, 83/15; criminal proceedings, a violation of Article 5 of the European Convention and Article II(3)(d) of the Constitution of BiH established**

The length of detention

The Constitutional Court finds that the County Court examined the justification for extending the detention taking into account the circumstances of the relevant case and presented the detailed reasons for its position that there were the legitimate aims justifying the extension of the detention. The Constitutional Court finds that, while examining the lawfulness of detention, the Supreme Court assessed that this measure was necessary and it provided the reasons with regard to the appellant’s complaints against the extension of his detention. The Constitutional Court notes that the appellant’s detention had been determined by the County Court’s ruling of 24 November 2006 and, after the confirmation of the indictment, the detention was extended by the County Court’s ruling of 22 May 2007. Afterwards, pursuant to Article 194 paragraph 1 of the Criminal Procedure Code of the Republika Srpska, the justification for the detention was reviewed every two months. Finally, by the challenged ruling of 19 February 2008, the County Court determined that the criteria justifying the detention still existed given that the relevant case in its nature related to a very complex criminal offence punishable by at least 10 years imprisonment or by more severe penalty and, as to the manner in which the criminal offence had been committed or the consequences thereof, the detention was necessary to protect the security and property of the citizens. In the view of the Constitutional Court, the period of the appellant’s detention of one year and four months in the County Prison in Trebinje is not unreasonable.

- **Decision on Admissibility No. AP 744/08 of 17 April 2008, paragraph 25;** *the length of detention and detention of a mentally ill person, the appeal is manifestly ill-founded*

Having examined all the reasons, *pro et contra*, in respect of the 9-month time period that the appellants would stay in detention before the completion of the investigation, the Constitutional Court concluded that there was no violation of the right to be tried within a reasonable time under Article II(3)(d) of the Constitution of Bosnia and Herzegovina and Article 5 paragraph 3 of the European Convention. The questions that the Constitutional Court had to answer related to the seriousness of the criminal offences, *i.e.* the amount of penalties set for the criminal offences under investigation against the appellants, the suspects-appellants' moral and character traits and behaviour, the complexity of the case and the manner in which the investigation was conducted, and the investigation authority's conduct in respect of the appellants' request to be released from detention and their request for completion of the investigation.

- **Decision on Admissibility and Merits No. AP 2849/09 of 11 November 2009, paragraph 38, published in the *Official Gazette of Bosnia and Herzegovina*, 18/10;** *the length of the detention at the investigation stage, no violation of Article 5 of the European Convention and Article II(3)(d) of the Constitution of BiH established*

Request to be released from detention

There is no violation of Article 5 of the European Convention in the situation where the appellant's petition for reopening the proceedings was granted and his detention was extended based on Article 191, paragraph 1(4) of the Criminal Procedure Code (the seriousness of the criminal offence). The mentioned basis is an objective and unchangeable category and the application of this basis depends exclusively on the existence of an abstract danger in each criminal offence, *i.e.* on the punishment prescribed for the offence committed. Consequently, this is not affected by the fact that the appellant, by reason of the principle *reformatio in peius*, cannot be imposed a more severe punishment than that imposed earlier.

- **Decision on Admissibility and Merits No. AP 330/04 of 17 December 2004, paragraph 33, published in the *Official Gazette of Bosnia and Herzegovina*, 38/05**

Justification for a length of pre-trial detention

According to the Constitutional Court, the appellant's complaint relating to a violation of the right „to be brought before the court” when the decision extending his detention was taken, are not well founded nor are there any other elements indicating that the procedure in this regard was unconstitutional. Consequently, there is no violation of the right to liberty and security of the person under Article II(3)(d) of the Constitution of Bosnia and Herzegovina and Article 5 paragraph 3 of the European Convention.

- **Decision on Admissibility and Merits No. AP 247/05 of 18 May 2005, paragraph 30, published in the *Official Gazette of Bosnia and Herzegovina*, 60/05**

The Constitutional Court established that the Court of BiH had examined the justification for extending the detention given the circumstances of the relevant case and presented the detailed reasons for its position that there had been the legitimate aims justifying the extension of the detention. In examining the lawfulness of the detention, the Court of BiH assessed that this measure was necessary and it provided the reasons with regard to the appellant's complaints against the extension of his detention, stating that the indictment was confirmed and that there was the need to prevent him from fleeing or exerting influence over witnesses or accomplices.

- **Decision on the Merits No. AP 542/05 of 14 March 2006, paragraph 38, published in the *Official Gazette of Bosnia and Herzegovina*, 57/06;**
- **Decision on the Merits No. AP 252/05 of 12 April 2006, paragraph 46, published in the *Official Gazette of Bosnia and Herzegovina*, 49/06**

There is a violation of Article II(3)(d) of the Constitution of Bosnia and Herzegovina and Article 5 paragraph 3 of the European Convention in case where the appellant's detention was ordered based on the fear that influence would be exerted over witnesses whereby the criminal proceedings would be hindered, but the fear was not substantiated by specific and valid reasons, which would objectively indicate that the appellant attempted or that there was a serious risk that he would attempt to exert influence over witnesses, and the decision was based merely on the presumptions made by the court due to the nature and severity of the offence the appellant had been charged with and due to the possible investigation against accomplices.

- **Decision on Admissibility and Merits No. AP 6/08 of 13 May 2008, paragraph 50, published in the *Official Gazette of Bosnia and Herzegovina*, 49/08; the reasons for the detention; a violation of Article 5 of the European Convention and Article II(3)(d) of the Constitution of BiH established**

There is no violation of Article II(3)(d) of the Constitution of Bosnia and Herzegovina and Article 5 paragraph 3 of the European Convention in case where the appellant's detention was ordered based on the fear that influence would be exerted over witnesses whereby the criminal proceedings would be hindered, and the fear was substantiated by specific and valid reasons, which objectively indicated that there had been the attempts or the serious risks of witness intimidation, even against those who were protected, as well as that influence was exerted over accomplices who were also under investigation.

- **Decision on Admissibility and Merits No. AP 1966/08 of 28 October 2008, paragraph 33, published in the *Official Gazette of Bosnia and Herzegovina*, 18/09; the reasons for the detention; there is no violation of Article 5 of the European Convention and Article II(3)(d) of the Constitution of BiH**

There is a violation of the appellant's right to liberty and security of person under Article II(3)(d) of the Constitution of Bosnia and Herzegovina and Article 5 paragraph 3 in conjunction with paragraph 1(c) of the European Convention, as the Cantonal Court, by rendering its decision No. 07 0 K 003284 10 Kv 11 of 10 June 2010, failed within the legal time-limit of two months to review the appellant's detention to ensure that it continued to be justified and, therefore, the appellant's detention in the period of 14 days was unlawful.

- **Decision on Admissibility and Merits No. AP 1518/10 of 13 October 2010, paragraph 35, published in the *Official Gazette of Bosnia and Herzegovina*, 37/11**

Judicial review of the lawfulness of deprivation of liberty or arrest

There is a violation of Article 5 paragraph 1(e) and paragraph 4 of the European Convention in case where the applicable law does not specifically define any procedure of pronouncing, extending or terminating the measure of compulsory medical treatment and placement in healthcare institutions when it comes to the persons who committed criminal offences in a state of mental incapacity, nor does it prescribe an effective right of access to „court” to ensure the review of the lawfulness of the detention, which leaves an ample room for arbitrary application of law.

- **Decision on Admissibility and Merits No. AP 2271/05 of 21 December 2006, pp. 77 to 81, published in the *Official Gazette of Bosnia and Herzegovina*, 38/07;**
- **Decision on Admissibility and Merits No. AP 672/07 of 17 December 2009, published in the *Official Gazette of Bosnia and Herzegovina*, 20/10; *criminal proceedings, the measure of compulsory medical treatment and placement in healthcare institution***

There is a violation of Article 5 paragraph 4 of the European Convention where the Court, deciding on the appeal against the decision on detention, failed to review the decision determining the detention and conducted the appellate proceedings just for the sake of form and upheld the first instance decision without the possibility to consider the circumstances of the detention, given the obligatory nature of the detention; thus, the legal remedy sought by the appellant was made illusory.

- **Decision on Admissibility and Merits No. AP573/07 of 29 April 2009, paragraph 36, published in the *Official Gazette of Bosnia and Herzegovina*, 75/09; *a violation of Article 5 of the European Convention and Article II(3)(d) of the Constitution of BiH established***

Speed of review of the lawfulness of deprivation of liberty or arrest

The Constitutional Court concludes that the appellant was not deprived of his right to file an appeal with the court in respect of a review of the lawfulness of deprivation of liberty and that the requirement as to the expediency of review of the lawfulness of the proceedings was satisfied, as stipulated by Article 5 paragraph 4 of the European Convention, given that the Supreme Court took its decision within eight days upon the appellant’s appeal filed against the ruling extending his detention.

- **Decision on Admissibility and Merits No. AP 641/03 of 30 November 2004, paragraph 38, published in the *Official Gazette of Bosnia and Herzegovina*, 20/05**

Procedural guarantees of review of the lawfulness of deprivation of liberty or arrest

The fact that the Court of BiH decided on the two appeals filed against the same ruling and issued the two separate rulings does not mean that the appellant was in any manner deprived of his right to avail himself of legal remedy against the ruling ordering his detention nor does it mean that any procedural guarantees of Article 5 paragraph 4 of the European Convention were breached.

- **Decision on Admissibility and Merits No. AP 6/08 of 13 May 2008, paragraph 44, published in the *Official Gazette of Bosnia and Herzegovina*, 49/08; the grounds for the detention; the violation of Article 5 of the European Convention and Article II(3)(d) of the Constitution of BiH established**

Compensation

A formal stipulation of the right to compensation in the present case, where SFOR carried out the arrest and detention, does not meet the requirement of Article 5 paragraph 5 of the European Convention.

- **Decision on Admissibility and Merits No. AP 2582/05 of 16 January 2007, paragraph 78, published in the *Official Gazette of Bosnia and Herzegovina*, 38/07; the deprivation of liberty by SFOR; a violation of Article 5 of the European Convention and Article II(3)(d) of the Constitution of BiH established**

A person seeking compensation under Article 5 paragraph 5 of the European Convention must be a victim of a breach of any of paragraphs 1 through 4 of Article 5 of the European Convention. Otherwise, such a person would not be entitled to compensation under paragraph 5 of Article 5 of the European Convention. According to the case-law of the European Court of Human Rights, the mere fact that the person in detention is subsequently released by the court decision does not make the arrest unlawful with retroactive effect (see European Court of Human Rights, *X vs. the United Kingdom*, Decisions and Reports, 1980, p. 223).

- **Decision on Admissibility and Merits No. AP 2666/06 of 28 November 2008, paragraph 33, published in the *Official Gazette of Bosnia and Herzegovina*, 12/09; the issue of compensation for non-pecuniary damages sustained during the appellant's detention, as the charges against him were subsequently dropped; there is no violation of Article 5 of the European Convention and Article II(3)(d) of the Constitution of BiH;**
- **Decision on Admissibility and Merits No. AP 1928/06 of 18 December 2008, published in the *Official Gazette of Bosnia and Herzegovina*, 17/09;**
- **Decision on Admissibility and Merits No. AP 2414/11 of 10 June 2014**

There is a violation of Article II(3)(d) of the Constitution of Bosnia and Herzegovina and Article 5 paragraph 5 of the European Convention where the judicial decisions ignore the positive obligation of the State to compensate the persons in respect of whom it was

established that they were the victims of „unlawful deprivation of liberty”, whereby the appellant, as to the right to liberty and security of person, had no possibility to claim compensation for unlawful and arbitrary actions taken by the State and its bodies.

- **Decision on Admissibility and Merits No. AP 3223/06 of 17 March 2009, paragraph 37, published in the *Official Gazette of Bosnia and Herzegovina*, 50/09; a violation of Article 5 of the European Convention and Article II(3)(d) of the Constitution of BiH established**

ARTICLE 6 OF THE ECHR – RIGHT TO A FAIR TRIAL

Article 6 of the ECHR

– right to a fair trial – in general

The Constitutional Court is a domestic institution of appellate jurisdiction in the view of the rights and freedoms guaranteed by the Constitution of Bosnia and Herzegovina, and in that sense, regardless of the fact that the proceedings were not finalized, it has to point out violations of rights guaranteed by the European Convention and the Constitution of Bosnia and Herzegovina.

- **Decision No. U 34/01 of 22 June 2001, paragraph 25, published in the *Official Gazette of Bosnia and Herzegovina*, 20/01; the criminal proceedings were not conducted by the court established under law; the proceedings initiated upon an objection as to the subject matter jurisdiction; the violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The rule that the time-limit should be calculated from the date on which the judgment was communicated to the defendant and not to his attorney cannot be considered to be of such a nature as to raise an issue of violation of Article 6 paragraph 1 of the European Convention.

- **Decision No. U 36/01 of 3 November 2001, paragraph 23, published in the *Official Gazette of Bosnia and Herzegovina*, 7/02; criminal proceedings, a time limit on pursuing a legal remedy; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

The ordinary courts' failure to resolve a plea of immunity, as an important preliminary issue in the criminal proceedings, constitutes a violation of the appellant's right to a fair trial.

- **Decisions Nos. U 59/01, U 60/01 and U 61/01 of 10 May 2002, published in the *Official Gazette of Bosnia and Herzegovina*, 24/02; the criminal proceedings; immunity; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established;**
- **Decision on Admissibility and Merits No. AP 412/04 of 29 October 2004, paragraph 22, published in the *Official Gazette of Bosnia and Herzegovina*, 19/05;**

the criminal proceedings; a plea of immunity, no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established

The legislative body must not regulate the statute of limitations in a manner which would result in an essential impossibility or unjustified difficulties in the exercise of the rights in question, but this mechanism is necessary to secure legal certainty.

- **Decision on Admissibility and Merits No. U 158/03 of 22 September 2003, paragraph 35, published in the *Official Gazette of Bosnia and Herzegovina*, 5/05**

Even if some rights could clearly be classified as being in the field of public law which falls outside the scope of Article 6 of the European Convention, it is necessary to secure, within the national framework, the minimum procedural guarantees of the conduct of proceedings in accordance with Article 6 of the European Convention, and the ultimate obligation falls particularly on judicial bodies which have the constitutional obligation, regardless of the character of the dispute, to secure full compliance with the requirements of Article 6 of the European Convention.

- **Decision No. U 148/03 of 28 November 2003, paragraph 51, published in the *Official Gazette of Bosnia and Herzegovina*, 1/04; administrative proceedings and administrative dispute; the application of Article 6 in the proceedings related to customs duties, a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The European Convention protects, in principle, individuals, non-governmental organizations or associations of citizens. Therefore, Article 6 of the European Convention does not provide for the protection for the state authorities and institutions vested with public powers. Moreover, the European Convention stipulates that state authorities at all levels are obliged to act in accordance with the rights and obligations mentioned therein. Consequently, the Constitutional Court holds that the appellant (the Federal Ministry of Defence) does not enjoy the protection under Article 6 paragraph 1 of the European Convention.

- **Decision No. U 5/02 of 21 January 2004, paragraph 25, published in the *Official Gazette of Bosnia and Herzegovina*, 6/04; administrative proceedings, the repossession of the apartment; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

The dispute concerns an economic issue and it falls within the scope of Article 6 paragraph 1 of the European Convention in case where the appellant is entitled to seek in accordance with laws the repayment of the overpaid customs levy, which is to be deemed his property and which embodies a „civil right“. In view of the above, the Constitutional Court concludes that Article 6 of the European Convention is applicable to the present case.

- **Decision No. U 46/03 of 23 April 2004, paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina*, 38/04; administrative proceedings and administrative dispute on the repayment of the overpaid levies**

The appellant has not stated any procedural error or irregularity that might have an effect on the fairness of the proceedings, nor is there any other element that might make it unfair. Contrary to the allegations stated in the appeal, the case file reveals that the appellant was given the possibility to represent his interests in all proceedings at all levels and, based on the fully clear reasons stated in the challenged decisions enacted in accordance with law, it may be concluded that there are no evidence that the courts acted unfairly or contrary to Article 6 paragraph 1 of the European Convention.

- **Decision on Admissibility and Merits No. U 61/03 of 19 March 2004, paragraph 29, published in the *Official Gazette of Bosnia and Herzegovina*, 15/04;**
- **Decision on Admissibility and Merits No. U 68/03 of 17 May 2004, paragraph 23, published in the *Official Gazette of Bosnia and Herzegovina*, 34/04;**
- **Decision on Admissibility and Merits No. U 105/03 of 26 August 2004, paragraphs 24 and 25, published in the *Official Gazette of Bosnia and Herzegovina*, 48/04;**
- **Decision on Admissibility and Merits No. AP 910/04 of 15 June 2005, paragraph 25, published in the *Official Gazette of Bosnia and Herzegovina*, 73/05**

The Constitutional Court's task is not to give a ruling as to whether statements of witnesses were properly admitted as evidence, but rather to ascertain whether the proceedings as a whole, including the way in which evidence was taken, were fair (see, among other authorities, Judgment by the European Court of Human Rights in the case of *Doorson vs. the Netherlands*, 26 March 1996, Reports on Judgments and Decisions 1996-II, paragraph 67).

- **Decision on Admissibility and Merits No. AP 71/02 of 28 April 2004, paragraph 33, published in the *Official Gazette of Bosnia and Herzegovina*, 34/04; non-contentious proceedings to issue an order cancelling the lease agreement related to the business premises at issue**

There is no violation of the right to a fair trial in the situation where the appellants' claims were dismissed for a failure to comply with the legal time-limit.

- **Decision AP 28/02 of 15 June 2004, paragraph 34, published in the *Official Gazette of Bosnia and Herzegovina*, 38/04; administrative proceedings for repayment of money paid for special customs duties**

As to the issue of witnesses and evidence, Article 6 paragraph 1 of the European Convention does not require that the court deals with all arguments put forward by the parties during the course of proceedings, but only with those the court considers to be relevant. The court has to take into account the arguments of the parties to the proceedings, but there is no need for all of them to be reflected in the reasoning of the judgment (see Constitutional Court, Decision No. *U 62/05* of 5 April 2002, paragraph 19, *the Official Gazette of Bosnia and Herzegovina*, 24/02). Discretionary power enjoyed by each court contributes to the efficient conduct of the proceedings.

- **Decision on Admissibility and Merits No. AP 45/02 of 30 June 2004, paragraph 63, published in the *Official Gazette of Bosnia and Herzegovina*, 41/04; the transfer of the occupancy right from the grandfather to the grandson, the violation**

of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established

In the course of evidentiary proceedings, the County Court heard the criminal intelligence service authorized officers and the relevant investigative judge, who explicitly claimed that the appellant had presented his defence and admitted the crime without being subjected to compulsory powers or threat. In addition, the investigative judge's conclusion was based on his direct observations of signs of physical coercion or a fear of the accused. Consequently, there is no violation of the right to a fair trial.

- **Decision on Admissibility and Merits No. U 50/03 of 21 July 2004, paragraph 23, published in the *Official Gazette of Bosnia and Herzegovina*, 41/04**

The Constitutional Court holds that the appellant had the opportunity in the course of proceedings as a whole to present all evidence serving to establish the facts decisive in rendering the court judgments. Furthermore, the courts took into account all allegations and assertions and examined the appellant's claims on the basis of applicable legal provisions and provided sufficiently clear reasons for their decisions within the meaning of Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 paragraph 1 of the European Convention. In the view of the Constitutional Court there is no indication that the proceedings were conducted unfairly nor is there any indication of any procedural violations as regards the respect of the principle of fair trial.

- **Decision on Admissibility and Merits No. AP 91/02 of 23 July 2004, paragraph 20, published in the *Official Gazette of Bosnia and Herzegovina*, 43/04;**
- **Decision on Admissibility and Merits No. AP 152/02 of 15 June 2004, paragraph 23, published in the *Official Gazette of Bosnia and Herzegovina*, 40/04**

Given that the appellant, in his appeal, complains of a violation of his right to a fair trial based on the improper composition of the court of first instance and given that there are no other indications that the court proceedings were conducted unfairly, the Constitutional Court concludes that there is no violation of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 paragraph 1 of the European Convention.

- **Decision on Admissibility and Merits No. AP 216/03 of 29 September 2004, paragraph 23, published in the *Official Gazette of Bosnia and Herzegovina*, 54/04**

There is no violation of the right to a fair trial on the ground that the appellants had no opportunity to question the expert at the main trial.

- **Decision on Admissibility and Merits No. AP 280/03 of 27 October 2004, published in the *Official Gazette of Bosnia and Herzegovina*, 54/04**

The fairness of the proceedings is assessed on the basis of the proceedings as a whole.

- **Decision on Admissibility and Merits No. AP 381/04 of 27 October 2004, paragraph 24, published in the *Official Gazette of Bosnia and Herzegovina*, 19/05; *criminal proceedings, the facts established by the court of first instance are challenged; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH;***

- **Decision on Admissibility and Merits No. AP 404/04 of 23 March 2005, paragraph 27, published in the *Official Gazette of Bosnia and Herzegovina*, 32/05; the proceedings to establish the amount of compensation; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

The ordinary court's decision not to merge the litigations does not constitute a violation of the right to a fair trial, as it relates to the procedural decision taken by the court pursuant to the Civil Procedure Code.

- **Decision on Admissibility and Merits No. AP 289/04 of 30 November 2004, paragraph 26, published in the *Official Gazette of Bosnia and Herzegovina*, 19/05**

The ordinary court's interpretation related to the appellant's disapproval in respect of the gift agreement does not constitute a violation of the right to a fair trial under Article II(3)(e) of the Constitution of BiH and Article 6 paragraph 1 of the European Convention.

- **Decision on Admissibility and Merits No. AP 545/03 of 17 December 2004, paragraph 22, published in the *Official Gazette of Bosnia and Herzegovina*, 34/05; the cancellation of the gift agreement based on the disapproval**

There is an excessive burden placed on individuals by the legal provision stipulating that the claims which are established in the legally binding court judgments will be settled „by issuing of bonds with the maturity date of up to 50 years” which justifiably imposes the question whether any of the citizens who will possess such type of bonds will live to charge these bonds and thus exercise their rights.

- **Decision on Admissibility and Merits No. AP 288/03 of 17 December 2004, paragraph 34, published in the *Official Gazette of Bosnia and Herzegovina*, 8/05; delayed enforcement of the legally binding court judgments of the Republika Srpska**

The fact that the ruling terminating the appellant's employment, on the basis of which his employment contract ceased *ex lege*, was delivered to the appellant after he had finished serving his prison sentence does not in itself constitute a breach of the right to a fair trial since the appellant had and used the legal remedies stipulated for the protection of his rights.

- **Decision on Admissibility and Merits No. AP 119/04 of 9 December 2004, paragraph 30, published in the *Official Gazette of Bosnia and Herzegovina*, 15/05**

The consideration of the validity of indictment and evidence collected without an investigative judge is irrelevant where the indictment has already entered into force and the appellant has failed to file an objection in order to correct any possible failures in proceedings before the ordinary courts with regard to the lawfulness of the indictment.

- **Decision on Admissibility and Merits No. AP 476/04 of 17 December 2004, paragraph 26, published in the *Official Gazette of Bosnia and Herzegovina*, 34/05; criminal proceedings, compensation of the costs of the criminal proceedings, there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

The public interest in terms of the limitation of the right by regulation of certain time limits is reflected in the efficient functioning of the legal system and legal certainty; the appellant's failure to comply with the legally prescribed time limits, prevented the ordinary courts to decide on the merits of the appellant's claim, which is not in opposition to the requirements set out in Article 6 paragraph 1 of European Convention.

- **Decision on Admissibility and Merits No. AP 150/04 of 17 February 2005, paragraph 31, published in the *Official Gazette of Bosnia and Herzegovina*, 36/05**

Enforcement of a judgment issued by any court should be considered as an integral part of the „trial” within the meaning of Article 6 of the European Convention.

- **Decision on Admissibility and Merits No. AP 464/04 of 17 February 2005, paragraph 27, published in the *Official Gazette of Bosnia and Herzegovina*, 40/05; impossibility to enforce the legally binding court decision awarding compensation for non-pecuniary damages suffered due to the death of the appellants' family member; access to courts; a violation of Article 6 of the European Convention and Article II(3) (e) of the Constitution of BiH established**

The appellant's assertions that the court of first instance failed to establish the facts correctly and completely do not give rise to a constitutional issue falling within the Constitutional Court's jurisdiction.

- **Decision on Admissibility and Merits No. AP 74/04 of 23 March 2005, paragraph 22, published in the *Official Gazette of Bosnia and Herzegovina*, 27/05**

There is no violation of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 paragraph 1 of the European Convention in case where the ordinary courts in the relevant case used evidence collected by the judicial and police authorities of the Federal Republic of Germany as transfer of evidence is based on the bilateral agreement between former SFRY and the Federal Republic of Germany.

- **Decision on Admissibility and Merits No. AP 91/04 23 March 2005, paragraph 44, published in the *Official Gazette of Bosnia and Herzegovina*, 30/05**

The appellant's complaints relating to a violation of his right to a fair trial due to the Supreme Court's failure to answer all the allegations stated in the appeal, are ill-founded given that the Supreme Court's judgment contains the sufficient reasons and explanations affirming the dismissal of the appellant's appeal as well as the essential reasons on the basis of which the Supreme Court upheld the Court Court's judgment.

- **Decision on Admissibility and Merits No. AP 108/04 of 23 March 2005, paragraph 25, published in the *Official Gazette of Bosnia and Herzegovina*, 30/05**

The appellant had the opportunity to exercise his employment rights in court proceedings in two jurisdictions. The courts carried out evidentiary proceedings and the appellant took part in those proceedings so he could present his position in respect of the decisive facts. The courts gave the clear and sufficient reasons for their decisions.

- **Decision on Admissibility and Merits No. AP 351/04 of 23 March 2005, paragraph 22, published in the *Official Gazette of Bosnia and Herzegovina*, 32/05; the decertified police officer**

There is no violation of the right to a fair trial in case where the public powers are exercised *ex officio*, as stipulated by the law, in order to corroborate evidence presented in court proceedings with regard to the question whether the former rulings constituting certain rights were rendered in accordance with the law, which embodies the special procedure dealing exclusively with the legal issues and not with the establishment of the facts.

- **Decision on Admissibility and Merits No. AP 556/04 of 15 June 2005, paragraph 27, published in the *Official Gazette of Bosnia and Herzegovina*, 69/05; administrative proceedings, the determination of the right to family disability allowance; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

There is no violation of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 paragraph 1 of the European Convention in case where the ordinary courts in the relevant case, while deciding on a motion of immunity, establish that the disputed statement of the holder of immunity, *in abstracto*, exceeds the framework of activities for which he was granted immunity under the positive legal regulations.

- **Decision on Admissibility and Merits No. AP 963/05 of 22 July 2005, paragraph 39, published in the *Official Gazette of Bosnia and Herzegovina*, 57/06**

The principles of the right to a fair trial relate also to the proceedings where the right to immunity is to be decided given that, in case where the request for immunity is dismissed and civil proceedings are continued, the issue of immunity cannot be raised any longer. In view of the above, the Constitutional Court holds that the appeal in this case is admissible as to the right under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 paragraph 1 of the European Convention, although the final decision has not yet been taken in civil proceedings.

- **Decision on Admissibility and Merits No. AP 963/05 of 22 July 2005, paragraph 20, published in the *Official Gazette of Bosnia and Herzegovina*, 57/06;**
- **Decision on Admissibility and Merits No. AP 412/04 of 29 October 2004, paragraph 18; published in the *Official Gazette of Bosnia and Herzegovina*, 19/05; the motion of immunity raised as a preliminary issue**

The appellants' right to a fair trial is not breached since they had the opportunity to present their allegations, facts and evidence in court proceedings in three jurisdictions and the court judgments are the result of the court's impartial and independent efforts. In addition, the court's interpretation of the legal provisions is not arbitrary.

- **Decision on the Merits No. AP 972/04 of 13 September 2005, paragraph 37, published in the *Official Gazette of Bosnia and Herzegovina*, 3/06;**
- **Decision on the Merits No. AP 1073/04 of 13 September 2005, paragraph 20 et seq., published in the *Official Gazette of Bosnia and Herzegovina*, 94/05**

The ordinary courts offered the complete and clear reasoning for their decisions in the relevant case where they decided that the legal requirements necessary to join the

proceedings were not met and that the appellant's allegation were ill-founded as to the violation of his right to a fair trial on that ground that the proceedings were conducted by the County Court in Banja Luka independent of the proceedings pending before the County Court in Dobož.

- **Decision on the Merits No. AP 934/04 of 13 October 2005, paragraph 23, published in the *Official Gazette of Bosnia and Herzegovina*, 20/06**

The use of evidence collected at an earlier stage of the proceedings does not in itself constitute a violation of the right to a fair trial if the convicting judgment is not based solely on that evidence.

- **Decision on the Merits No. AP 1064/04 of 13 October 2005, paragraph 31, published in the *Official Gazette of Bosnia and Herzegovina*, 94/05**

The execution of a legally binding ruling ordering enforcement, rendered in administrative proceedings, is an integral part of the right to a fair trial.

- **Decision on the Merits No. AP 602/04 of 13 October 2005, paragraphs 31 and 32, published in the *Official Gazette of Bosnia and Herzegovina*, 17/06; administrative proceedings, non-enforcement of the legally binding ruling, access to courts; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

In case where the charges were dropped as a result of the amnesty, there are no charges that could be „determined” within the meaning of Article 6 paragraph 1 of the European Convention and, therefore, this provision cannot be applied.

- **Decision U 24/01 of 28 September 2001, paragraph 23, published in the *Official Gazette of Bosnia and Herzegovina*, 5/02; amnesty; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

A principle of *ne bis in idem* is not breached in case where the challenged convicting and previous acquitting judgment relate to the various loans taken at different times and in different loan amounts by the appellant in cooperation with a number of persons, although these actions were classified in both proceedings as the criminal offence of fraud.

- **Decision on Admissibility and Merits No. AP 954/06 of 5 April 2007, paragraph 38, published in the *Official Gazette of Bosnia and Herzegovina*, 70/07; criminal proceedings, the criminal offence of fraud; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

The Constitutional Court considers that the principle *ne bis in idem* is not violated in the present case given that the previous judgments rendered in the proceedings in which the subsidiary prosecutors participated as suspects and the convicting judgments against the appellant do not relate to the same person. Consequently, the challenged judgments cannot have a *res iudicata* effect.

- **Decision on Admissibility and Merits No. AP 1828/06 of 28 March 2008, paragraph 33, published in the *Official Gazette of Bosnia and Herzegovina*, 99/08; criminal**

proceedings, no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH

Given that the guarantees of a fair trial, according to the case-law of the European Convention, apply to all registration procedures related to ownership, the Constitutional Court will give the same guarantees in proceedings conducted upon the appeals lodged with this court.

- **Decision on Admissibility and Merits No. AP 2706/06 of 14 October 2008, paragraph 22, published in the *Official Gazette of Bosnia and Herzegovina*, 99/08; the case-law of the Constitutional Court has been changed as to the admissibility of appeals related to the registration of the ownership right and it has been concluded that such appeals are compatible *ratione materiae* with the Constitution of Bosnia and Herzegovina; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court concludes that there is a violation of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 paragraph 1 of the European Convention in the case where the reasoning of the judgment rendered by the ordinary court includes an arbitrary interpretation and calls into question the right under the Constitution of Bosnia and Herzegovina to have civil rights and obligations determined by a court, as the enforcement of the judicial decision which is an integral part of the „trial”, has become illusory.

- **Decision on Admissibility and Merits No. AP 1472/07 of 22 October 2009, paragraph 50, published in the *Official Gazette of Bosnia and Herzegovina*, 23/10; payment of unpaid salaries, General Grammar School in Zavidovići**

Pursuant to Article 241 of Civil Procedure Code, the Court of Review *i.e.* the Supreme Court examines the challenged judgment only in the part contested by the petition for review, within the limits of the reasons stated in the petition for review, having due regard, *ex officio*, to the application of substantive law and procedural errors concerning the litigation capacity of the parties and the representation. In view of the aforementioned, it follows that the Supreme Court was not obliged to examine whether the Cantonal Court exceeded the scope of the claim (*ultra petitem*) in the situation where the appellant failed to raise that issue in the petition for review.

- **Decision on Admissibility and Merits No. AP 814/08 of 29 June 2010, paragraph 45, published in the *Official Gazette of Bosnia and Herzegovina*, 95/10; exceeding the scope of the claim; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

There is a violation of the right to legal certainty, as an element of the right to a fair trial under Article II(3)(e) of the Constitution of BiH and Article 6 paragraph 1 of the European Convention in the situation where the court, which is also the court of last resort to decide certain issues, in the cases that are based on identical or similar factual and legal grounds, renders contradictory decisions lacking the reasoning in respect of a deviation from its previous case-law, while there is no mechanism ensuring consistency in decision-making.

- **Decision on Admissibility and Merits No. AP 1076/09 of 26 January 2012, paragraph 36, published in the *Official Gazette of Bosnia and Herzegovina*, 26/12; divergent case law; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court concludes that the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 paragraph 1 of the European Convention is violated in the present case by the issuance of the HJPC's decision in the disciplinary proceedings before the HJPC in which, due to inconsistent application of substantive law and imprecision of the legal norm, the appellants were denied the right to legal certainty as an element of the rule of law principle under Article I(2) of the Constitution of Bosnia and Herzegovina in the disciplinary proceedings which enjoy the guarantees of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina as well as of Article 6 of the European Convention.

- **Decision on Admissibility and Merits No. AP 4101/09 of 30 March 2012, paragraph 56, published in the *Official Gazette of Bosnia and Herzegovina*, 40/12; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court holds that the present case does not involve an issue of retrospective application of the law but it concerns the application of a classic case of review/control, which is clearly stipulated and determined by the law (adequately accessible and published), based on the legal provision of a general nature and in effect at the time when the appellant carried out the actions related to the customs procedure and the appellant, given the facts of his case, had to be aware of the fact that the said provision was applicable to the case in question. Namely, taking into account that the procedure of review/control, as a legal mechanism provided in other laws, too, the Constitutional Court holds that the circumstances of the specific case do not disclose anything to indicate an arbitrary application of the law or that the specific actions produced legal uncertainty. Moreover, the Constitutional Court notes that „uncertainty” for the state as a whole would occur if the customs debts remained unpaid. In view of the above and since the Constitutional Court did not find an arbitrary application of the law in the present case, the Constitutional Court concludes that there is no violation of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina as well as of Article 6 of the European Convention.

- **Decision on Admissibility and Merits No. AP 2726/09 of 18 April 2012, paragraph 74 to 75, published in the *Official Gazette of Bosnia and Herzegovina*, 52/12; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

The Constitutional Court concludes that there is no violation of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina of the appellant, the Zenica-Doboj Canton and the Sarajevo Canton, where the ordinary courts took into account all the relevant circumstances of the specific cases and established the relevant facts and provided the clear and precise reasons why the relevant provisions of the 2000

Branch Collective Agreement, which was still in effect and more favourable to the employees, and not the provisions of the General Collective Agreement of 8 September 2005, had to be applied to the plaintiffs' claims arising out of employment after 8 September 2005.

- **Decision on Admissibility and Merits No. AP 3417/08 of 15 May 2012, paragraph 72, published in the *Official Gazette of Bosnia and Herzegovina*, 44/12; the rights arising out of employment; application of the Branch Collective Agreement and General Collective Agreement; no violation of Article II(3)(e) of the Constitution of Bosnia and Herzegovina**

The Constitutional Court concludes that the challenged decisions rendered by the ordinary courts are in violation of the appellant's right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 paragraph 1 of the European Convention in conjunction with the rule of law principle under Article I(2) of the Constitution of Bosnia and Herzegovina, in the case where the legal provision stipulating a replacement for prison sentence is unclear and is interpreted and applied differently and the courts failed to interpret and to apply it in favour of the party in question.

- **Decision on Admissibility and Merits No. AP 2809/12 of 24 May 2013, paragraph 42, published in the *Official Gazette of Bosnia and Herzegovina*, 77/13; prison sentence converted into a fine; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court concludes that the present case concerns a violation of the appellant's right under Article 6 paragraph 1 of the European Convention where the Supreme Court failed to provide a well-substantiated answer as to why the principle *reformatio in peius* was not violated in the situation where the indictment was amended by adding certain elements to the factual description which amount to the criminal offence the appellant was charged with, while the original indictment, based on which the first instance judgment had been rendered and then quashed upon an appeal filed by the defence counsel, had not contained the same elements in the factual description thereof.

- **Decision on Admissibility and Merits No. AP 1165/10 of 22 October 2013, paragraph 44, published in the *Official Gazette of Bosnia and Herzegovina*, 88/13; criminal proceedings; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court concludes that the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 paragraphs 1 and 3(d) of the European Convention is violated where the challenged judgment, finding the appellant guilty of the criminal offence of aggravated theft, is based to a decisive extent on the statements given by the co-accused persons under investigation who, at the main trial, availed themselves of the right not to answer any questions and, therefore, the appellant had no opportunity to call their statements into question at any stage of proceedings, whereas those statements were decisive for the appellant's conviction and, according to the reasoning of the judgment, no other evidence indicated the appellant's guilt.

- **Decision on Admissibility and Merits No. AP 2140/12 of 15 April 2015, paragraph 47, criminal proceedings; the judgment is based to a decisive extent on the statements given by the co-accused persons, who availed themselves of the right to remain silent; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The determination of civil rights or obligations – related disputes

A data registration procedure cannot be considered to be the determination of civil rights within the meaning of Article 6 paragraph 1 of the European Convention, nor does it concern the rights set forth in Article 1 Protocol No. 1 of the European Convention.

- **Decision No. U 20/01 of 4 May 2001, paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina*, 25/01**

Article 6 paragraph 1 of the European Convention and Article II(3)(e) of the Constitution of BiH are not applicable to disputes between administrative authorities and employees who occupy positions involving participation in the exercise of powers conferred by public law.

- **Decision No. U 38/00 of 22 June 2001, paragraphs 20 and 21, published in the *Official Gazette of Bosnia and Herzegovina*, 25/01; the dismissal of the officer from the military service**

In case where the ruling of the probate court is clearly based on the law and the facts established in civil proceedings, which can undisputedly be considered to be a „dispute” within the meaning of Article 6 paragraph 1 of the European Convention, then the said proceedings must be considered as a whole. As such, these proceedings are the subject-matter of consideration by the Constitutional Court, where referred to in the appellant’s appeal.

- **Decision No. U 65/02 of 26 September 2003, paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina*, 43/03**

The appellant’s request lodged with the Municipal Court and the Cantonal Court in respect of her occupancy right relates to the civil right protected under Article 6 paragraph 1 of the European Convention.

- **Decision No. U 32/02 of 24 October 2003, paragraph 19, published in the *Official Gazette of Bosnia and Herzegovina*, 6/04; administrative proceedings, the occupancy right transferred to the person who provides support; the violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

As to the applicability of Article 6 paragraph 1 of the European Convention in the case at hand, the European Court of Human Rights has accepted its jurisdiction to decide the cases that are related to retirement only if the pension is acquired through voluntary contributions to the pension fund previously made by an appellant. However, in the present case, it relates to the domestic law which provides that the war-disabled persons’

right to pension shall be acquired through the mandatory payment of retirement benefits to the relevant pension fund. In view of the above, the Constitutional Court holds that Article 6 of the European Convention is not applicable in the present case.

- **Decision on the Merits No. U 79/03 of 28 November 2003, paragraphs 21 and 22, published in the *Official Gazette of Bosnia and Herzegovina*, 6/04; administrative proceedings and administrative dispute related to the recognition of the status of disabled war-veteran**

In case that the ruling issued by the Supreme Court may result in a cancellation of the decisions rendered in administrative proceedings, then the said proceedings must be considered as a whole. As such, these proceedings are the subject-matter of consideration by the Constitutional Court, where referred to in the appellant's appeal.

- **Decision on the Merits No. U 63/02 of 21 January 2004, paragraph 29, published in the *Official Gazette of Bosnia and Herzegovina*, 13/04; administrative proceedings, the repayment of special tax charged on imported goods; Article 6 of the European Convention is not applicable**

In the context of obligations and duties of a judge, the appellant's position requires her participation in exercise of judicial authority aimed at the protection of the state's general interests. Consequently, Article 6 paragraph 1 of the European Convention is not applicable to the case in which the ruling terminating the appellant's employment due to retirement is contested.

- **Decision on Admissibility and Merits No. U 104/03 of 19 April 2004, paragraphs 24 and 25, published in the *Official Gazette of Bosnia and Herzegovina*, 40/04**

The proceedings conducted with regard to a cancellation of the lease contract for business premises are considered to be civil proceedings as regards domestic laws as well as within the meaning of Article 6 paragraph 1 of the European Convention.

- **Decision on Admissibility and Merits No. AP 71/02 of 28 April 2004, paragraph 27, published in the *Official Gazette of Bosnia and Herzegovina*, 34/04; non-contentious proceedings to issue an order cancelling the lease agreement related to the disputed business premises**

The Constitutional Court notes that the administrative disputes were aimed at determining the existence or non-existence of certain facts or rights decisive for the decisions in administrative proceedings conducted by the customs authorities. However, the Constitutional Court holds that in case where the ruling issued by the Supreme Court may result in a cancellation of the decisions rendered in administrative proceedings, then the said proceedings must be considered as a whole and, as such, these proceedings are the subject-matter of consideration by the Constitutional Court if referred to in the appellant's appeal (see, Decision of the Constitutional Court in case No. *U 65/02*).

- **Decision on Admissibility and Merits No. AP 28/02 of 15 June 2004, paragraphs 27 and 28, published in the *Official Gazette of Bosnia and Herzegovina*, 38/04; the administrative proceedings for reimbursement of money paid for special customs duties**

Article 6 paragraph 1 of the European Convention is applicable to the present case given that the authorities, which conducted the proceedings determining the appellant's liability to pay levy, failed to pay sufficient attention to the important issues indicated by the appellant and it resulted in the appellant's financial obligation which no doubt has the effect on his property, *i.e.* on his „civil rights and obligations” within the meaning of Article 6 paragraph 1 of the European Convention.

- **Decision on Admissibility and Merits No. AP 236/03 of 15 June 2004, published in the *Official Gazette of Bosnia and Herzegovina*, 38/04; Lijanovići**

The Constitutional Court notes that the relevant proceedings conducted by the ordinary courts related to compensation for loss of income and, therefore, Article 6 paragraph 1 of the European Convention is applicable in the case at hand.

- **Decision on Admissibility and Merits No. AP 203/02 of 30 June 2004, paragraph 19, published in the *Official Gazette of Bosnia and Herzegovina*, 41/04**

The proceedings to determine the costs of proceedings must be considered to be the continuation of the litigation and, consequently, it must be considered to be a part of „the determination of civil rights or obligations”.

- **Decision on Admissibility and Merits No. AP 189/02 of 30 June 2004, paragraph 25, published in the *Official Gazette of Bosnia and Herzegovina*, 40/04;**
- **Decision on Admissibility and Merits No. AP 85/04 of 18 March 2005, paragraph 20, published in the *Official Gazette of Bosnia and Herzegovina*, 36/05; the decision awarding the costs of proceedings has been challenged**

The civil rights or obligations are not determined in enforcement proceedings but in earlier civil proceedings where the appellant failed to present the relevant facts as to the existence of the lease agreement. Accordingly, Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH are not applicable.

- **Decision on Admissibility No. AP 206/02 of 23 July 2004, paragraph 14**

Disputes in respect of compensation, in accordance with the health insurance scheme, relate to the „civil rights”.

- **Decision No. U 66/03 of 21 July 2004, paragraph 24, published in the *Official Gazette of Bosnia and Herzegovina*, 41/04**

The rights of physical persons and their mutual relations resulting from contract law, *i.e.* contractual relations, always relate to civil rights.

- **Decision on Admissibility and Merits No. AP 261/03 of 26 August 2004, paragraph 25, published in the *Official Gazette of Bosnia and Herzegovina*, 48/04**

In accordance with the consistent practice of the European Convention's bodies, termination of employment, for any reason, falls within the scope of civil rights within the meaning of Article 6 paragraph 1 of the European Convention.

- **Decision on Admissibility and Merits No. AP 221/02 of 26 August 2004, paragraph 27, published in the *Official Gazette of Bosnia and Herzegovina*, 48/04**

The proceedings related to the payment of debt for utility services is decisive in respect of the appellant's property and the fact that it related to the payment of debt for utility services rendered by the plaintiff in the exercise of powers conferred by public law is irrelevant for determining the nature of the dispute. Therefore, Article 6 paragraph 1 of the European Convention is applicable to the present case.

- **Decision on Admissibility and Merits No. AP 116/02 of 29 September 2004, paragraphs 23 and 24, published in the *Official Gazette of Bosnia and Herzegovina*, 54/04; civil proceedings related to the payment of debt for a garbage collection**

In addition to the proceedings of a private law nature, the first paragraph of Article 6 of the European Convention is also applicable to the proceedings determining civil rights or obligations and those related to the issuance of construction permits or other permits relating to real property where the outcome of such proceedings is directly decisive for determining the ownership right and, generally, it is applicable to the proceedings the outcome of which has an effect on the use or enjoyment of the right to property (see European Court of Human Rights, Judgment in the case of *Fredin* of 18 February 1991, Series A, No. 192).

- **Decision on Admissibility and Merits No. U 128/03 of 21 September 2004, paragraph 27, published in the *Official Gazette of Bosnia and Herzegovina*, 2/05; construction of additional floor; the proceedings related to the issuance of construction permit, the violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court holds that fair trial standards are applicable also to the proceedings deciding on a request for immunity and, therefore, the final decision on that issue may be examined by the Constitutional Court.

- **Decision on Admissibility and Merits No. AP 548/03 of 29 October 2004, paragraph 36, published in the *Official Gazette of Bosnia and Herzegovina*, 40/06;**
- **Decision on Admissibility and Merits No. AP 322/04 of 19 November 2004, paragraph 32, published in the *Official Gazette of Bosnia and Herzegovina*, 19/05**

All employment related claims, apart from those related to civil servants who exercise the powers conferred by public law and protect the general interests of the state, fall within the notion civil rights and obligations.

- **Decision on Admissibility and Merits No. U 107/03 of 19 November 2004, paragraph 32, published in the *Official Gazette of Bosnia and Herzegovina*, 23/05**

Given that all the lower instance court judgments have been modified by the challenged ruling, the appellant is obliged in the enforcement proceedings related to the said ruling to reimburse the amount paid to her husband by way of compensation for damages. So, it undoubtedly follows that the present case concerns the appellant's property rights and that the relevant proceedings involve her civil rights. Consequently, Article 6 paragraph 1 of the European Convention is applicable to the case at hand.

- **Decision on Admissibility and Merits No. AP 300/04 of 30 November 2004, paragraph 23, published in the *Official Gazette of Bosnia and Herzegovina*, 19/05**

A right to vote in elections is not a civil right but a subjective political right which relates to the „right to vote” and „the right to stand for election to the legislature”. Therefore, the appeal was not filed because of a violation of a civil right under the European Convention but because of a violation of a political right under Article 3 of Protocol No. 1 to the European Convention. The Constitutional Court therefore concludes that Article 6 paragraph 1 of the European Convention is not applicable in the case at hand as the appellant’s *civil rights and obligations* under Article 6 paragraph 1 of the European Convention were not to be determined in the proceedings which were terminated by the challenged decision of the Court of BiH.

- **Decision on Admissibility and Merits No. AP 35/03 of 28 January 2005, paragraph 35, published in the *Official Gazette of Bosnia and Herzegovina*, 30/05**

A dispute on trespass is of a civil nature.

- **Decision on Admissibility and Merits No. AP 434/04 of 18 January 2005, paragraph 20, published in the *Official Gazette of Bosnia and Herzegovina*, 40/05; *the dispute on trespass; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH;***
- **Decision on Admissibility and Merits No. AP 445/04 of 23 March 2005, paragraph 18, published in the *Official Gazette of Bosnia and Herzegovina*, 27/05; *the dispute on trespass; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH***

A dispute related to the payment of earned but unpaid salaries is of a civil nature also where the employer is a public institution.

- **Decision on Admissibility and Merits No. AP 752/04 of 18 January 2005, paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina*, 44/05; *payment of salaries earned in wartime, the inconsistent application of the laws in similar cases; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH***

Irrespective of the fact that the case concerning the reimbursement of the overpaid customs duties was decided in first and second instances by the customs authorities, the dispute is of an economic nature and falls within the scope of Article 6 paragraph 1 of the European Convention since the relevant case related to the right to property, which is a „civil right”.

- **Decision on Admissibility and Merits No. AP 870/04 of 17 February 2005, paragraph 26, published in the *Official Gazette of Bosnia and Herzegovina*, 48/05; *the proceedings related to the reimbursement of the overpaid customs duties; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH***

A dispute related to compensation for pecuniary damages for an injury at work is of a civil nature.

- **Decision on Admissibility and Merits No. AP 489/04 of 17 February 2005, paragraph 20, published in the *Official Gazette of Bosnia and Herzegovina*, 40/05;**

civil proceedings, compensation of non-pecuniary damages; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH

Proceedings conducted in relation to the payment of debt are of a civil nature.

- **Decision on Admissibility and Merits No. AP 473/04 of 18 March 2005, paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina*, 40/05; the proceedings related to the payment of debt resulting from the contract, entered into with the State of BiH, on the printing, packaging and distribution of BH Dinar; the violation of Article II(3)(e) of the Constitution of BiH established**

The right to compensation for damages in the amount being sought is of a private nature and, as such, it is a civil right and fair trial standards are applicable to this right.

- **Decision on Admissibility and Merits No. AP 428/04 of 23 March 2005, paragraph 22, published in the *Official Gazette of Bosnia and Herzegovina*, 32/05; civil proceedings, compensation of pecuniary damages, an arbitrary application of the law; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

Employment related claims, apart from those related to civil servants who exercise the powers conferred by public law and protect the general interests of the state, fall within the notion „civil rights and obligations”.

- **Decision on Admissibility and Merits No. AP 398/04 of 23 March 2005, paragraph 20, published in the *Official Gazette of Bosnia and Herzegovina*, 32/05; proceedings conducted in relation to the payment of salary, the Supreme Court acted in dispute the value of which did not exceed BAM 15 000; the violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established;**
- **Decision on Admissibility and Merits No. AP 452/04 of 12 April 2005, paragraph 23, published in the *Official Gazette of Bosnia and Herzegovina*, 40/05; a labour dispute, the claim related to the payment of salary during a period of lay off; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

A dispute determining the right to payment of salary is of a civil nature.

- **Decision on Admissibility and Merits No. AP 405/04 of 12 April 2005, paragraph 20, published in the *Official Gazette of Bosnia and Herzegovina*, 40/05; proceedings conducted in relation to the payment of salary, the Supreme Court's conduct in the dispute the value of which does not exceed BAM 15 000; the violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The right to salary while being laid-off is of a civil nature.

- **Decision on Admissibility and Merits No. AP 452/04 of 12 April 2005, paragraph 24, published in the *Official Gazette of Bosnia and Herzegovina*, 40/05; a labour dispute, the claim related to the payment of salary during a period of lay off; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

Decisions taken in liquidation proceedings and related to a debtor's property fall within the scope of Article 6 paragraph 1 of the European Convention as the debtor's „civil rights and obligations” within the meaning of Article 6 paragraph 1 of the European Convention could be temporarily called into question.

- **Decision on Admissibility No. AP 914/04 of 12 April 2005, paragraph 10;** *liquidation proceedings*

Promotion in the civil service does not concern a civil right or obligation within the meaning of Article 6 paragraph 1 of the European Convention and, consequently, it does not fall within the scope of Article 6 paragraph 1 of the European Convention.

- **Decision on Admissibility No. AP 156/05 of 18 May 2005, paragraph 8;** *the appeal is incompatible ratione materiae with the Constitution of BiH*

Disputes between public authorities and employees participating in exercising of authorities under public law, does not involve the application of Article 6 of European Convention.

- **Decision on Admissibility and Merits No. AP 633/04 of 27 May 2005, paragraph 23, published in the *Official Gazette of Bosnia and Herzegovina*, 73/05;** *the disciplinary proceedings conducted against the judge by the High Judicial and Prosecutorial Council; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH*

Right to salary while on sick leave is a civil right.

- **Decision on Admissibility and Merits No. AP 397/04 of 15 June 2005, paragraph 20, published in the *Official Gazette of Bosnia and Herzegovina*, 78/05;** *proceedings conducted in relation to the payment of salary, the Supreme Court's conduct in the dispute the value of which does not exceed BAM 15 000; the violation of Article 6 of the European Convention established*

The proceedings in which the appellants challenge the rulings to terminate the civil proceedings are of a civil nature.

- **Decision on Admissibility and Merits No. AP 691/04 of 28 June 2005, paragraph 22, published in the *Official Gazette of Bosnia and Herzegovina*, 27/06;** *the civil proceedings in respect of damage compensation upon the property claim following the criminal proceedings concluded by the legally binding decision was suspended as the petition for reopening the proceedings had been filed; the violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established*

The right to pension is a civil right.

- **Decision on Admissibility and Merits No. AP 491/04 of 28 June 2005, paragraph 20, published in the *Official Gazette of Bosnia and Herzegovina*, 67/05;** *the administrative dispute, the determination of the right to disability allowance; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH*

The rights related to the right to use an apartment, including the issue of acquiring the occupancy right *i.e.* the property right over an apartment, is covered by the notion civil rights or obligations.

- **Decision on Admissibility and Merits No. AP 497/04 of 28 June 2005, paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina*, 27/06; the civil proceedings, the cancellation of the contract of purchase and sale; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

The proceedings to determine the costs of proceedings must be considered to be the continuation of the litigation and, consequently, it must be considered to be a part of the „determination of civil rights or obligations”.

- **Decision on Admissibility and Merits No. AP 536/04 of 28 June 2005, paragraph 18, published in the *Official Gazette of Bosnia and Herzegovina*, 67/05; the payment of the costs of civil proceedings; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH.**
- **Decision on Admissibility and Merits No. AP 792/04 of 18 January 2005, paragraph 23, published in the *Official Gazette of Bosnia and Herzegovina*, 48/05; the payment of the costs of defence, discrimination as to the determination of the defence counsel's fees; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

The dispute related to a compensation claim based on the lease agreement is of a civil nature.

- **Decision on Admissibility and Merits No. AP 561/04 of 13 July 2005, paragraph 24, published in the *Official Gazette of Bosnia and Herzegovina*, 80/05; civil proceedings, the payment of rent arrears; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

Disputes between private persons, in respect of the property rights, involve a determination of civil rights.

- **Decision on the Merits No. AP 642/04 of 13 October 2005, paragraph 20, published in the *Official Gazette of Bosnia and Herzegovina*, 17/06; the civil proceedings, the determination of the ownership right, there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

Article 6 paragraph 1 of the European Convention is applicable in the situation where the realization of the rights or obligations determined by a legally binding decision rendered in another proceedings is stayed by an interim measure issued in the proceedings just to determine the civil rights or obligations.

- **Decision on the Merits No. AP 743/04 of 17 November 2005, paragraph 43, published in the *Official Gazette of Bosnia and Herzegovina*, 17/06; civil proceedings, the reinstatement into the apartment, the reasonable time limit to take the Decision on Merits resolving the issue of legal justification and legal grounds for interim measures; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The dispute which determines the compensation for expropriation of the real estates is of a civil nature in case where the court ought to determine in non-contentious proceedings the amount of compensation in part where the expropriation beneficiary and the earlier proprietor (the appellant) failed to reach an agreement.

- **Decision on the Merits No. AP 836/04 of 17 November 2005, paragraph 27, published in the *Official Gazette of Bosnia and Herzegovina*, 20/06; the length of proceedings which determine the compensation for the expropriated property; the violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

Determining whether the legal requirements for cancelling the contract on the use of the apartment over which the occupancy right was acquired prior to 30 April 1991 falls within the scope of „civil rights and obligations”.

- **Decision on the Merits No. AP 645/04 of 2 December 2005, paragraph 25, published in the *Official Gazette of Bosnia and Herzegovina*, 41/06; the civil proceedings, the right to the apartment was acquired after the cancellation of the occupancy right holder’s contract on the use of the apartment; the violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The notion „dispute”, within the meaning of Article 6 paragraph 1 of the European Convention, covers „all proceedings the result of which is decisive for private rights and obligations”, even when the proceedings involve a dispute between an individual and the public authority acting within the scope of its authorities. The character of „the legislation which governs how the matter is to be determined” and that of the „authority” which is invested with jurisdiction in the matter are therefore of little consequence (Decision No. AP 540/04 of 18 January 2005, paragraph 20; European Court of Human Rights, *Ringeisen vs. Austria*, judgment of 16 July 1971, Series A, No. 13, paragraph 94).

- **Decision on Admissibility and Merits No. AP 1831/05 of 16 January 2007, paragraph 42, published in the *Official Gazette of Bosnia and Herzegovina*, 34/07; the determination of fair compensation for expropriated land**

The state authorities have the exclusive competence to decide on movement and stay of aliens and, therefore, it does not fall within the ambit of „civil rights or obligations” safeguarded by Article 6 of the European Convention.

- **Decision on Admissibility No. AP 244/05 of 9 February 2006, paragraph 7; the appeal is incompatible *ratione materiae* with the Constitution of BiH**

The dispute upon the appellant’s request for cancellation of the servitude right over her real property is of a civil nature.

- **Decision on the Merits No. AP 1180/05 of 9 February 2006, paragraph 19, published in the *Official Gazette of Bosnia and Herzegovina*, 45/06; the civil proceedings; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

Consequently, the Constitutional Court concludes that the appellant as the holder of public office within radio diffusion system, in the dispute to protect the employment rights, enjoys the protection of Article 6 paragraph 1 of the European Convention.

- **Decision on Admissibility and Merits No. AP 356/04 of 9 May 2006, paragraphs 32 and 38, published in the *Official Gazette of Bosnia and Herzegovina*, 68/06**

The appellant employment right based on his innovative work in the employer's company, *i.e.* his right to industrial ownership, is of a civil nature.

- **Decision on the Merits No. AP 1232/05 of 9 May 2006, paragraph 32, published in the *Official Gazette of Bosnia and Herzegovina*, 87/06; the civil proceedings; industrial ownership; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

Enforcement of the final judgment is decisive for the realization of the appellant's right, which is of a civil nature.

- **Decision on Admissibility and Merits No. AP 1177/05 of 13 June 2006, paragraph 33, published in the *Official Gazette of Bosnia and Herzegovina*, 87/06; the civil proceedings; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

The dispute, which determined the appellant's obligation to compensate the plaintiff for funds invested in construction of the house in question, is of a civil nature.

- **Decision on Admissibility and Merits No. AP 1193/05 of 27 June 2006, paragraph 17, published in the *Official Gazette of Bosnia and Herzegovina*, 86/07; civil proceedings; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

Recognition of the right to ownership over the real property is of a civil and legal nature.

- **Decision on Admissibility and Merits No. AP 1187/05 of 13 June 2006, paragraph 25, published in the *Official Gazette of Bosnia and Herzegovina*, 87/06; the civil proceedings; acquiring the right of ownership; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

The proceedings involving pecuniary claims against a debtor are decisive for the realization of the appellant's civil rights. Therefore, Article 6 paragraph 1 of the European Convention is applicable in the present case.

- **Decision on Admissibility and Merits No. AP 1293/05 of 12 September 2006, paragraph 25, published in the *Official Gazette of Bosnia and Herzegovina*, 7/07; the enforcement proceedings, the applicability of the Law on Enforcement; the violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The proceedings for determination of the costs of proceedings must be regarded as an integral part of the proceedings and accordingly must be regarded as part of „the determination of civil rights and obligations” (see European Court of Human Rights, *Robins vs. the United Kingdom*, Judgment of 23 September 1997, paragraph 25.f.).

- **Decision on Admissibility and Merits No. AP 1365/05 of 29 September 2006, paragraph 21, published in the *Official Gazette of Bosnia and Herzegovina*, 9/07; the civil proceedings; the costs of proceedings pursuant to lawyers' tariff; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

The state authorities have the exclusive competence to decide on the alien's right to stay in the country and, therefore, it does not fall within the ambit of „civil rights or obligations” safeguarded by Article 6 paragraph 1 of the European Convention. The case-law of the European Court of Human Rights in Strasbourg is exclusively based on the position that decision-making on movement and stay of aliens, and by analogy, the decision on expulsion of aliens from Bosnia and Herzegovina, lies in exclusive competence of state organs and it may not be included under the concept of „civil rights and obligations” protected by Article 6 of the European Convention.

- **Decision on Admissibility and Merits No. AP 1788/05 of 20 September 2006, paragraphs 33 to 35, published in the *Official Gazette of Bosnia and Herzegovina*, 9/07; expulsion of aliens**

The proceedings to establish that the contract is null and void, are of a civil nature. Therefore, Article 6 paragraph 1 of the European Convention is applicable to the present case.

- **Decision on Admissibility and Merits No. AP 1605/05 of 20 October 2006, paragraph 30, published in the *Official Gazette of Bosnia and Herzegovina*, 11/07**

The court proceedings to establish that the decision on termination of labour relations is unlawful are of a civil nature.

- **Decision on Admissibility and Merits No. AP 2144/05 of 20 October 2006, paragraph 26, published in the *Official Gazette of Bosnia and Herzegovina*, 12/07**

The proceedings concerning the right to work and the payment of unpaid salaries are of a civil nature even in case where an employer is a public authority.

- **Decision on Admissibility and Merits No. AP 2405/05 of 16 January 2007, paragraph 29, published in the *Official Gazette of Bosnia and Herzegovina*, 70/07;**
- **Decision on Admissibility and Merits No. U 116/03 of 15 June 2004, paragraph 31, published in the *Official Gazette of Bosnia and Herzegovina*, 40/04**

The outcome of the proceedings upon the motion to confer territorial jurisdiction, which decided on the procedural issues, is not decisive for the determination of the appellant's civil rights or obligations.

- **Decision on Admissibility No. AP 2950/06 of 6 March 2007;**
- **Decision on Admissibility No. AP 923/06 of 5 April 2007; the conferral of territorial jurisdiction; the appeal is inadmissible *ratione materiae***

As to the applicability of Article 6 paragraph 1 of the European Convention to the proceedings for compensation of the costs of proceedings and the determination of the

appellant's „civil rights or obligations” in such proceedings, the Constitutional Court points to its case-law as well as the case-law of the European Court of Human Rights according to which the guarantees of Article 6 paragraph 1 of the European Convention apply also to the proceedings for determination of the costs of proceedings, which must be seen as a continuation of the substantive litigation and accordingly as part of a „determination of civil rights and obligations” (see, *mutatis mutandis*, The Constitutional Court, Judgment No. AP 85/04 of 18 March 2005, and European Court of Human Rights, *Robins vs. the United Kingdom*, Judgment of 23 September 1997, paragraph 25.f.). Furthermore, according to the case-law of the Constitutional Court and the European Court of Human Rights, the enforcement of a judgment adopted by any court must be taken as an integral part of a „trial” within the meaning of Article 6 of the European Convention (see, *inter alia*, the Constitutional Court, Judgment No. AP 2653/05 of 12 September 2006 and European Court for Human Rights, *Golder vs. United Kingdom*, Judgment of 7 May 1974, series A-18, page 16 to 18, paragraph 34 to 36). In view of the above, the Constitutional Court concludes that Article 6 paragraph 1 of the European Convention is applicable to the case at hand.

- **Decision on Admissibility No. AP 1525/06 of 26 June 2007, paragraph 9;**
- **Decision on Admissibility and Merits No. AP 128/06 of 10 January 2008, paragraph 22;** *the enforcement proceedings, compensation of the costs of proceedings*

The outcome of the proceedings, which decided on the procedural issues upon the motion to disqualify an executive, a judge or the president of the court, is not decisive for the determination of the appellant's civil rights or obligations.

- **Decision on Admissibility No. AP 2138/07 of 13 September 2007, paragraph 10;** *the appeal is incompatible ratione materiae with the Constitution of BiH*

In the case concerning obligations, the Constitutional Court concludes that the appellant enjoys the „civil right” protected only in case where the law provides for that the appellant unconditionally acquires certain property (justified expectations) through the legal business concluded.

- **Decision on Admissibility and Merits No. AP 2195/06 of 18 October 2007, paragraph 34, published in the *Official Gazette of Bosnia and Herzegovina*, 6/08;** *the right to a fair trial, the right to property, the arbitrary application of the law, securities transaction; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established*

The Constitutional Court recalls that in certain cases, irrespective of the fact that these cases relate to civil servants, the Court considered the appellants' complaints of a violation of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 paragraph 1 of the European Convention. Such cases were dealt with by the Constitutional Court as any labour relations dispute and, depending on the facts of each case, resolved by way of decisions on admissibility or merits. In this regard, the Constitutional Court states that the European Court of Human Rights, in the case of *Vilho Eskelinen et al. vs. Finland* (Judgment of 19 April 2007, Application No. 63235/00, pp. 42 through 62), reviewed its case-law and concluded that „in order

for the respondent State to be able to rely before the Court on the applicant's status as a civil servant in excluding the protection embodied in Article 6, two conditions must be fulfilled. Firstly, the State in its national law must have expressly excluded access to a court for the post or category of staff in question. Secondly, the exclusion must be justified on objective grounds in the State's interest" and „there can in principle be no justification for the exclusion from the guarantees of Article 6 of ordinary labour disputes, such as those relating to salaries, allowances or similar entitlements, on the basis of the special nature of relationship between the particular civil servant and the State in question. There will, in effect, be a presumption that Article 6 applies". In view of the above, as in the present case no single regulation of Bosnia and Herzegovina governs that the appellant as a civil servant may have no access to court, and keeping in mind the challenged judgments of the ordinary courts, it is indisputable that the appellant, pursuant to the national law, had access to a court. Therefore, Article 6(1) of the European Convention is applicable to the appellant's case.

- **Decision on Admissibility No. AP 2231/06 of 23 November 2007, paragraphs 10 to 13;** *the applicability of Article 6 of the European Convention when it concerns civil servants; the change of case-law of the European Court in case Pellegrin vs. France*

Article 6 of the European Convention is applicable in the case where the appellant asserts the right in respect of a sum which can be calculated in accordance with a valid legal measure, such as the provisions of Article 48(3) of the Law on Attorneys' Profession in Republika Srpska (*Official Gazette of the Republika Srpska*, 37/02), but the public authorities failed to exercise discretionary powers in his or her favour and the appellant has done all that he or she needs to do in order to become entitled to receive that sum.

- **Decision on Admissibility No. AP 1918/06 of 25 January 2008, paragraph 9;** *the application of the Tariff of Attorney's Fees*

The appellant in the present case states that, in accordance with the law, he is entitled to request the excise tax refund, which is to be deemed the property. Indisputably, the right to property is a „civil right". In addition, it is clear that the dispute between the appellant and state authorities concerns the appellant's right to property. Accordingly, irrespective of the fact that the tax authorities decided at first and second instances, it concerns an economic dispute within the scope of Article 6 paragraph 1 of the European Convention, which is applicable to the case at hand (see the Constitutional Court, Judgment No. AP 28/02 of 15 June 2004, published in the *Official Gazette of BiH*, 34/04 of 18 August 2004).

- **Decision on Admissibility No. AP 1284/06 of 11 March 2008, paragraph 8;** *payment of excise tax; the appeal is manifestly (prima facie) ill-founded*

The Constitutional Court states that the relevant non-contentious proceedings conducted upon the appellant's motion to deposit pecuniary compensation in favour of the Brčko District of BiH, and that the Basic Court dismissed the appellant's motion pursuant to Articles 193 through 200 of the Law on Non-Contentious Proceedings, which contain the procedural provisions governing the situations where a competent court is obliged to accept securities and cash in deposit in court by applying the substantive law as it concerns

the contractual relations, *i.e.* the Law on Obligations, which regulates the conditions under which money can be placed in deposit in court. The Constitutional Court finds that the relevant non-contentious proceedings did not involve civil rights or obligations, given that the same was decided in the Contract, which had been previously concluded, and that the aforementioned proceedings decided whether or not the conditions under which money can be placed in deposit in court were met.

• **Decision on Admissibility No. AP 3296/07 of 17 April 2008, paragraph 8**

Taking into account the nature of the dispute in the present case and the position of the European Court of Human Rights that Article 6(1) of the European Convention is applicable to non-contentious proceedings relating to the determination of land borders, which is closely related to the extent of the ownership and is decisive for the effective exercise of the applicant's rights, *i.e.* the free enjoyment of his ownership (see, ECHR, the case of *Debelić v. the Republic of Croatia*, Judgment of 12 October 2006, Application No. 9235/04), the Constitutional Court concludes that Article 6(1) of the European Convention is applicable to the present case.

• **Decision on Admissibility No. AP 655/07 of 10 June 2009, paragraph 9; the applicability of Article 6(1) of the European Convention to non-contentious proceedings relating to the determination of land borders**

The Constitutional Court notes that the present case is about a situation where the relevant court proceedings, which were instituted by appellant's deceased husband I.H., were to decide on the grounds of his statement of claim on the payment of his overdue disability benefits. However, the Constitutional Court points out that although the relevant court proceedings were not to decide on the appellant's statement of claim, the outcome of the proceedings was decisive for the appellant's rights and obligations and, consequently, the appellant has a legal interest, *i.e.* standing to sue and to file an appeal on her own behalf in respect of the relevant court proceedings and for the protection of the rights guaranteed to her under the constitution of Bosnia and Herzegovina and the European Convention.

• **Decision on Admissibility No. AP 1648/08 of 24 June 2009, paragraph 6**

In the present case the Constitutional Court notes that in non-contentious proceedings a „dispute” arose from the manner of dividing the real property and related to the issue whether the real property could be physically divided or it had to be sold. The Constitutional Court holds that a decision in this „dispute” may have a decisive effect to some other civil rights of the appellant (e.g. the right to home) and, therefore, Article 6(1) of the European Convention is applicable to the present case.

• **Decision on Admissibility and Merits No. AP 264/07 of 3 July 2009, paragraph 31, published in the *Official Gazette of Bosnia and Herzegovina*, 82/09; non-contentious proceedings for division of real property involve the determination of civil rights and obligations**

In the relevant probate proceedings accurate portions of the ownership of the appellants over the testator's property were determined. In the present case, the outcome of such

proceedings where the accurate portions of the ownership of the appellants over the testator's property were determined, in the view of the Constitutional Court, is decisive for the appellants' civil rights and obligations and such proceedings are safeguarded by Article 6(1) of the European Convention.

- **Decision on Admissibility and Merits No. AP 512/07 of 3 July 2009, paragraph 23, published in the *Official Gazette of Bosnia and Herzegovina*, 82/09; probate proceedings**

The enforcement proceedings relating to the appellants in the present case raises new issues with regards to the application of the provisions of the Law on Enforcement Procedure, as the enforcement was carried out against the real property which was not subject to the enforcement and where the appellants had lived before the enforcement creditor entered into the possession thereof. The foregoing indicates that the present case involves the proceedings determining the civil rights and obligations within the meaning of Article 6(1) of the European Convention and, therefore, Article 6(1) of the European Convention is applicable to the present case.

- **Decision on Admissibility and Merits No. AP 2621/07 of 2 December 2009, paragraph 30, published in the *Official Gazette of Bosnia and Herzegovina*, 23/10; enforcement proceedings, the appellant is an enforcement debtor in the proceedings; the appeal is admissible *ratione materiae*, a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The right to protection of vital national interests under the Constitution of the Republika Srpska is a right of a political nature which, in the opinion of this Constitutional Court, does not fall within the scope of „civil rights and obligations” as that term is understood for the purposes of Article II(3)(e) and Article 6 paragraph 1 of the European Convention.

- **Decision on Admissibility and Merits No. AP 2821/09 of 26 March 2010, paragraphs 14 and 33, published in the *Official Gazette of Bosnia and Herzegovina*, 51/10**

The Constitutional Court notes that the relevant proceedings, completed by the Judgment of the Supreme Court No. Uvl-90/05 of 12 December 2007, did not relate to the determination of the appellant's civil rights but to the well-foundedness of the complaints and statement of claims of appellant's father Ranko Knežević. In addition, the Constitutional Court notes that the appellant, as a child of deceased pension beneficiary Ranko Knežević, based on a temporary decision issued by the first instance body, was recognised the right to family pension as of 5 July 2006 in the amount of BAM 211.47, and that it contained the reasons according to which a final decision would be issued upon the completion of the proceedings pending before the ordinary courts. In the opinion of the Constitutional Court, the appellant's rights are called into question by the decisions challenged in the appeal, given that the appellant's right to family pension stems from the rights that were the subject-matter of consideration in the challenged decisions, *i.e.* the appellant may be considered an „indirect victim” of the violation referred to in the appeal.

- **Decision on Admissibility No. AP 774/08 of 13 October 2010, paragraph 26, published in the *Official Gazette of Bosnia and Herzegovina*, 24/11; the retroactive payment of contributions**

The Constitutional Court finds that during the main proceedings, *i.e.* in the administrative dispute, in its lawsuit the appellant sought the protection of his property rights through a request to establish that the decision of the Commission of 9 March 2010 is unlawful, which revoked the appellant's management license and banned the disposal of the property of the Closed-End Investment Fund. Accordingly, the Constitutional Court finds that the appellant manages the fund based on the contract of 22 April 2009 and collects a management commission in the monthly amount of BAM 100,000.00 or BAM 1,200,000.00 annually. It follows that the purpose of the appellant's lawsuit in the administrative dispute is the protection of the appellant's property interests which are interfered with by the decision of the Commission dated 9 March 2010. The purpose and objective of the appellant's request for postponement of the enforcement of the Commission's decision dated 9 March 2010 were also the protection of the appellant's property interest which would come into question by the enforcement of the Commission's decision of 9 March 2010, which lawfulness is challenged by the appellant during the main proceedings. Therefore, it follows that the proceedings for adoption of the challenged decision was decisive for the effective exercise of the appellant's civil rights. Accordingly, the Constitutional Court, while taking into its consideration the criteria established by the European Court, considers that the guarantees of Article 6 of the European Convention apply to the proceedings of adoption of the challenged decision.

- **Decision on the Admissibility and Merits No. AP 1676/10 of 27 November 2010, published in the *Official Gazette of BiH*, 24/11, change of the case-law according to which the appeals relating to interim measures used to be rejected as inadmissible *ratione materiae*; according to the new case-law, the guarantees of the right to a fair trial, under certain conditions, are applicable to the proceedings relating to interim measures to be decided by ordinary courts**

Prior to a further discussion on the case as regards the right to a fair trial, the Constitutional Court recalls its newly established case-law in case No. *AP 3080/09* of 25 September 2010 (the *Official Gazette of BiH*, No. 48/11), relating to the removal of the appellant as judge from office in proceedings before the High Judicial and Prosecutorial Council of Bosnia and Herzegovina. After that, the appellant filed an appeal with the Court of BiH against the decision of the HJPC and the Court of BiH dismissed the appeal and stressed the issue of applicability of Article 6(1) of the European Convention to the appellant's case in respect of both „civil” and „criminal aspect” thereof. In the Decision No. *AP 3080/09*, the Constitutional Court re-examined its previous case-law and the case-law of the European Court of Human Rights (*Olujić v. Croatia*, Judgement of 5 February 2009, App. No. 22330/05), and concluded that Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention apply to the appellant's case under the guaranties provided for by „civil” level of the right to a fair trial. The same applies to the present case and the Constitutional Court will examine the case in the light of the protection of the appellant's „civil rights” guaranteed by Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention.

- **Decision on the Admissibility and Merits No. AP 147/09 of 23 March 2012, paragraph 59, published in the *Official Gazette of Bosnia and Herzegovina*, 31/12;**

- **Decision on the Admissibility and Merits No. AP 3080/09 of 25 September 2010, paragraphs 36 to 39, published in the *Official Gazette of Bosnia and Herzegovina*, 48/11; removal of the judge in the proceedings before the HJPC, there is no violation of Article 6 of the European Convention**

The determination of a criminal charge

Considering that the purpose of sanction passed in minor offences proceedings is the prevention and it includes a significant amount of money, such minor offences fall within the ambit of Article 6 of the European Convention under the case-law of the European Court of Human Rights.

- **Decision No. U 19/00 of 4 May 2001, published in the *Official Gazette of Bosnia and Herzegovina*, 27/01**

The proceedings in which the appellants were found guilty of economic crime are based on the regulations that, in essence, represent criminal legislation by their nature. The amount of the fine imposed on the appellants is significant. Taking into account all relevant factors, it is concluded that the appellants are entitled to the entire procedural protection available in the determination of a criminal charge under Article 6 of the European Convention.

- **Decision on Admissibility and Merits No. AP 223/02 of 23 July 2004, paragraph 20, published in the *Official Gazette of Bosnia and Herzegovina*, 43/04; the proceedings which determine liability for economic crime**

A contrary interpretation of Article 6 of the European Convention, according to which the right to a fair trial would be guaranteed also to a person who seeks that the justification of criminal charges against another person be determined, would exceed the scope for interpretation of Article 6 of the European Convention.

- **Decision on Admissibility No. AP 408/04 of 18 January 2005, paragraph 11; the termination of the investigation in criminal proceedings, the appellant is an injured party to the proceedings**

In order to determine whether the essential character of the legislative scheme is criminal, the courts have to consider a number of factors and, in particular: a) whether the purpose or one of the purposes of the relevant laws is to prevent or to sanction of certain conduct, b) whether the conduct subject to prevention or to sanction implies a guilt in case where the purpose is to prevent or to sanction (for example, fraudulent conduct or negligence), and c) what is the amount of sanction which can be imposed for the offence.

- **Decision on Admissibility and Merits No. AP 437/04 of 23 March 2005, paragraph 18, published in the *Official Gazette of Bosnia and Herzegovina*, 32/05; payment of a fine for contempt of court; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

Considering the case-law related to Article 6 paragraph 1 of the European Convention, the regulations relevant to the present case essentially represent criminal legislation by

their nature [...]. Taking into account all relevant factors, it is concluded that the appellant is entitled to the entire procedural protection available in the determination of a criminal charge under Article 6 of the European Convention.

- **Decision on Admissibility and Merits No. AP 437/04 of 23 March 2005, paragraph 19, published in the *Official Gazette of Bosnia and Herzegovina*, 32/05; payment of a fine for contempt of court; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH;**
- **Decision on Admissibility and Merits No. AP 508/04 of 23 March 2005, paragraph 18, published in the *Official Gazette of Bosnia and Herzegovina*, 32/05; payment of a fine for traffic offence; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH;**
- **Decision on Admissibility and Merits No. AP 530/04 of 18 January 2005, paragraph 23, published in the *Official Gazette of Bosnia and Herzegovina*, 42/05; payment of a fine for non-payment of tax; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH;**
- **Decision on the Merits No. AP 599/04 of 13 October 2005, paragraph 24, published in the *Official Gazette of Bosnia and Herzegovina*, 17/06; minor offences proceedings, the accused legal person did not represent the authorized person; the violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

Disciplinary proceedings conducted against judges and prosecutors by the High Judicial and Prosecutorial Council of Bosnia and Herzegovina are criminal in nature.

- **Decision on Admissibility and Merits No. AP 633/04 of 27 May 2005, paragraphs 20 to 29, published in the *Official Gazette of Bosnia and Herzegovina*, 73/05;**
- **Decision on the Merits No. AP 662/04 of 20 December 2005, paragraph 27, published in the *Official Gazette of Bosnia and Herzegovina*, 41/06; disciplinary proceedings against the judge before the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

„Criminal charge” is an autonomous concept, that is to say, an act which is classified in national law as a regulatory offence may none the less be regarded as giving rise to a criminal charge for the purposes of Article 6 of the European Convention, although the essential character of the legislative scheme is not criminal, but rather civil, in nature - in order to ensure that a State cannot avoid the obligation to provide a fair hearing merely by classifying an act as non-criminal in its legislation.

- **Decision on the Merits No. AP 2078/05 of 12 April 2006, paragraph 25, published in the *Official Gazette of Bosnia and Herzegovina*, 7/07; seizure of a vehicle for customs offence**

The assessment as to whether a charge is „criminal” within the meaning of Article 6 of the European Convention is to be given on the basis of the following criteria: classification according to the legislation, the nature of the offence and the nature and degree of severity

of the penalty (see, European Court of Human Rights, *Engel and Others vs. Netherlands*, judgment of 8 June 1976). These criteria must be met cumulatively. The nature of the offence includes two sub-criteria: the scope of the violated norm and purpose of the punishment, which must be met cumulatively.

- **Decision on Admissibility and Merits No. AP 2468/05 of 21 December 2006, paragraph 21, published in the *Official Gazette of Bosnia and Herzegovina*, 38/07; minor offences proceedings**

Although the purpose of punishment for violations of the rules of conduct during the election process is not specifically defined in the Election Law, it aims at preventing the actions which could jeopardize the election process, preventing possible disturbance of public order, preventing limitations of freedom of expression (Article 7.3 para 1 item 7), strengthening the morality and making influence on development of responsibility and discipline. The Constitutional Court holds that it appears that the case at hand case engages „criminal” charge rather than a disciplinary sanction.

- **Decision on Admissibility and Merits No. AP 952/05 of 8 July 2006, paragraph 20, published in the *Official Gazette of Bosnia and Herzegovina*, 87/06; elections;**
- **Decision on Admissibility and Merits No. AP 41/07 of 14 October 2009, paragraph 24, published in the *Official Gazette of Bosnia and Herzegovina*, 4/10**

The Constitutional Court notes that the appellant does not challenge the decision deciding directly on criminal charges. The appeal is related neither to the type nor to the amount of the sanction determined, *i.e.* the facts that are not considered, as a rule, by the Constitutional Court when deciding about violations of the right to a fair trial. The appeal is actually filed against the decision replacing the prison sentence by a fine. However, the Constitutional Court holds that Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention apply to the present case, too. Namely, the appeal relates to the application of the substantive law in respect of the execution of the sanction pronounced by the Court deciding on the criminal charge against the appellant and, therefore, the Constitutional Court concludes that it is about the joint proceedings „to determine the criminal charge”, as the decision on admissibility of the execution of the sanction pronounced or the decision on the statute of limitations of the execution of the sanction pronounced is an integral part of the trial, *i.e.* of the determination of the criminal charge.

- **Decision on Admissibility and Merits No. AP 2402/08 of 25 March 2011, paragraph 24, published in the *Official Gazette of Bosnia and Herzegovina*, 81/11; criminal proceedings, the prison sentence replaced by a fine, a violation of Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention established;**
- **Decision on Admissibility and Merits No. AP 2809/12 of 24 May 2013, paragraphs 21 and 22, published in the *Official Gazette of Bosnia and Herzegovina*, 77/13**

Taking into account that the present case relates to minor offence proceedings, the Constitutional Court points out that an issue arises as to the applicability of Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 of the European

Convention in the present case, *i.e.* whether it concerns a „criminal charge” against the appellant within the meaning of Article 6 of the European Convention. The Constitutional Court recalls the general position and reiterates that in ascertaining whether there is a „criminal charge”, regard must be had to three criteria: the legal classification of the measure in question in national law, the very nature of the measure, and the nature and degree of severity of the „penalty” (see European Court of Human Rights, *Escoubet v. Belgium* [GC], App. No. 26780/95, paragraph 32, ECHR 1999-VII). Furthermore, these criteria are alternative and not cumulative ones: for Article 6 to apply in respect of the words „criminal charge”, it suffices that the offence in question should by its nature be „criminal” from the point of view of the Convention, or should have made the person concerned liable to a sanction which, by virtue of its nature and degree of severity, belongs in general to the „criminal” sphere. This does not prevent a cumulative approach from being adopted where the separate analysis of each criterion does not make it possible to reach a clear conclusion as to the existence of a „criminal charge” (see European Court of Human Rights, *Garyfallou AEBE v. Greece*, 24 September 1997, paragraph 33, Reports of Judgments and Decisions 1997-V; *Jussila v. Finland* [GC], App. No. 73053/01, paragraphs 30 and 31, ECHR 2006-XIII; and *Zaicevs v. Latvia*, App. No. 65022/01, paragraph 31, ECHR 2007-IX). Furthermore, the Constitutional Court points out that, according to the case-law of European Court of Human Rights, even a minor traffic offence constitutes a „criminal offence” for the purposes of Article 6 of the Convention (see European Court of Human Rights, *Öztürk v. Germany*, judgment of 21 February 1984, Series A no. 73, pp. 17 to 21, paragraphs 46 to 54; *Falk v. the Netherlands*, Judgment on Admissibility of 19 October 2004, App. No. 66273/01). Thus, the European Court of Human Rights, in the case of *Falk v. the Netherlands*, concluded that the proceedings concerning the fine of 108.91 euros, imposed on the applicant, as the owner of the car, for a traffic offence – namely having failed to give way to a pedestrian who wanted to cross the road at a pedestrian crossing, as a minor traffic offence, fall within the scope of Article 6 of the Convention (see, *ibid*, *Falk v. the Netherlands*). In view of the aforementioned case-law of the European Court of Human Rights and taking the aforementioned general criteria as a starting point, the Constitutional Court concludes that the present case, given the scope of the norm regulating the petty offence and the purpose of the sanction, relates to a „criminal charge” and that Article 6 of the European Convention applies to the present case.

• **Decision on Admissibility No. AP 716/09 of 26 January 2012, paragraph 13; proceedings in the petty offence case**

The Constitutional Court notes that the appellant in the present case challenges the ruling that is not related to the determination of a criminal charge against him but that imposes a temporary prohibition on disposal of property until the completion of the proceedings. The Constitutional Court notes that the provisional measure in the present case was issued at the investigation stage and that, according to the ruling of the Court of BiH, pursuant to Articles 65 and 73 of the Criminal Procedure Code of BiH, *i.e.* Articles 110, 110a and 111 of the Criminal Code of BiH, its purpose was to secure at the initial stage of the proceedings that they were completed without a risk of alienating the property, in respect of which existed a strong suspicion that it had originated from the

perpetration of the criminal offence. The Constitutional Court notes that according to the relevant provisions of the Criminal Procedure Code of BiH, material gain acquired by the perpetration of a criminal offence will be confiscated by the court decision, which established the perpetration of the criminal offence (Article 110) and that the appellant's property in the present case could be seized only if the criminal liability of the appellant suspected of committing the criminal offences were established. Therefore, the Constitutional Court holds that the challenged decisions, by their nature, are temporary and that there is no indication that the relevant rulings, in terms of the positions taken by the European Court of Human Rights and the Constitutional Court, „have had any impact on the appellant's criminal record” and, therefore, they cannot be regarded as a „determination of a criminal charge” against the appellant within the meaning of Article 6(1) of the European Convention. In view of the above, the Constitutional Court holds that the issue of fairness of the relevant proceedings does not fall within the ambit of Article 6(1) of the European Convention or Article II(3)(e) of the Constitution of BiH and, therefore, the appellant's appeal relating to a violation of the right to a fair trial is incompatible *ratione materiae* with the Constitution of Bosnia and Herzegovina and the European Convention.

- **Decision on Admissibility and Merits No. AP 2753/13 of 13 September 2015, paragraphs 37 and 38, published in the *Official Gazette of Bosnia and Herzegovina*, 83/15; criminal proceedings, provisional measure prohibiting alienation and disposal of property**

Enforcement

There is a violation of the right to a fair trial under Article II(3)(e) of the Constitution of BiH and Article 6(1) of the European Convention in the situation where there is no guarantee that the appellant, as a holder of the instrument permitting enforcement, would be able to obtain the payment of the claim against the Federation of BiH.

- **Decision on Admissibility and Merits No. AP 1307/08 of 9 July 2010, paragraph 40, published in the *Official Gazette of Bosnia and Herzegovina*, 95/10; war damages**

The Constitutional Court concludes that there is a violation of the right to a fair trial under Article II(3)(e) of the Constitution of BiH and Article 6(1) of the European Convention in the case where the ordinary courts granted the objection raised in enforcement proceedings because instead of the failure to specify the Zenica-Doboj Canton and not the legal entity having a transaction account at the aforementioned Canton in the motion for enforcement, the enforcement of the judicial decision, which is an integral part of the „trial” within the meaning of Article 6 of the European Convention, became illusory.

- **Decision on Admissibility and Merits No. AP 1603/08 of 13 October 2010, paragraph 35, published in the *Official Gazette of Bosnia and Herzegovina*, 24/11; *Mješovita srednja škola „Hazim Šabanović” Visoko*;**
- **Decision on Admissibility and Merits No. AP 63/09 of 22 February 2011, paragraph 38, published in the *Official Gazette of Bosnia and Herzegovina*, 41/11**

The Constitutional Court concludes that, given the fact that the Federation of BiH failed to calculate the total debts arising from the enforceable judicial decisions, which, if need be, could be updated, and taking into account that there is no central and transparent record of claims, it follows that the appellants, as the holders of the enforceable court decisions, had no guarantee that the payment of their claims would be made within a reasonable time by the Federation of BiH and, consequently, there is a violation of the right to a fair trial under Article II(3)(e) of the Constitution of BiH and Article 6(1) of the European Convention in the present case in respect of the right to enforcement of the final judgment within a reasonable time as well as a violation of the right to property under Article II(3)(k) of the Constitution of BiH and Article 1 of Protocol No. 1 to the European Convention.

- **Decision on Admissibility and Merits No. AP 1544 of 27 May 2011, paragraph 65, published in the *Official Gazette of Bosnia and Herzegovina*, 99/11; failure to enforce the final judgments; the claims arising from the employment decided by the final judgments; compensation awarded**

The Constitutional Court finds that, given the fact that the Government of the Zenica-Doboj Canton failed to calculate the total debts arising from the enforceable judicial decisions, which, if need be, could be updated, and taking into account that there is no central and transparent record of claims, it follows that the appellants, as the holders of the enforceable court decisions, had no guarantee that the payment of their claims would be made within a reasonable time by the Zenica-Doboj Canton. For that reason, the Constitutional Court concludes that there is a violation of the right to a fair trial under Article II(3)(e) of the Constitution of BiH and Article 6(1) of the European Convention in the present case in respect of the right to enforcement of the final judgment within a reasonable time as well as a violation of the right to property under Article II(3)(k) of the Constitution of BiH and Article 1 of Protocol No. 1 to the European Convention.

- **Decision on Admissibility and Merits No. AP 2110/08 of 12 October 2011, paragraph 54, published in the *Official Gazette of Bosnia and Herzegovina*, 99/11; the claims arising from the employment for the period between 2005 and 2006 decided by the final judgments, so that the claims must be paid by the Cantonal Government, i.e. the budget of the Zenica-Doboj Canton**

Access to a court

By declining its competence to re-examine the facts of the case, the Supreme Court of the Republika Srpska violated the appellant's right of access to court of full jurisdiction as set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Constitution of Bosnia and Herzegovina.

- **Decision U 7/00 of 18 and 19 August 2000, published in the *Official Gazette of Bosnia and Herzegovina*, 6/01; administrative proceedings**

As the Supreme Court of the Republika Srpska, on three occasions, referred the case back to the administrative authorities, the appellant had no possibility to obtain a decision on

merits on his civil rights. Consequently, the appellant was not secured an effective access to court, as required by Article 6 paragraph 1 of the European Convention.

- **Decision No. U 15/00 of 15 and 16 December 2000, published in the *Official Gazette of Bosnia and Herzegovina*, 6/01**

Article 6 paragraph 1 of the European Convention provides the right of access to court of full jurisdiction as well as the right to have the court adopt a Decision on Merits in order to decide on a claim for repossession of an unlawfully taken apartment, even in a case where the pertinent administrative proceedings are pending.

- **Decision No. U 24/00 of 31 August 2001, published in the *Official Gazette of Bosnia and Herzegovina*, 1/02**

There is a violation of the right of access to court in cases related to housing issues where the Municipal and Cantonal Courts, by referring the case to the administrative authorities, rejected to decide on the merits of the case for the alleged lack of jurisdiction. The administrative proceedings, which are pending, cannot be the reason for which the Decision on Merits has not been taken.

- **Decision No. U 32/02 of 24 October 2003, paragraphs 21 and 28, published in the *Official Gazette of Bosnia and Herzegovina*, 6/04; the administrative proceedings, the transfer of the occupancy right to the person who provides support; the violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

There is a violation of the right to access to court in case where the court failed to decide on the appellant's civil rights.

- **Decision No. U 64/02 of 24 October 2003, paragraph 48, published in the *Official Gazette of Bosnia and Herzegovina*, 8/04; the determination of civil rights in ordinary proceedings following a failure to satisfy the obligations determined in non-contentious settlement; the violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court notes that, by failing to decide the merits of the appellant's complaint, the Municipal Court denied the appellant's right of access to court and, thus, violated Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 paragraph 1 of the European Convention. Moreover, this violation was corrected neither upon the appeal lodged with the Cantonal Court nor upon the revision-appeal lodged with the Supreme Court.

- **Decision U 28/00 of 28 November 2003, published in the *Official Gazette of Bosnia and Herzegovina*, 8/04; proceedings to obtain compensation for damages against UN and UNPROFOR**

The States have a discretionary power to organize, on their own motion, the judicial system securing the right of access to court for all citizens when it relates to „the determination of a civil right or obligation”. Thus, the States are entitled to seek from every person to comply with the relevant domestic legal regulations governing the

proceedings before the competent authorities. The aforementioned relates primarily to the regulations governing the competence of the authorities and the admissibility of legal remedies.

- **Decision on the Merits No. U 25/03 of 21 January 2004, paragraph 22, published in the *Official Gazette of Bosnia and Herzegovina*, 40/04; civil proceedings for determination of the property right over „military apartments”**

Each person, whose rights are directly or indirectly violated by measures issued by administrative authorities, is entitled to access to court of full jurisdiction in order to secure the protection of his/her rights.

- **Decision on the Merits No. U 25/03 of 21 January 2004, paragraph 23, published in the *Official Gazette of Bosnia and Herzegovina*, 40/04; civil proceedings for determination of the property right over „military apartments”**

In the challenged judgments, the ordinary courts decided on the appellant's request for institution of the investigation proceedings against a third party. The appellant did not complain about the court decision on his guilt. Given that the right of access to court provided for in Article 6 paragraph 1 of the European Convention does not include the right to initiate criminal proceedings against a third person, Article 6 paragraph 1 of the European Convention is not applicable in this case.

- **Decision on the Merits No. U 63/03 of 27 February 2004, paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina*, 11/04**

The Supreme Court rejected as inadmissible the request for judicial review against the decision of the customs administrative authority, as a second instance body, and thereby denied the appellants' right to access to court given that the determination of a civil right or a criminal charge by an administrative authority, which does not satisfy the requirements of an independent and impartial tribunal established by law, must be subject to judicial review by an independent and impartial tribunal with full jurisdiction.

- **Decision on Admissibility and Merits No. U 10/03 of 26 March 2004, paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina*, 19/04**

There is a reasonable relationship of proportionality between the means employed and the aim sought to be realized in case where the appellants, the sister and the grandfather of underage children, by the challenged court decisions, were denied the right of access to court for not having the standing to sue in the proceedings for termination of parental right since the Law on Non-Contentious Proceedings stipulates that only adopter, foster parent or guardian of a child have the standing.

- **Decision on Admissibility and Merits No. U 62/03 of 21 July 2004, paragraphs 22 and 23, published in the *Official Gazette of Bosnia and Herzegovina*, 8/05**

Given the restrictive interpretation of Article 187 of the Civil Procedure Code, which regulates the right to lodge a lawsuit for a judicial determination, there is a violation of the appellant's right of access to court provided for in Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 paragraph 1 of the European Convention.

- **Decision on Admissibility and Merits No. AP 219/03 of 23 July 2004, paragraph 21, published in the *Official Gazette of Bosnia and Herzegovina*, 48/04; the lawsuit seeking a judicial determination that Elektroprivreda is not entitled to reimbursement for the appellant's debt**

In case where during the entire proceedings the appellants did not receive a decision on the merits on their property claim within the period longer than three years, it follows that the appellants did not have a substantive access to court, apart from the formal one, and that by the challenged decisions their right to a fair trial safeguarded by Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 paragraph 1 of the European Convention was violated.

- **Decision on Admissibility and Merits No. AP 130/02 of 23 July 2004, paragraph 39, published in the *Official Gazette of Bosnia and Herzegovina*, 43/04; proceedings upon a lawsuit for trespassing user filed by a co-owner against a temporary user**

The fact that the appellant succeeded in obtaining that the lower courts rendered the challenged decisions indisputably corroborates that the appellant in the present case exercised his right of access to court. The reason being that the lower courts considered the appellant's claim and decided on the merits of this case, which, of itself, rules out a violation of the right of access to court safeguarded by Article 6 paragraph 1 of the European Convention. Actually, there is a violation of the right of access to court in cases where courts reject on procedural grounds to decide on the merits of a dispute. However, this is not the case here.

- **Decision on Admissibility and Merits No. AP 218/02 of 23 July 2004, paragraph 18, published in the *Official Gazette of Bosnia and Herzegovina*, 43/04; the alleged impossibility to institute civil proceedings because of the war – the statute of limitations – the Brčko District of BiH**

The first instance court, in accordance with Article 323 of the Civil Procedure Codes, should have stayed the delivery of the appeal to the second instance court until the adoption of a decision on the proposal on the supplement to the judgment and until the expiry of the time-limit for filing an appeal. However, the first instance court referred the whole case-file to the second instance court for a decision upon the appeal. Thereby, the appellant's right of access to court provided for in Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 paragraph 1 of the European Convention has been violated.

- **Decision on Admissibility and Merits No. AP 53/03 of 26 August 2004, paragraph 23, published in the *Official Gazette of Bosnia and Herzegovina*, 48/04; civil proceedings for compensation as a result of unpaid salaries**

The appellant's right of access to court provided for in Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 paragraph 1 of the European Convention is not violated as she exercised the right of access to court of full jurisdiction by bringing an action requesting the establishment of the right to reinstatement into the apartment over which the appellant and her husband, prior to their divorce, had lived as the co-holders of the occupancy right.

- **Decision on Admissibility and Merits No. AP 107/03 of 29 September 2004, paragraphs 25 to 28, published in the *Official Gazette of Bosnia and Herzegovina*, 54/04; the recognition of the foreign decision**

The appellant's right of access to court provided for in Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 paragraph 1 of the European Convention is violated given that the domestic legal system does not provide a judicial review by a judicial body, which has full jurisdiction, against customs authorities, at least in one instance, in the case that concerns the appellant's rights under Article 6 of the European Convention.

- **Decision on Admissibility and Merits No. U 106/03 of 27 October 2004, paragraph 38, published in the *Official Gazette of Bosnia and Herzegovina*, 23/05**

There is a violation of the right of access to court as the appellant's lawsuit is rejected and she is directed to claim damages with the State War Damage Commission. The ordinary courts should have accepted their jurisdiction on the basis of Article 6 paragraph 1 of the European Convention and examined the grounds of the appellants claim within the meaning of the applicable provisions of the Law on Ownership Relations and the Law on Obligations. Finally, the courts should have decided on the merits as to whether or not the respondents are liable.

- **Decision on Admissibility and Merits No. AP 98/03 of 27 October 2004, paragraphs 36 to 41, published in the *Official Gazette of Bosnia and Herzegovina*, 15/05;**
- **Decision on Admissibility and Merits No. AP 464/04 of 17 February 2005, paragraph 33, published in the *Official Gazette of Bosnia and Herzegovina*, 40/05; impossibility to enforce the legally binding decision awarding non-pecuniary damages for death of close family members; the violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

There is a violation of the right of access to court as an element of the right to a fair trial if the law or any other act of the authorities deprive execution of a legally valid court judgment, when such a law or other act places „an excessive burden on the individual” which does not satisfy the requirement of proportionality between a public interest of the community and fundamental rights of an individual.

- **Decision on Admissibility and Merits No. AP 969/04 of 23 March 2005, paragraph 34, published in the *Official Gazette of Bosnia and Herzegovina*, 27/05;**
- **Decision on the Merits No. AP 1094/04 of 20 December 2005, paragraph 43, published in the *Official Gazette of Bosnia and Herzegovina*, 45/06;**
- **Decision on the Merits No. AP 276/05 of 9 February 2006, paragraph 39, published in the *Official Gazette of Bosnia and Herzegovina*, 37/06;**
- **Decision on the Merits No. AP 487/05 of 20 December 2005, paragraph 413, published in the *Official Gazette of Bosnia and Herzegovina*, 39/06**

The right to equality before the law also includes the possibility of equal access to court for all citizens in the territory of Bosnia and Herzegovina, *i.e.* the right securing that the competent courts decide on the citizens' civil rights under equal conditions in proceedings stipulated by law.

- **Decision on Admissibility and Merits No. AP 402/04 of 23 March 2005, paragraph 24, published in the *Official Gazette of Bosnia and Herzegovina*, 32/05; proceedings related to the payment of salary, conduct of the Supreme Court in dispute not exceeding the value of BAM 15,000; the violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

There is a violation of the appellant's right to a fair trial safeguarded by Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 of the European Convention given that the appellant's claim is not decided in its entirety in court proceedings. Thereby, he is deprived of his right of access to court.

- **Decision on Admissibility and Merits No. AP 225/04 of 23 March 2005, paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina*, 32/05**

The essence of the appellant's „right of access to court” stipulated in Article 6 of the European Convention is denied as his claim in part related to the respondent's obligation to pay contributions is dismissed.

- **Decision on Admissibility and Merits No. AP 311/04 of 22 April 2005, paragraph 33, published in the *Official Gazette of Bosnia and Herzegovina*, 60/05; the appellant's claim related to the payment of contributions is dismissed for alleged lack of standing**

There is a violation of the appellant's right of access to court as an element of the right to a fair trial in case where the civil proceedings are suspended until the completion of the criminal proceedings, which have been completed by the legally binding decision but the proceedings upon the petition for reopening the proceedings are pending.

- **Decision on Admissibility and Merits No. AP 70/05 of 22 April 2005, paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina*, 36/05**

In the present case where the ordinary courts rejected as untimely the appellants' lawsuits filed for the protection of their rights arising from labor relations, there is the public interest in restricting the rights based on the stipulated time limits. The public interest is reflected in the efficient functioning of the legal system and legal certainty. A failure to meet the stipulated time limits made it impossible for the ordinary courts to decide on the merits of the appellants' claims, which is not contrary to the requirements of Article 6 paragraph 1 of the European Convention.

- **Decision on Admissibility and Merits No. AP 1110/04 of 18 May 2005, paragraph 36, published in the *Official Gazette of Bosnia and Herzegovina*, 47/06**

There is a violation of the right of access to court in case where ordinary courts suspend the civil proceedings, which are instituted after the criminal proceedings have been completed by a legally binding judgment, on the ground that the petition for reopening the proceedings has been filed.

- **Decision on Admissibility and Merits No. AP 691/04 of 28 June 2005, paragraph 25 to 27, published in the *Official Gazette of Bosnia and Herzegovina*, 27/06; compensation for damages; civil proceedings upon a property claim filed after the**

criminal proceedings completed by the legally binding decision are suspended as the petition for reopening the proceedings has been filed; the violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established

The right of access to court shall be applicable pending the realization of the civil right determined. Otherwise, the effective proceedings determining the civil rights or obligations would be illusory if the civil right cannot be exercised in the subsequent enforcement proceedings.

- **Decision on Admissibility No. AP 552/04 of 28 June 2005, paragraph 9; Decision No. U 38/02 of 19 December 2003, paragraphs 50 and 51, published in the *Official Gazette of Bosnia and Herzegovina*, 8/04; a labour dispute; the violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

There is a violation of the right of access to court, which is an integral part of the right to a fair trial if the enforcement of legally binding court decision is impeded by law or by any other act of public authorities when such a law or other act places „an excessive burden on individuals”, whereby the requirement of proportionality between the public interest and basic individual rights is not met.

- **Decision on Admissibility and Merits No. AP 703/04 of 28 June 2005, paragraph 47, published in the *Official Gazette of Bosnia and Herzegovina*, 32/05; failure to enforce the ruling on enforcement, the payment of debt incurred in wartime; the violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The appellant’s right of access to court is violated as the Basic Court, for a period of four years, failed to take any action aimed at processing the lawsuit. The aforementioned constitutes a violation of Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 paragraph 1 of the European Convention.

- **Decision on the Merits No. AP 994/04 of 13 September 2005, paragraph 32, published in the *Official Gazette of Bosnia and Herzegovina*, 4/06**

The Federation of Bosnia and Herzegovina failed to secure the appellants’ right of access to court. Thereby, there is a violation of Article 6 of the European Convention.

- **Decision on Admissibility and Merits No. AP 130/04 of 2 December 2005, published in the *Official Gazette of Bosnia and Herzegovina*, 9/06; old foreign currency savings**

In cases where there is a violation of the right of access to court, as a precondition to find the violation, it is necessary that the court has rejected on the procedural grounds to decide on the merits of a dispute. However, this is not the case here.

- **Decision on Admissibility No. AP 1000/04 of 13 October 2005, paragraph 10**

There is no violation of the right to a fair trial in case where the competent administrative authority takes a decision and the Supreme Court reviews that decision in proceedings upon a request for judicial review.

- **Decision on the Merits No. AP 676/04 of 20 December 2005, paragraphs 30 and 34, published in the *Official Gazette of Bosnia and Herzegovina*, 41/06; administrative proceedings, the appellant complained of a violation of the right to a fair trial as the administrative authority and not the court decided in the second instance; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

There is the public interest in restricting the rights based on the stipulated time limits. The public interest is reflected in the efficient functioning of the legal system and legal certainty. A failure to meet the stipulated time limits makes it impossible for the ordinary courts to decide the merits of the claim, which is not contrary to the requirements of Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 paragraph 1 of the European Convention.

- **Decision on Admissibility and Merits No. AP 85/06 of 15 February 2006, paragraph 31, published in the *Official Gazette of Bosnia and Herzegovina*, 38/07; administrative proceedings, a failure to meet the preclusive time limits; there is no violation of the right to a fair trial**

There is no violation of the right of access to court in case where the appellant, by filing a lawsuit in administrative proceedings, failed to request that the court hold a public hearing and the challenged decision was taken by the court sitting in panel.

- **Decision on the Merits No. AP 908/05 of 9 February 2006, paragraph 26, published in the *Official Gazette of Bosnia and Herzegovina*, 41/06**

Though the preliminary request for enforcement was dismissed by a legally binding judgment, the matter was not validly concluded. Actually, the preliminary request to allow enforcement was premature as it was filed before the fulfilment of the condition set out in the enforcement document.

- **Decision on the Merits No. AP 1202/05 of 12 April 2006, paragraph 24, published in the *Official Gazette of Bosnia and Herzegovina*, 61/06; enforcement proceedings, non-enforcement of the legally binding decision, access to a court**

The ordinary court's failure to take any action within the much longer time limits than those prescribed by the mandatory regulations and take any steps to remedy obstacles in the work of the courts, including no obligation on the courts' side to inform citizens about the order in which their civil rights and obligations are to be determined, constitute the violation of the right to a fair trial in relation to the right of access to court stipulated in Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 paragraph 1 of the European Convention.

- **Decision on Admissibility and Merits No. AP 1199/06 of 13 June 2006, paragraph 31, published in the *Official Gazette of Bosnia and Herzegovina*, 77/06;**
- **Decision on Admissibility and Merits No. AP 957/06 of 13 June 2006, pp.26 and 31, published in the *Official Gazette of Bosnia and Herzegovina*, 67/06; civil proceedings, the court failed to take any action upon the lawsuit**

There is no violation of the appellants' right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 paragraph 1 of the European Convention as a result of the limitations on the right of access to court on the basis of the Law on Achieving Rights to Compensation for Pecuniary and Non-Pecuniary Damage Arising out of the Combat Period as of 20 May 1992 to 19 June 1996, based on which the competent courts relinquished the cases for further proceedings to the Attorney's Office of the Republika Srpska.

- **Decision on Admissibility and Merits No. AP 1257/05 of 12 September 2006, paragraphs 30 and 31, published in the *Official Gazette of Bosnia and Herzegovina*, 7/07; civil proceedings, war damages; the violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Republika Srpska' failure to secure that its bodies satisfy the legal obligations and thus make it possible for the appellants to have their legally binding decisions enforced constitutes the breach of the right to a fair trial.

- **Decision on Admissibility and Merits No. AP 1431/05 of 12 September 2006, paragraphs 54 to 56, published in the *Official Gazette of Bosnia and Herzegovina*, 9/06; enforcement proceedings**

There is a violation of the right of access to court in case where the Government of the Republika Srpska fails to enact within the legal time limit or after the expiry of that time limit an Act regulating the procedure, conditions and priorities to acquire the right to war veterans allowance and, thereby, it prevents the enforcement of the legally binding judgment.

- **Decision on Admissibility and Merits No. AP 231/06 of 13 September 2007, paragraphs 36 to 37, published in the *Official Gazette of Bosnia and Herzegovina*, 86/07; enforcement proceedings; payment of war veterans allowance; the violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The County Court arbitrarily applied the Law on Acquiring the Right to Damage Compensation by making the reference to the provisions of the said Law. Practically, the County Court declared itself not competent to decide on the defendants' appeal against the judgment rendered in civil proceedings instituted upon the appellant's lawsuit, though the appellant's claim does not fall within the time period stipulated in the mentioned law (from 20 May 1992 to 19 June 1996), nor does the provisions of the Law on Obligations regulating damage compensation constitute the legal basis of the claim. Thus, the County Court made it impossible for the appellant to exercise the right of access to court, which includes the right according to which the appellant is entitled to have his/her claim decided by the legally finding judgment rendered in efficient court proceedings conducted by the competent court.

- **Decision on Admissibility and Merits No. AP 430/06 of 13 December 2007, paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina*, 12/08; civil proceedings related to the unlawful gain, the violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

There is a violation of the right of access to court in case where the Supreme Court rejected, as inadmissible, the appellant's claim in administrative proceedings, although the facts of the case indicated that the claim was admissible and that the Supreme Court should have acted upon the appeal pursuant to Article 8 of the Law on Legal Disputes, which provides that an administrative dispute may be instituted against the „silence of administration”.

- **Decision on Admissibility and Merits No. AP 2329/06 of 13 May 2008, paragraph 23; published in the *Official Gazette of Bosnia and Herzegovina*, 49/08; administrative dispute, repossession of the apartment; the violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The appellant's right of access to court is violated for the ordinary court's failure to decide on the appellant's request to take part in litigation as intervener on the defendant's side. Thus, the ordinary courts did not allow the appellant to take part at the stage of litigation in which he could have an effective *i.e.* essential access to court and enjoy all guaranties of the right to a fair trial.

- **Decision on Admissibility and Merits No. AP 2394/06 of 4 September 2008, paragraph 29, published in the *Official Gazette of Bosnia and Herzegovina*, 91/08; civil proceedings, access to court; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court concludes that there is no violation of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention in respect of an effective access to courts as a result of the non-existence of the free legal assistance in Bosnia and Herzegovina, where in the proceedings for determination of civil rights, which were important for the appellant, there is nothing to indicate that the relevant case was complex as well as the relevant law and the proceedings and that the appellant was unable effectively to represent himself in the relevant proceedings.

- **Decision on Admissibility and Merits No. AP 2944/08 of 21 July 2011, paragraph 69, published in the *Official Gazette of Bosnia and Herzegovina*, 99/11; free legal assistance, access to a court, there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

The Constitutional Court concludes that there is no violation of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention in respect of the right of access to a court in the situation where the appellants did not personally attend the proceedings, as they were represented by a guardian for special cases – a lawyer, who protected their rights and interests in the relevant proceedings, and the appointment of the guardian for special cases (in the situation where no information about the appellants' addresses was available to the ordinary courts) was carried out in accordance with the relevant provisions of the Family Law.

- **Decision on Admissibility and Merits No. AP 3627/08 of 23 September 2011, paragraph 36; temporary guardian, access to a court, there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

The Constitutional Court concludes that there is a violation of the right of access to a court, as an element of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina, where the court, having jurisdiction to decide on the factual and legal issues, failed to decide the appeal guaranteed under law, which had been lodged with that court, so that no final decision on the appellant's right was rendered.

- **Decision on Admissibility and Merits No. AP 3806/09 of 19 July 2012, paragraph 31, published in the *Official Gazette of Bosnia and Herzegovina*, 79/12; payment of tax obligation against the taxpayer's property, a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court concludes that monetary claims referred to in the provisions of the Law on the Rights of Veterans and their Families are a kind of social assistance that public authorities, within their margin of appreciation, regulate in accordance with the needs of the society, on the one hand, and in accordance with the possibilities and opportunities of the social community in question, on the other hand. Therefore, the scope and content of those rights as well as related mechanisms fall entirely within the margin of appreciation of the public authorities. As regards the specific issue, the Constitutional Court notes that the realisation of certain monetary claims in the area of social protection of veterans and their families in the Federation of BiH is regulated by a special law, which, as *lex specialis*, stipulates that this matter falls entirely under the jurisdiction of administrative authorities. Consequently, the Constitutional Court holds that the ordinary courts, declaring that they lacked jurisdiction to act upon the appellants' motions for forcible enforcement of the appellants' claims established in administrative proceedings based on the Law on the Rights of Veterans and their Families, did not violate their right of access to a court, as an element of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention.

- **Decision on Admissibility and Merits No. AP 4609/12 of 12 June 2013, paragraphs 30 and 31, forcible enforcement related to the costs of proceedings accrued in the proceedings to determine the right to personal disability allowance; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

The Constitutional Court concludes that there is a violation of the appellant's right of access to a court, as an element of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention, as the appellant's request for postponement of the hearing, which was scheduled for the second day of religious holiday, was not recognised as justified by the Municipal Court. In fact, the specific case related to the justified request for the postponement of hearing and the ordinary courts should have taken into account the core values of a multicultural society.

- **Decision on Admissibility and Merits No. AP 2691/10 of 22 October 2013, paragraph 35, published in the *Official Gazette of Bosnia and Herzegovina*, 92/13; request to postpone a main hearing scheduled and held on the second day of the religious holiday; the violation of Article 6 of the European Convention established**

The Constitutional Court notes that the challenged decisions to terminate the proceedings are based on the provisions of Article 4 of the Law on Implementation of Annex G of the Agreement on Succession Issues on Territory of the Republika Srpska, which was applicable at that time. However, the Constitutional Court recalls that it established by its Decision No. *U 16/11* of 13 July 2012 that the Law on Implementation of Annex G of the Agreement on Succession Issues on Territory of the Republika Srpska as a whole was incompatible with the Constitution of Bosnia and Herzegovina. Therefore, the Constitutional Court holds that it is necessary to order the County Commercial Court to continue and to finalize the relevant proceedings without further delay. In view of the aforesaid, the Constitutional Court concludes that the challenged decisions are in violation of the appellant's right of access to a court, as an element of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention.

- **Decision on Admissibility and Merits No. AP 5657/10 of 15 January 2014, paragraphs 31 and 32, published in the *Official Gazette of Bosnia and Herzegovina*, 19/14; request by the appellant with a seat on the territory of another State (the Republic of Croatia, as one of the SFRY successor states, for solution of property-legal relation; termination of proceedings; the violation of Article 6 of the European Convention established**

The Constitutional Court concludes that there is a violation of the right of access to a court, as a part of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention, where the restriction established by law, which is reflected in the payment of court taxes, as a requirement to act upon a lawsuit, is not a proportionate means of achieving a legitimate aim – the payment of court taxes as public revenues, as it infringes the very essence of the right of access to a court.

- **Decision on Admissibility and Merits No. AP 3991/11 of 21 October 2014, paragraph 26, published in the *Official Gazette of Bosnia and Herzegovina*, 93/14; court taxes; the violation of Article 6 of the European Convention established**

Right to a fair trial – right to adversarial proceedings

The ordinary courts have the discretion to decide whether or not they will hear the parties. There is no violation of the adversarial principle and the right to a fair trial in cases where the appellants' authorized representative gave before the court the statement in the name of all the appellants and, in the course of the proceedings, none of the appellants made an objection stating that he/she had a separate statement to make.

- **Decision No. U 12/03 of 26 March 2004, paragraph 23, published in the *Official Gazette of Bosnia and Herzegovina*, 18/04**

There is a violation of the principle of adversarial proceedings because the competent public prosecutor took part in appellate proceedings and the appellant and his authorized representative were not given such an opportunity.

- **Decision on Admissibility and Merits No. AP 54/03 of 23 July 2004, published in the *Official Gazette of Bosnia and Herzegovina*, 43/04; criminal proceedings – appellants’ non-attendance at the session of the second instance court**

The proceedings must comply with the adversarial principle so that the accused must be provided all information about the allegations and evidence given by the public prosecutor as well as the opportunity to reply on the allegations presented and to submit evidence in support of his defence.

- **Decision on Admissibility and Merits No. AP 557/04 of 30 November 2004, paragraph 24, published in the *Official Gazette of Bosnia and Herzegovina*, 19/05; criminal proceedings, offence in traffic safety; there has been no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

Taking into account that neither the appellant nor the public prosecutor took part in the appellate proceedings, the principle of „equality of arms” and the respect of adversarial proceedings are not infringed by the appellant’s failure to attend the session of the County Court.

- **Decision on the Merits No. AP 1065/05 of 13 September 2005, paragraph 29, published in the *Official Gazette of Bosnia and Herzegovina*, 22/06;**
- **Decision No. AP 1245/05 of 13 June 2006, paragraph 41, published in the *Official Gazette of Bosnia and Herzegovina*, 77/06; criminal proceedings**

There is no violation of the right to equality before courts, as an element of the right to a fair trial, in case where the second instance court, in accordance with the law, took the decision at the session of the panel without holding a hearing and presenting new evidence and no party to the proceedings attended the second instance session.

- **Decision on the Merits No. AP 1124/05 of 9 February 2006, paragraph 31, published in the *Official Gazette of Bosnia and Herzegovina*, 45/06; criminal proceedings, criminal offence of tax evasion**

There is no breach of the right to a fair trial and the adversarial principle in case where one of the witnesses refused to testify and all other evidence and facts indicated the criminal offence and criminal responsibility of the accused, *i.e.* the appellant in the case at hand. Indeed, Article 6(2)(d) of the European Convention stipulates that everyone charged with a criminal offence has the right „to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him” but the refusal to allow the defence witness testimony cannot in any way be treated as a violation of the right to a fair trial in criminal matters.

- **Decision on Admissibility and Merits No. AP 702/05 of 30 March 2007, paragraph 31, published in the *Official Gazette of Bosnia and Herzegovina*, 57/07; criminal proceedings, war-crime, there has been no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

Right to a fair trial – equality of arms in proceedings

There is a violation of the right to a fair trial, especially of the principle of equality of arms, in case where neither the appellant nor his/her legal counsel are given the opportunity to attend a court hearing dealing with factual and legal aspects of the appeal in the presence of the deputy public prosecutor, even if this is founded on the applicable law.

- **Decision No. U 28/01 of 21 June 2001, paragraph 29, published in the *Official Gazette of Bosnia and Herzegovina*, 5/02; criminal proceedings, the appellant was not given the opportunity to attend the second instance proceedings; the violation of Article 6 of the European Convention established**

Taking into account that the appellant's defence counsel took part in appellate proceedings and the appellant and his counsel were duly summoned to the public hearing before the second instance court, the principle of „equality of arms” and the adversarial principle are not infringed by the appellant's failure to attend the public hearing before the second instance court.

- **Decision No. U 13/03 of 24 October 2003, paragraph 27, published in the *Official Gazette of Bosnia and Herzegovina*, 39/03**

In case where the witnesses were present and examined at the main trial so that the appellant had the opportunity to question the witnesses in person, the fact that the testimony was obtained by questioning one of the witnesses outside the main trial proceedings in the presence of the prosecutor, while the accused was not summoned, is not of a decisive nature. Therefore, there is no breach of the principle of „equality of arms” before courts.

- **Decision on Admissibility and Merits No. U 101/03 of 17 May 2004, paragraphs 26 and 27, published in the *Official Gazette of Bosnia and Herzegovina*, 40/04**

In proceedings before the ordinary courts the appellant was not placed in an inferior position in relation to his opponent and there were no procedural errors which would affect the principle of a fair trial in case where the courts considered all the assertions of the appellant, giving more importance to some and less to others, and sufficiently substantiated their decisions.

- **Decision No. U 34/03 of 17 May 2004, paragraph 23, published in the *Official Gazette of Bosnia and Herzegovina*, 34/04;**
- **Decision on Admissibility and Merits No. U 80/03 of 26 August 2004, paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina*, 48/04;**
- **Decision on the Merits No. AP 161/05 of 12 April 2006, paragraph 31, published in the *Official Gazette of Bosnia and Herzegovina*, 49/06;**
- **Decision on the Merits No. AP 711/05 of 14 March 2006, paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina*, 59/06**

There is no breach of the principle of equality before the law, as an element of the right to a fair trial under Article 6 paragraph 1 of the European Convention in case where the

second instance court, in accordance with the law, took the decision at the session of the panel without holding a hearing and presenting new evidence and no party to the proceedings attended the second instance session.

- **Decision on Admissibility and Merits No. AP 415/04 of 23 July 2004, paragraph 24, published in the *Official Gazette of Bosnia and Herzegovina*, 43/04; criminal proceedings, equality between the parties in proceedings, misapplication of the law; there has been no violation of Article 6 of the European Convention Article II(3)(e) of the Constitution of BiH;**
- **Decision on Admissibility and Merits No. AP 444/04 of 17 February 2005, paragraphs 27 and 31, published in the *Official Gazette of Bosnia and Herzegovina*, 40/05; criminal proceedings, offence in traffic safety; equality of the parties in proceedings; there has been no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

In the view of the Constitutional Court, Article 6 of the European Convention does not stipulate an unrestricted right to put questions to witnesses before the court.

- **Decision on Admissibility and Merits No. AP 114/02 of 27 October 2004, paragraphs 23, 24 and 26, published in the *Official Gazette of Bosnia and Herzegovina*, 60/04; criminal proceedings related the offence of abuse of office**

The principle of fair trial under Article 6 of the European Convention, i.e. the principle of equality before the law, is not breached because of the fact that the findings of the expert, who was proposed by the appellant, are not taken into account since expert examinations are carried out by the experts from a list established by the civil courts.

- **Decision on Admissibility and Merits No. U 95/03 of 29 September 2004, paragraph 25, published in the *Official Gazette of Bosnia and Herzegovina*, 10/05**

Considering that it related to the stage of proceedings that was not attended by either of the parties to the proceedings, the principle of equality before the law was met. Therefore, this part of the complaints of a violation of the right to a fair trial is ill-founded.

- **Decision on Admissibility and Merits No. AP 592/03 of 14 October 2004, paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina*, 8/05;**
- **Decision on Admissibility and Merits No. AP 639/03 of 14 October 2004, published in the *Official Gazette of Bosnia and Herzegovina*, 8/05**

The parties to proceedings are entitled to propose evidence and facts upon which the fair proceedings before the ordinary courts depend. If the courts fail to examine all relevant allegations presented by the parties to proceedings, there is a danger that the ordinary courts take an arbitrary decision in violation of the rights guaranteed by the Constitution of Bosnia and Herzegovina.

- **Decision No. U 47/01 of 24 October 2003, paragraph 48, published in the *Official Gazette of Bosnia and Herzegovina*, 8/04; enforcement proceedings, payment of pecuniary claim, the violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

In the proceedings before ordinary courts, both prosecution and defence were given a reasonable opportunity to present evidence at two judicial instances. The appellant was given the opportunity to present all evidence relevant for establishment of the facts decisive for the judgment and to summon and hear witnesses. In addition, the relevant expert was engaged to conduct the expert examination and the necessary expertise was performed.

- **Decision on Admissibility and Merits No. AP 278/04 of 18 January 2005, published in the *Official Gazette of Bosnia and Herzegovina*, 38/05**

Given that the State is one of the parties to the dispute and taking into account the provision stipulating that the new facts must be presented before the completion of the main trial, the Constitutional Court holds that the first instance court should have taken all necessary measures to ensure equal participation of the appellant (the State of BiH), in first instance proceedings, since the appellant was not adequately represented and the sole issue for the court to resolve who was to be held liable to fulfil the obligations under the contract.

- **Decision on Admissibility and Merits No. AP 473/04 of 18 March 2005, paragraph 34, published in the *Official Gazette of Bosnia and Herzegovina*, 40/05; procedure of the payment of the debt in respect of the contract for printing, packaging and distribution of the banknotes – BH Dinar, entered into with the State of BiH; the violation of Article II(3)(e) of the Constitution of BiH established**

No party to the proceedings will have an advantage with respect to the presentation of evidence.

- **Decision on Admissibility and Merits No. AP 447/04 of 12 April 2005, paragraph 25, published in the *Official Gazette of Bosnia and Herzegovina*, 40/05; criminal proceedings, the presentation of all evidence by the prosecution; there has been no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

There is no violation of the equality principle, as an element of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention, in case where the appellant's defence counsel presents the defence at the main trial and fails to request in the course of the main trial the postponement of the main trial as a consequence of the specified indictment of the public prosecutor.

- **Decision on Admissibility and Merits No. AP 990/04 of 12 April 2005, paragraph 31, published in the *Official Gazette of Bosnia and Herzegovina*, 48/05**

There is no breach of the right to a fair trial in case where the judge in investigative proceedings, acting under his/her legal authorities, dismisses a procedural motion filed by the defence counsel.

- **Decision on Admissibility and Merits No. AP 447/04 of 12 April 2005, paragraphs 29 to 31, published in the *Official Gazette of Bosnia and Herzegovina*, 40/05; criminal proceedings, the presentation of all evidence by the prosecution; there has**

been no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH

Domestic courts enjoy a margin of appreciation in deciding, on their own motion, to hear witnesses that can assist in determining the truth, *i.e.* in assessing whether or not it is necessary to summon the proposed witnesses. In addition the courts ought to observe the purpose and objective of the right to a fair trial, which stipulates that trials are conducted „under equal conditions” and with „equality of arms”. Article 6 of the European Convention requires that the courts state their reasons for which they decide not to summon those witnesses whose testimony is explicitly requested.

- **Decision on Admissibility and Merits No. AP 637/04 of 22 July 2005, paragraph 23, published in the *Official Gazette of Bosnia and Herzegovina*, 40/06; criminal proceedings, the presentation of new evidence; there has been no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

Article 6(1) of the European Convention does not stipulate an unrestricted right to put questions to witnesses before the court. In fact, the court ought to assess whether or not the presentation of the proposed evidence has relevance to decision-taking in the relevant case.

- **Decision on the Merits No. AP 620/04 of 13 September 2005, paragraph 25, published in the *Official Gazette of Bosnia and Herzegovina*, 80/05; minor offences proceedings; there has been no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

There is a breach of the principle of equality between the parties in proceedings in case where the court fails in administrative dispute to submit the indictment to an interested party, as stipulated by the Law on Administrative Disputes, given that the court decision is relevant for the civil rights of the interested party.

- **Decision on Admissibility and Merits No. AP 307/06 of 18 October 2007, paragraph 27, published in the *Official Gazette of Bosnia and Herzegovina*, 2/08;**
- **Decision on Admissibility and Merits No. AP 2998/07 of 14 February 2008, paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina*, 23/08; administrative dispute related to the occupancy right, the violation of the principle of equality between the parties, and not the violation of the right of access to court, established for the failure to submit the indictment; the violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court concludes that there is no violation of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) and 3(d) of the European Convention in relation to the principle of equality of arms in a procedure where the sentencing judgement is based on evidence presented at the main hearing and where the appellant was not prevented from examining all the evidence of the Prosecutor’s Office of BiH in compliance with the adversarial principle, or from presenting his own evidence.

- **Decision on Admissibility and Merits No. AP 408/07 of 11 February 2010, paragraph 53, published in the *Official Gazette of Bosnia and Herzegovina*,**

50/10; criminal proceedings; there has been no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH

The Constitutional Court concludes that there is no violation of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) and 3(d) of the European Convention in relation to the principle of equality of arms in a minor offence procedure where the appellant, in accordance with the legal obligation which is applicable under the same conditions for the opposing party, failed to secure the appearance of the persons in capacity of witnesses nor did he in any way prove that they refused to appear voluntarily before the court, whereby he could have requested the court to summon them. The Constitutional Court also concludes that there occurred no violation of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) and 3(d) of the European Convention where there is nothing indicating that he was brought in an unequal position in any way when compared to the opposing party and where the decision establishing the existence of minor offence and of minor offence liability was based on the statements of witnesses for the opposing party, whose presence was secured by the opposing party in accordance with the legal obligation.

- **Decision on Admissibility and Merits No. AP 3552/09 of 30 January 2013, paragraph 50, published in the *Official Gazette of Bosnia and Herzegovina*, 50/10; minor offences proceedings; there has been no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

By bringing the mentioned facts in the context of the principle of „equality of arms” under the provisions of Article 6 of the European Convention, the Constitutional Court notes that it follows from the mentioned facts that, despite the court’s order and only after more than four years of the respective proceedings, the plaintiff submitted to the appellant the documentation on which it based its claim and the court accepted that documentation, whereas it dismissed the appellant’s request for specifying a time limit for submitting the financial documentation related to the subject-matter of the dispute. Accordingly, the Constitutional Court holds that the Municipal Court, acting in the mentioned manner, did not afford a reasonable opportunity to the appellant to present in the further course of the ordinary proceedings its allegations on unfoundedness of the claim, including the evidentiary material, under the same conditions that applied to the plaintiff. Namely, the Constitutional Court holds that the Municipal Court, through such a decision, *i.e.* through the strictly formal interpretation of the provisions of the Law on Civil Procedure relating to the time limit within which the parties may propose evidence, placed the appellant at a substantially disadvantageous position when compared to the plaintiff. The reason begins that the Municipal Court, at the preliminary hearing, which was held on 11 April 2005, dismissed the proposal of the appellant to be given the time limit for the submission of the financial documentation, thereby it tolerated the plaintiff’s lack of activity in the period from the date of filing the lawsuit to the date of the said hearing, that is for over four years, although the appellant, from the outset of the proceeding (starting with the reply to the lawsuit), persisted in asserting (that in the present case the preliminary issue for the assessment of well-foundedness of the claim) that the statement of claim was

unfounded. According to the Constitutional Court, the courts actually made it impossible for the appellant to oppose the arguments presented by the plaintiff in proving its claims regarding the ill/well-foundedness of the statement of claim.

- **Decision on Admissibility and Merits No. AP 4659/11 of 22 January 2015, paragraph 49, published in the *Official Gazette of Bosnia and Herzegovina*, 17/15; civil proceedings; the violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

[...] the Supreme Court's conclusion that there is no legal obligation of the prosecutor to transmit the case-file or evidence to the accused and his defence counsel during the investigation or after lodging the Indictment, when the inspection of the case-file is provided in the course of the investigation, including legal restrictions, and after the Indictment is lodged with no restriction, does not call into question the principle of equality of arms and the appellant's right to defend himself, especially given that in the present case the appellant did not claim that the inspection of the case-file was denied or restricted to him at any stage of the proceedings or that he was prevented from using in the proceedings what he found out on the basis of the possible inspection of the case-file.

- **Decision on Admissibility and Merits No. AP 2137/14 of 15 April 2015, paragraph 52; criminal proceedings; there has been no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

Right to public proceedings

The Constitutional Court recalls that, in principle, court hearings are to be held in public. The public character of hearings ensures public scrutiny, serves the general interest and is aimed at preventing crimes and developing moral and social discipline in citizens.

- **Decision on Admissibility and Merits No. AP 74/04 of 23 March 2005, paragraph 25, published in the *Official Gazette of Bosnia and Herzegovina*, 27/05**

The administrative court is obliged to hold a public hearing in cases where the circumstances indicate so and where the appellant demands it (*cf. AP 963/04*, of 17 November 2005, paragraphs 40 *et seq.*). Consequently, the administrative court cannot interpret its discretionary right in an arbitrary manner. It should be interpreted in the spirit of the constitutional substantive law including the European Convention, which has priority over all other laws (Article II(2) of the Constitution of Bosnia and Herzegovina). The reason for this is that there is an exception in case where the administrative court decides that the hearing, in proceedings which decide on „civil rights” within the meaning of Article 6 European Convention, is to take place in camera. Such an exception is justified if the hearing of a case in private satisfies all the elements of a fair trial. This is a particularly sensitive issue in administrative proceedings and disputes as the administrative authorities do not satisfy criteria of „independence” and „impartiality” and, therefore, the administrative court is the only instance where the criteria are met. Nevertheless, the standard of a fair trial is not met if it is necessary that the court hears the party in persona and if it is requisite to present and examine evidence to which the party might refer directly. In the view of the Constitutional Court, this will occur always if it

is required that the administrative court is to determine the complex facts or to ascertain the correct application of the law (*cf. U 148/03* of 28 November 2003, paragraphs 55 *et seq.*, *Official Gazette of Bosnia and Herzegovina*, 1/04).

- **Decision on Admissibility and Merits No. AP 1139/06 of 17 April 2008, paragraph 27, published in the *Official Gazette of Bosnia and Herzegovina*, 55/08; administrative proceedings, the facts established in an arbitrary manner and an erroneous application of the law, the court stated its reasons for the judgment; the violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

Right to attend a trial

The proceedings conducted by the Supreme Court of the Republika Srpska on the basis of the Minor Offences Law cannot be deemed to involve the complete review of all aspects of a case. The Supreme Court examines the application of the law and it does not review the facts established by administrative authorities. In addition, the Supreme Court does not hear witnesses, nor does it examine evidence. The proceedings before the Supreme Court are not held in public. Moreover, the Supreme Court does not of itself take a Decision on Merits but refers a case back to the first instance or second instance administrative authority. Consequently, the Constitutional Court finds that the proceedings before the Supreme Court of the Republika Srpska in the present case do not fulfil the requirements of Article 6(1) and (3) of the European Convention since these proceedings do not involve an examination of the indictment.

- **Decision U 19/00 of 4 May 2001, paragraph 33, published in the *Official Gazette of Bosnia and Herzegovina*, 27/01**

Irrespective of the appellant's explicit request and contrary to Article 6(1) of the European Convention, the Supreme Court failed to ensure that the appellant attends and takes part at the hearing in proceedings to determine a criminal charge.

- **Decision on Admissibility and Merits No. U 59/03 of 17 May 2004, paragraph 23, published in the *Official Gazette of Bosnia and Herzegovina*, 40/04; minor offence proceedings related to failure to pay customs duty on goods imported**

In case where the appellant is entitled to file a petition for reopening the proceedings within the time limit of one year from the date on which he has learnt about the judgment, by which he/she has been convicted in absence, and where the petition for reopening the proceedings imposes no particular requirements, the courts are obliged to grant such a request and to hold a new hearing in such a case. Therefore, it cannot be said that the appellant's right to a fair trial has been violated because the trial was conducted in the absence of the appellant.

- **Decision on Admissibility and Merits No. U 103/03 of 28 May 2004, paragraphs 27 and 28, published in the *Official Gazette of Bosnia and Herzegovina*, 38/04**

Right to public hearing has not been secured in proceedings conducted before customs authorities and before the Supreme Court of the Federation of Bosnia and Herzegovina

and the appellant has not been given the opportunity to examine, in person, the allegations against him or to present the reasons for which he had filed a lawsuit in administrative proceedings. Therefore, the right to a public hearing has not been complied with in the present case.

- **Decision on Admissibility and Merits No. AP 236/03 of 15 June 2004, published in the *Official Gazette of Bosnia and Herzegovina*, 38/04; Lijanovići**

There is no violation of Article 6 of the European Convention in case where neither a plaintiff nor a defendant nor defence counsel attended the session of the panel which decided on the defendant's appeal (the appellant's appeal).

- **Decision on Admissibility and Merits No. U 119/03 of 15 June 2004, paragraph 27, published in the *Official Gazette of Bosnia and Herzegovina*, 40/04; neither plaintiff nor defendant were present at the session of the panel; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

Contrary to the appellant's allegations, there is no violation of his right to defence on the ground that his counsel was not present when a photo-documentation was produced. In addition, this photo-documentation is not related to the evidence on the basis of which the court took its decision.

- **Decision on Admissibility and Merits No. U 50/03 of 21 July 2004, paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina*, 41/04**

Therefore, the principle of equality between parties has been called into question by the fact that neither the appellant nor his counsel attended the criminal proceedings in their entirety and that the appellant did not explicitly renounce his right to be heard and to participate in proceedings. Nevertheless, in addition to the aforementioned, the Constitutional Court states that, taking into account that it is mandatory to apply the former Criminal Procedure Code in these proceedings, the appellant, in the case at hand, has the opportunity to avail himself of an extraordinary remedy - a petition for reopening the proceedings. By filing the extraordinary remedy with the competent court, automatically and with no discretionary right to decide, the mentioned court is obliged to issue a ruling allowing renewal proceedings. Thus, in the reopened proceedings, the appellant will enjoy all rights and procedural guarantees under Article 6 of the European Convention and he will be in a position to participate in proceedings to resolve the grounds of charges pending against him. In addition, the Constitutional Court is not aware of any single fact suggesting that the appellant will not have a fair trial in the reopened proceedings.

- **Decision on Admissibility and Merits No. AP 407/04 of 23 July 2004, paragraph 24, published in the *Official Gazette of Bosnia and Herzegovina*, 43/04; right to attend criminal proceedings, neither the appellant nor his counsel attended the criminal proceedings; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

It cannot be said that the appellant had a fair trial as he was not notified of the place and date at which the hearing would be held and neither the appellant nor his counsel were given the opportunity to attend the session.

- **Decision on Admissibility and Merits No. AP 145/02 of 26 August 2004, paragraph 27, published in the *Official Gazette of Bosnia and Herzegovina*, 48/04; attendance at the session of the panel in appellate proceedings**

The appellant must be given an opportunity to attend the court session. This relates to, primarily, trials in the first instance. However, the right to a fair trial also includes the right to attend hearings before courts of higher instance, which decide on appeals. In cases where the considerations before the courts are limited to the procedural or solely legal issues, the personal attendance of the defendant is not relevant.

- **Decision on Admissibility and Merits No. AP 557/04 of 30 November 2004, paragraph 23, published in the *Official Gazette of Bosnia and Herzegovina*, 19/05; criminal proceedings, criminal offence in traffic safety; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH;**
- **Decision on the Merits No. AP 656/04 of 13 September 2005, paragraph 25, published in the *Official Gazette of Bosnia and Herzegovina*, 83/05; criminal proceedings, the application of the more lenient law, the death penalty replaced with a 20-year prison term; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

There is always a violation of Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 paragraphs 1 and 3(c) of the European Convention in case where the appellant, who demanded to attend the session in appellate proceedings, was not summoned to the session of the appellate court, as stipulated by law, and the decision was about the facts, the allegations of the criminal offence and circumstances under which the offence was committed, and the perpetrator's point of view on the facts.

- **Decision on Admissibility and Merits No. AP 224/04 of 17 February 2005, published in the *Official Gazette of Bosnia and Herzegovina*, 38/05**

In case where the appellant did not request to attend the session in appellate proceedings or to be invited to that session and where the authorized counsel did not attend the session of the appellate court, the right to a fair trial is not violated if the law stipulates the possibility to attend the proceedings and the decision does not concern the facts and the allegations of the criminal offence.

- **Decision on the Merits No. AP 1102/04 of 13 October 2005, paragraph 37, published in the *Official Gazette of Bosnia and Herzegovina*, 22/06**

Minor offence proceedings, which resulted in challenged rulings by which a fine was imposed on the appellant, is deemed to be „criminal” proceedings. However, in passing the challenged rulings, the court did not examine the appellant and, therefore, his right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 paragraph 1 of the European Convention has been violated.

- **Decision on the Merits No. AP 1087/04 of 2 December 2005, paragraph 36, published in the *Official Gazette of Bosnia and Herzegovina*, 22/06**

There is a violation of Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) and 3(c) and (d) of the European Convention in case where the appellant in

minor offences proceedings, in which he was not heard as the accused, was found guilty of a minor offence by the decision of the court

- **Decision on Admissibility and Merits No. AP 2255/05 of 16 January 2006, paragraphs 30 to 32, published in the *Official Gazette of Bosnia and Herzegovina*, 38/07; minor offences proceedings, the appellant's guilt decided in the absence of the appellant**

There is a violation of Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) and 3(c) and (d) of the European Convention in case where it is indisputably established that the witnesses were heard before the first instance court and that the appellant was not present at that hearing and that a traffic expert witness presented his findings and the appellant, before the issuance of the first instance decision, was not given an opportunity to state his observations about the selection of the expert or about the expert's findings, and that he was not informed of the hearing before the second instance court.

- **Decision on the Merits No. AP 481/05 of 14 March 2006, paragraph 50, published in the *Official Gazette of Bosnia and Herzegovina*, 57/06**

In case where the accused and his counsel attend the session where all evidence are presented and assessed, so that the accused and his counsel have the opportunity to state their positions on the evidence, and where the confession must be proved, the fact that the accused, in the absence of his counsel, is heard before the indictment is served on him cannot have relevance for assessment that the entire proceedings are unfair. In addition, the fact that the appellant and his counsel were not present at the scene where certain evidence was examined, but they attended the main hearing when the evidence was checked and an expert was called to test the credibility of the evidence, does not give rise to a violation of the fair trial provision of Article 6 of the European Convention.

- **Decision on the Merits No. AP 263/05 of 14 March 2006, paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina*, 49/06**

As to the complaints of a violation of the right to a public hearing before a court of second instance, the Constitutional Court refers to the European Court of Human Rights' case-law according to which a distinction must be drawn between the first instance trial and second instance trial, *i.e.* the proceedings upon an appeal.

- **Decision on Admissibility and Merits No. AP 1401/05 of 12 September 2006, paragraph 59, published in the *Official Gazette of Bosnia and Herzegovina*, 7/07; civil proceedings**

In the present case, the Constitutional Court notes that, according to the appellant, the summons for the session of the Panel was served on him while he was in the detention unit and he was not apprehended from detention; however, the appellant failed to state the reasons for which he was not apprehended. Furthermore, the Constitutional Court finds that the Cantonal Court held a session of the Panel, finding that the appellate reasons that there was no sufficient evidence to support the claim that the appellant had committed the criminal offences did not indicate that there was a need to hold the main hearing, *i.e.* that it was necessary once again to present evidence already presented by the first

instance court. In view of the above, given that the appellant, although duly summoned, did not attend the session and given the aforementioned principles, the Constitutional Court establishes that the appellant's allegations do not call into question the fairness of proceedings.

- **Decision on Admissibility and Merits No. AP 3643/07 of 14 April 2010, paragraph 10; detention**

Right not to incriminate oneself

The entire case-file and the text of the first instance judgment disclose that the court did not base its judgment exclusively on the statement given by the first defendant during the investigation but the court thoroughly examined all the facts and evidence at the main trial, those in favor of the accused as well as those against them. Consequently, there is no breach of the appellant's right to a fair trial.

- **Decision on the Merits No. AP 177/05 of 12 April 2006, paragraphs 28 and 29, published in the *Official Gazette of Bosnia and Herzegovina*, 49/06**

Right to a public hearing

The appellant's constitutional right to a fair trial is violated in case where the court of first-instance failed to hold a public hearing, as proposed in the appellants' lawsuit, where second-instance the court made no attempt to correct the first-instance court's failure, where there were no exceptional reasons justifying the failure of the second-instance court to hold the hearing.

- **Decision on the Merits No. AP 1124/04 of 13 October 2005, paragraph 32 et seq., published in the *Official Gazette of Bosnia and Herzegovina*, 27/06;**
- **Decision on the Merits No. AP 231/05 of 23 February 2006, paragraph 27, published in the *Official Gazette of Bosnia and Herzegovina*, 35/06; administrative proceedings and administrative dispute related to the lawfulness of the decision and the contract on use of the apartment**

As to the appellant's allegations that he was given no opportunity to be heard, the case-file shows that the Supreme Court rendered all the judgments while holding the proceedings in camera. In this context, the appellant failed to submit to the Constitutional Court evidence proving that he proposed that the hearing be held before the Supreme Court. Accordingly, the appellant's allegations are unfounded and there is no violation of his right to a fair trial.

- **Decision on the Merits No. AP 993/04 of 20 December 2005, paragraph 80, published in the *Official Gazette of Bosnia and Herzegovina*, 43/06;**
- **Decision on Admissibility and Merits No. AP 1044/04 of 26 April 2005, paragraph 27, published in the *Official Gazette of Bosnia and Herzegovina*, 48/05**

There is a violation of the appellant's right to a fair trial as he was denied right to public proceedings before the customs authorities and the Supreme Court. The appellant was

given no opportunity to assess the allegations made against him nor was he afforded the opportunity to state the reasons for filing the lawsuit in administrative dispute.

- **Decision on the Merits No. AP 505/05 of 23 February 2006, paragraph 27 et seq., published in the *Official Gazette of Bosnia and Herzegovina*, 41/05;**
- **Decision on the Merits No. AP 580/05 of 23 February 2006, paragraph 29, published in the *Official Gazette of Bosnia and Herzegovina*, 41/06**

Right to a fair trial within a reasonable time

The overall length of these proceedings, being approximately seven years and ten months while the case is still pending before the first instance court, is not justified. The appellant cannot be held responsible for any delay, the case is not a complex one, and the conduct of the courts lacks due diligence. Accordingly, the length of the relevant proceedings cannot be considered as „reasonable”.

- **Decision No. U 15/03 of 28 November 2003, paragraph 44, published in the *Official Gazette of Bosnia and Herzegovina*, 8/04**

It is underlined that the Constitutional Court, in principle, is not competent to review the course of proceedings before administrative authorities but before courts, since the courts are strictly bound to comply with the rules of the European Convention. However, in taking a decision as to whether or not the right to a fair trial within a reasonable time has been complied with, the length of the proceedings before administrative authorities must be taken into account. Otherwise, the Constitutional Court would not be able to take a fair decision as to whether the proceedings were completed with a reasonable time.

- **Decision on Admissibility and Merits No. AP 45/02 of 30 June 2004, paragraph 42, published in the *Official Gazette of Bosnia and Herzegovina*, 41/04; the transfer of the occupancy right from the grandfather to the grandson; the violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The length of the proceedings was excessive in the case related to a trespass action, which lasted more than six years and four months and which was not a complex one. In addition, the proceedings to determine the co-ownership over the real property were relatively complex and took five years, nine months and seventeen days. However, the delays cannot be imputed to the appellant and the courts unjustifiably failed to meet the reasonable time requirement.

- **Decision on Admissibility and Merits No. AP 129/02 of 30 June 2004, published in the *Official Gazette of Bosnia and Herzegovina*, 48/04; the length of the proceedings related to the trespass action and the proceedings to determine the co-ownership right over the land**

The length of the proceedings was excessive in the case concerning the determination of the house construction cost. The proceedings lasted fifteen years and four months, out of which the proceedings that lasted eight years and seven months related to the matters falling within the jurisdiction of the Constitutional Court. The proceedings were

particularly complex but the delays cannot be imputed to the appellant. The Municipal Court in Ljubuški failed to meet the reasonable time requirement within the meaning of Article II(3)(e) of the Constitution of BiH and Article 6 paragraph 1 of the European Convention.

- **Decision on Admissibility and Merits No. AP 138/03 of 27 October 2004, published in the *Official Gazette of Bosnia and Herzegovina*, 5/05**

The labor dispute took seven years and eight months, out of which the proceedings that lasted seven years and six months related to the matters falling within the jurisdiction of the Constitutional Court. The proceedings were particularly complex but the delays cannot be imputed to the appellant. The ordinary courts failed to meet the reasonable time requirement within the meaning of Article II(3)(e) of the Constitution of BiH and Article 6 paragraph 1 of the European Convention.

- **Decision on Admissibility and Merits No. AP 256/03 of 27 October 2004, published in the *Official Gazette of Bosnia and Herzegovina*, 15/05**

As to the length of the proceedings in the case at hand, it is underlined that the proceedings upon a lawsuit for compensation of damages lasted in total twelve years and nine months, out of which the proceedings that lasted six years and two months related to the matters falling within the jurisdiction of the Constitutional Court. The case was not particularly complex. The appellants considerably contributed to the delay and the ordinary court offered a reasonable and objective justification for not completing the proceedings earlier. Accordingly, the proceedings did not exceed a reasonable time.

- **Decision on Admissibility and Merits No. AP 167/03 of 30 November 2004, published in the *Official Gazette of Bosnia and Herzegovina*, 15/05**

According to the case-law of the Constitutional Court and the European Court of Human Rights, in assessing „the reasonableness of the length of proceedings” in criminal cases, the period to be taken into consideration begins to run as soon as a person is charged. In addition, it is necessary to observe the autonomous meaning of the concept of ‘charge’ as well as a substantive and not a formal concept of ‘charge’ (see European Court of Human Rights, *Scopelliti v. Italy*, judgment of 23 November 1993, paragraph 18). As regards the end of the „time”, the time when the court ended uncertainty as to the legal position of the person concerned must be taken into account. Moreover, appellate and cassation proceedings and the outcomes thereof must be taken into consideration, while extraordinary legal remedies must be ruled out. (see European Court of Human Rights, *Poiss v. Austria*, judgment of 23 April 1987, A.117-C, p. 103).

- **Decision on Admissibility and Merits No. AP 631/04 of 18 January 2005, paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina*, 42/05; criminal proceedings, a reasonable time in proceedings related to the request for protection of legality; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

There is a breach of the right to a fair trial within a reasonable time under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 paragraph 1 of the

European Convention where the appellant, for six years, has not obtained a final decision in enforcement proceedings in which he demands the enforcement of a legally binding judgment.

- **Decision on Admissibility and Merits No. AP 701/04 of 18 January 2005, paragraph 47, published in the *Official Gazette of Bosnia and Herzegovina*, 73/05; a reasonable time in proceedings related to the enforcement of the judgment rendered in labor dispute; the violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The two months delay in submitting the second instance ruling does not constitute a violation of the right to a fair trial in case where there are no other elements indicating that the delay is incompatible with the requirements of Article 6 of the European Convention or that the competent authorities have failed to take the measures for remedying the situation.

- **Decision on Admissibility and Merits No. AP 600/04 of 17 February 2005, paragraph 25, published in the *Official Gazette of Bosnia and Herzegovina*, 42/05; minor offence proceedings; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

There is no violation of a reasonable time requirement under Article 6 paragraph 1 of the European Convention in cases where the length of the proceedings is affected by a number of factors, such as the judicial reform in Bosnia and Herzegovina, which resulted in changes in respect of subject matter jurisdiction. Next, the fact that the appellant stays in the territory of another state and that the communication was made through the Ministry of Justice. Furthermore, the Economic Department of the Municipal Court is overloaded with cases. Finally, the Law on Contentious Procedures was amended so that the appellant had to amend her lawsuit, which also affected the length of the proceedings.

- **Decision on Admissibility and Merits No. AP 505/04 of 15 June 2005, paragraphs 30 to 32, published in the *Official Gazette of Bosnia and Herzegovina*, 67/05; the length of the civil proceedings for damage compensation for a violation of copyright; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

In the case at hand the dispute concerns a royalty payment. In this regard, it was necessary to resolve an issue as to whether the defendant had violated the authors' copyright as well as whether he had made the royalty payment for work performed by the author upon the defendant's order. In addition, the amount of remuneration had to be established. In the view of the Constitutional Court, such a dispute cannot be regarded as particularly complex.

- **Decision on Admissibility and Merits No. AP 519/04 of 22 July 2005, paragraph 35, published in the *Official Gazette of Bosnia and Herzegovina*, 80/05; the length of the civil proceedings for remuneration of royalties; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH.)**

There is no violation of the right to a fair trial in respect of the reasonableness of the length of proceedings in case where the proceedings concerning the royalty payment last

sixteen years and five months, out of which the period of ten years and four months is relevant after the entry into force of the Constitution of Bosnia and Herzegovina, and the delays in taking the Decision on Merits within the relevant time are mainly attributable to the appellant.

- **Decision on Admissibility and Merits No. AP 519/04 of 22 July 2005, paragraph 42, published in the *Official Gazette of Bosnia and Herzegovina*, 80/05; the length of the civil proceedings for royalty payment; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

There was no violation of the appellant's right to have a decision on the merits by the Cantonal Court within the reasonable time as the length of 1 year, 9 months and 3 days, which elapsed from the moment when the lawsuit was filed to the moment when the judgment was rendered, was not excessive given the circumstances of the case.

- **Decision on the Merits No. AP 992/04 of 13 September 2005, paragraph 39, published in the *Official Gazette of Bosnia and Herzegovina*, 4/06**

There was no violation of the appellant's right to have a decision within the reasonable time falling within the scope of the right to a fair trial although the length of the proceedings was 14 years, out of which eight years and eight months were considered as the relevant period after the entry into force of the Constitution of Bosnia and Herzegovina, since the appellant's responsibility for taking a decision on the merits within the relevant period prevailed.

- **Decision on the Merits No. AP 962/04 of 13 October 2005, paragraph 55, published in the *Official Gazette of Bosnia and Herzegovina*, 20/06**

The appellant's right to have a decision on the merits within the reasonable time is violated by the Basic Court as the Constitutional Court took a decision to refer the case back to the Basic Court for a new expedited procedure and that the court did not hold any hearing within a time limit of two years, nor did it take a decision on the merits in the mentioned case, where the length of overall proceedings was seven years

- **Decision on the Merits No. AP 1101/04 of 13 October 2005, paragraph 52, published in the *Official Gazette of Bosnia and Herzegovina*, 17/06**

The proceedings for cancellation of the gift agreement, which lasted fifteen years and nine months, out of which the period of nine years and nine months is relevant after the entry into force of the Constitution of Bosnia and Herzegovina, exceeded the reasonable time given that the appellant did not contribute to the delays. On the other side, it is obvious that the Municipal Court misplaced the case file and made delays in ordering a reconstruction of the relevant case file. In so doing, the Municipal Court failed to meet the reasonable time requirement.

- **Decision on the Merits No. AP 542/04 of 13 October 2005, paragraph 47, published in the *Official Gazette of Bosnia and Herzegovina*, 17/06; the length of the civil proceedings related to annulment of a gift agreement; the violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The general arguments by the Basic Court, according to which the judicial reform and the case overload caused the delays in proceedings, cannot justify the court's inactivity as to the appellant's lawsuit, which was pending for three years and six months. Subsequently, there were other delays in proceedings so that the civil proceedings in the appellant's case exceeded a reasonable time stipulated in Article 6 paragraph 1 of the European Convention.

- **Decision on the Merits No. AP 938/04 of 17 November 2005, paragraph 46, published in the *Official Gazette of Bosnia and Herzegovina*, 20/06;**
- **Decision on the Merits No. AP 1097/04 of 17 November 2005, paragraph 40, published in the *Official Gazette of Bosnia and Herzegovina*, 22/06**

The appellants in Bosnia and Herzegovina, in cases where the requirements have been satisfied, should be paid compensation for non-pecuniary damages in the amount of circa BAM 150 per year's delay caused by domestic courts *i.e.* the double amount in cases where expedient proceedings are required.

- **Decision on the Merits No. AP 938/04 of 17 November 2005, paragraph 50, published in the *Official Gazette of Bosnia and Herzegovina*, 20/06**

In view of the aforementioned factors, the „reasonable time” requirement under Article 6 paragraph 1 of the European Convention was exceeded as the relevant proceedings lasted more than five years.

- **Decision on the Merits No. AP 949/04 of 17 November 2005, paragraph 71, published in the *Official Gazette of Bosnia and Herzegovina*, 20/06;**
- **Decision on the Merits No. AP 490/05 of 9 May 2006, pp. 44 and 45, published in the *Official Gazette of Bosnia and Herzegovina*, 77/06**

In assessing the length of the proceedings and the objective circumstances for which no decision has yet been taken by the Supreme Court, the court can find no circumstances leading to the conclusion that the delay in question might be of such a nature as to violate the requirements of Article 6 paragraph 1 of the European Convention.

- **Decision on the Merits No. AP 955/04 of 17 November 2005, paragraph 33, published in the *Official Gazette of Bosnia and Herzegovina*, 20/06**

There is a violation of the right to a fair trial within the reasonable time in the case where the procedure for repossession of apartment was not concluded seven years after the request had been filed, and such an excessive length of the proceedings could be entirely attributed to the conduct of the public authorities.

- **Decision on the Merits No. AP 19/05 of 20 December 2005, paragraph 68, published in the *Official Gazette of Bosnia and Herzegovina*, 37/06**

The proceedings for determining paternity, where it is necessary to establish the facts and exhume mortal remains of the deceased and carry out the expert analysis of the relevant material, are deemed to be complex.

- **Decision on Admissibility and Merits No. AP 1539/05 of 16 January 2006, paragraph 30, published in the *Official Gazette of Bosnia and Herzegovina*, 34/07;**

civil proceedings, the complexity of the case associated with the expert examination; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH

There is a breach of the right to a fair trial within a reasonable time under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 paragraph 1 of the European Convention given that administrative proceedings regarding the appellant's reinstatement into the apartment in question had lasted more than five years. In addition, the relevant ruling was not enforced in the next two years, *i.e.* until the adoption of the Constitutional Court's decision. Finally, the competent administrative authorities by their conduct caused the delays in proceedings.

- **Decision on the Merits No. AP 1070/05 of 9 February 2006, paragraph 57, published in the *Official Gazette of Bosnia and Herzegovina*, 45/06; the proceedings related to the reinstatement of the pre-war occupancy right holder**

There is no violation of the right to a fair trial within the reasonable time as the court issued a ruling within a time limit of 10 months to approve the enforcement of claims against illiquid account of the enforcement debtor and as the court, upon amended motions of the appellant, conducted the proceedings and issued a ruling to approve the enforcement by way of seizure and transfer of pecuniary claims of the enforcement debtor to a third person.

- **Decision on the Merits No. AP 155/05 of 14 March 2006, paragraph 50, published in the *Official Gazette of Bosnia and Herzegovina*, 49/06**

The enforcement proceedings which lasted two years and a half until they were terminated exceeded the limit of the „reasonable time” within the meaning of Article 6(1) of the European Convention taking into account the simplicity of the proceedings and the urgent nature of enforcement proceedings, the fact that no other actions were taken and that there was no need to take any other action, the fact that the debtor did not contest the ruling on enforcement and that the appellant took all necessary actions to accelerate the proceedings.

- **Decision on the Merits No. AP 200/05 of 12 April 2006, paragraph 40, published in the *Official Gazette of Bosnia and Herzegovina*, 68/06**

Civil proceedings to determine the labor status are not particularly complex in case where it is necessary to establish the facts on the basis of the public documents presented to the court and examined by the expert in the field of finance.

- **Decision on the Merits No. AP 1149/05 of 12 April 2006, paragraph 34, published in the *Official Gazette of Bosnia and Herzegovina*, 59/06; civil proceedings, a labor dispute**

Amendments to the legislation applicable to the legal situation in the present case do not affect the complexity of the case.

- **Decision on the Merits No. AP 1149/05 of 12 April 2006, paragraph 34, published in the *Official Gazette of Bosnia and Herzegovina*, 59/06; civil proceedings, a labor dispute**

There is no violation of the right to a fair trial within a reasonable time in case where the appellant contributed to the delays in proceedings with her conduct. In fact, the appellant insisted on the expert analysis of evidence by an expert in the field of finance to specify the amount of the claim for three years. On several occasions, the court granted her requests and issued the ruling appointing an expert, the ruling ordering the preparation of supplemental expert report and, finally, the ruling ordering new expert analysis. However, the appellant failed to meet her obligations in respect of the payment of expert fees to ensure the timely analysis. Finally, the appellant withdrew her request without giving any reasons for it and, not long after it, she filed the request again.

- **Decision on the Merits No. AP 1098/05 of 13 June 2006, paragraph 46, published in the *Official Gazette of Bosnia and Herzegovina*, 40/06; civil proceedings, a labor dispute**

The appellant's right to a fair trial within the reasonable time is violated in the case where the length of the proceedings exceeded four years as they lasted 3 years before the first-instance court and 13 months before the second-instance court. The length of the urgent proceedings was excessive as the case relates to the judicial protection in case of disturbance of possession so that the purpose of protection of possession and urgency of such procedures are justifiably called into question given the fact that they lasted more than four years.

- **Decision on Admissibility and Merits No. AP 148/05 of 29 September 2006, paragraph 37, published in the *Official Gazette of Bosnia and Herzegovina*, 9/07**

The fact that the civil proceedings were instituted and conducted at the time of adoption of the new Civil Procedure Code and the reform of judiciary which resulted in the procedure being delayed, cannot be attributed to the Basic Court.

- **Decision on Admissibility and Merits No. AP 1291/05 of 29 September 2006, paragraph 42, published in the *Official Gazette of Bosnia and Herzegovina*, 9/07; civil procedure, reform of judiciary and duration of proceedings; no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

Deficiencies in organization of the legal and judicial system of the state, i.e. the entities in the present case, which threaten the protection of individual rights, cannot be attributed to an individual nor can an individual bear the consequences of such deficiencies. In the opinion of the Constitutional Court, the ordinary courts have the obligation to advise the competent public authorities while the High Judicial Prosecutorial Council has the obligation to secure independent, impartial and professional judiciary and establish a professional and effective judicial system.

- **Decision on Admissibility and Merits No. AP 1410/05 of 9 November 2006, paragraph 42, published in the *Official Gazette of Bosnia and Herzegovina*, 11/07; civil procedure, reform of judiciary and length of proceedings; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

Regardless of evident tardiness on the part of the court, which contributed to the delays in the proceedings, the appellant's failure to file a specified lawsuit, that is to fully specify

the lawsuit in accordance with the ruling of the court to a sufficient extent, justifies the length of the respective proceeding.

- **Decision on Admissibility and Merits No. AP 2240/05 of 9 November 2006, paragraph 39, published in the *Official Gazette of Bosnia and Herzegovina*, 12/07; civil procedure, the appellant's conduct; no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

Bearing in mind Article 10 of the Civil Procedure Code, which provides for the duty of the court to mind that the parties to the proceedings do not abuse their rights and that the proceedings are conducted without delays, it is evident that the Municipal Court failed to fulfill its duty in the present case in a satisfactory manner. The Municipal Court displayed unacceptable tolerance of the plaintiff's conduct in this case and clearly acted without due promptness.

- **Decision on Admissibility and Merits No. AP 2554/05 of 16 January 2007, paragraph 87, published in the *Official Gazette of Bosnia and Herzegovina*, 70/07; civil procedure, the court's conduct; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

Taking into account the fact that the length of the appellate proceedings before the Cantonal Court, in which decisions were rendered without hearings, thus, at the session of the panel, was considerably longer than necessary and considerably longer than stipulated by the law, and taking into account the fact that the appellant's conduct did not attribute to the length of the proceedings, the Constitutional Court concludes that the appellant's right to have a decision within a reasonable time under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention has been violated.

- **Decision on Admissibility and Merits No. AP 2008/06 of 8 November 2007, paragraph 81, published in the *Official Gazette of Bosnia and Herzegovina*, 12/08; labor dispute, length of the appellate proceedings, length of the proceedings was one year and seven months; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

There is a violation of the right to a decision within a reasonable time in the event when a proceeding on establishing the employment status, under Article 143 of the Labor Law, took more than seven years and when the appellant had significantly contributed to the length of the proceeding at issue.

- **Decision on Admissibility and Merits No. AP 431/06 of 13 December 2007, paragraph 53, published in the *Official Gazette of Bosnia and Herzegovina*, 12/08; the procedure for establishing employment status; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The fact that the appellant was unable to enforce the legally valid court ruling not even in the part not challenged by the appeal for more than eight years, may be attributed to the ordinary courts, thereby violating the right of access to court, an element of the right to a fair trial.

- **Decision on Admissibility and Merits No. AP 1360/06 of 13 December 2007, paragraph 96, published in the *Official Gazette of Bosnia and Herzegovina*, 12/08; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

There is a violation of the appellant's right to enforcement of legally valid and enforceable court judgments and settlements within a reasonable time, when the courts, within a time limit of three years, regardless of the fact that they took certain actions, failed to keep the proceedings under control, use available legal instruments and remain active during certain periods.

- **Decision on Admissibility and Merits No. AP 2358/07 of 13 December 2007, paragraph 36, published in the *Official Gazette of Bosnia and Herzegovina*, 27/08**

There is a violation of the right to a fair trial in terms of adoption of a decision within a reasonable time under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6, paragraph 1 of the European Convention, in the event when a decision on the appeal in which the appellant is a party to the proceedings, takes five years to adopt and when such unjustified length of the proceedings can be fully attributed to the action of the competent court that failed to state it undertook any measures to improve the situation by resolving pending cases nor did it offer any other reasons that could be considered reasonable and objective justification for such lengthy proceeding.

- **Decision on Admissibility and Merits No. AP 2780/06 of 17 April 2008, paragraph 25, published in the *Official Gazette of Bosnia and Herzegovina*, 72/08; length of the proceedings on the appeal; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The period of 11 years in the criminal proceedings against the appellant that was conducted from 1989 to 2006, falls within the competence of the Constitutional Court and thus exceeds the reasonable time limit. The Constitutional Court held competent courts fully responsible for delays in the proceedings that failed to ensure the presence of the second defendant during the trial in the period from 1993 to 2005, although they had appropriate mechanisms at their disposal which proved efficient when used.

- **Decision on Admissibility and Merits No. AP 2497/06 of 4 September 2008, paragraph 41, published in the *Official Gazette of Bosnia and Herzegovina*, 91/08; length of the criminal proceedings; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The proceedings on the appellant's proposal for registration of the ownership right that lasted 18 years prior to adoption of the Constitutional Court's decision and which the Basic Court in Banja Luka failed to substantiate, did not meet the „reasonableness” requirement under Article 6, paragraph 1 of the European Convention.

- **Decision on Admissibility and Merits No. AP 2706/06 of 14 October 2008, paragraph 41, published in the *Official Gazette of Bosnia and Herzegovina*, 99/08; change of the case-law of the Constitutional Court of BiH regarding admissibility of appeals relating to the registration of the ownership right, finding such appeals *ratione***

materiae compatible with the Constitution of Bosnia and Herzegovina; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established

The Constitutional Court concludes that despite the fact that the appellants may contribute to the protraction of the proceedings to a certain extent, the court which has the role to effectively control the proceedings has decisive and the most important role. The Constitutional Court notes that the European Court of Human Rights, in its decision *Uljar and Others v. Croatia* (see, ECtHR, *Uljar v. Croatia*, Application no. 32668/02 of 8 March 2007), concluded that the ordinary courts had to control the proceeding effectively as they decide how to conduct the proceedings, in particular, which evidence to present and how to assess the acts or omissions of the parties, while bearing in mind all procedural requirements guaranteed by Article 6(1) of the European Convention.

- **Decision on Admissibility and Merits No. AP 2531/06 of 26 February 2009, paragraphs 54 and 59, published in the *Official Gazette of Bosnia and Herzegovina*, 50/09; the length of the contentious proceedings for compensation for damage; a violation of Article 6 and of the European Convention and Article II(3)(e) of the Constitution of BiH with regards to the adoption of a decision within the reasonable time-limit established**

The length of the proceedings cannot be attributed entirely to the administrative authorities as the Law on Administrative Disputes (Article 22) allowed the appellant to file an appeal or a lawsuit for silence of administration if he held that the decision on his claim or appeal was not adopted within the prescribed time-limit; however, he failed to do so, as it follows from the case-file.

- **Decision on Admissibility and Merits No. AP 12/07 of 15 April 2009, para 28, published in the *Official Gazette of Bosnia and Herzegovina*, 50/09; the length of the administrative proceedings wherein the appellant contributed to the excessive length of a segment of the proceedings as he failed to file a lawsuit for silence of administration; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**
- **Decision on Admissibility and Merits No. AP 2046/07 of 17 September 2009, para 26, published in the *Official Gazette of Bosnia and Herzegovina*, 99/09; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

There is a violation of the right to have a decision within the reasonable time under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention as the competent prosecutor's office has conducted investigation 4 years against several persons in the case considered as extremely complex and significant to the appellant, where he failed to offer any reason which could be regarded as reasonable and justified for the excessive length of the proceedings and to take lawful measures aiming at conclusion of the investigation.

- **Decision on Admissibility and Merits No. AP 2130/09 of 28 May 2010, paragraph 59, published in the *Official Gazette of Bosnia and Herzegovina*, 95/10; the length**

of the investigation; a violation of Article 6 and of the European Convention and Article II(3)(e) of the Constitution of BiH established

The Constitutional Court finds that the period of 2 years and 9 months, which was necessary for the enforcement of a legally binding judgment, cannot be attributed to the Municipal Court as the appellants did not act one year and nine months, which was the period within which the UPI Bank did not send any information about the enforcement procedure and within which there was no proceedings conducted by the court. In this connection, the Constitutional Court holds that the appellant's right to a trial within the reasonable time as an aspect of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention has not been violated.

- **Decision on Admissibility and Merits AP 1174/08 of 21 December 2010, para 37, published in the *Official Gazette of Bosnia and Herzegovina*, 47/11; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

There is a violation of the right to have a decision within the reasonable time as an aspect of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention as the length of the court proceedings upon the appellant's claim for modification of the decision on guardianship, which was taken by the Social Welfare Center, as a parental dispute within the meaning of Article 272 of the Family Law, which was of urgent nature under Article 273 of the same Law, was three years and ten days. Such an unjustified length of the proceedings can entirely be attributed to the conduct of the ordinary courts, which failed to give objective and justified reasons for such an excessive length of the proceedings.

- **Decision on Admissibility and Merits AP 3073/09 of 7 April 2011, paragraph 55, published in the *Official Gazette of Bosnia and Herzegovina*, 65/11; modification of the decision on child custody; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court concludes that there is a violation of the right to a decision within a reasonable time under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention, as the decision on the merits in the appellant's case, relating to a request for determination of her right to severance pay and the collection of the severance payment for unlawful termination of her employment, was taken seven years and six months after the date on which the appellant had filed her request in the case which was not complex and in which the administrative authorities failed to offer any objective or reasonable justification for such a conduct. The mentioned conduct was reflected in the first instance authority's failure to take a decision on the appellant's request, the second instance authority's failure to take a decision on the appellant's appeal related to the silence of the administration and in the fact that the latter authority adopted the respective decision five months after the County Court had passed its decision in the administrative dispute, and irrespective of the fact that the appellant had the possibility to lodge her appeal or to initiate the administrative dispute at an earlier point, since the aforementioned legal remedies were available to

the appellant only as an opportunity prescribed by the law, where the actions by the administrative authorities did not depend on that opportunity and they were required to act within the time limits prescribed by law.

- **Decision on Admissibility and Merits AP 3570/08 of 15 July 2011, paragraph 36, published in the *Official Gazette of Bosnia and Herzegovina*, 104/11;**
- **Decision on Admissibility and Merits AP 3554/08 of 21 July 2011, paragraph 40;** *administrative proceedings, silence of administration, violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established*

The Constitutional Court concludes that there was no violation of the right to a fair hearing with regards to a decision within the reasonable time as an aspect of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention as the overall length of the proceedings related to the compensation for damages was 13 years, and almost 7 months under the jurisdiction of the Constitutional Court, may be attributed to the greatest extent to the appellant's passivity and his lack of interest, where the inactivity of the courts was not of crucial significance.

- **Decision on Admissibility and Merits AP 2731/09 of 13 November 2012, paragraph 39, published in the *Official Gazette of Bosnia and Herzegovina*, 101/12;** *compensation for non-pecuniary damage for deterioration of health – occupational disease – due to mental pain; additional expertise; the appellant failed to initiate resumption of the proceedings; there has been no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH*

The Constitutional Court concludes that there was no violation of the right to have a decision within the reasonable time under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention, although the investigation in the criminal proceedings took more than four years because the investigation was extensive and complex and involved several persons, including the appellant. Furthermore, the Constitutional Court took into account the fact that following the investigation the criminal proceedings was concluded within a time limit of eight months at two court instances.

- **Decision on Admissibility and Merits AP 4340/10 of 15 January 2014, paragraph 34, published in the *Official Gazette of Bosnia and Herzegovina*, 19/14;** *criminal proceedings, investigation; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution BiH*

The Constitutional Court concludes that there was no violation of Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention when the stay of the bankruptcy proceedings, which have been pending for four years, lasted for more than two years due to the circumstances which could not be attributed to the competent court as it made efforts to overcome such circumstances in accordance with its powers prescribed by the law and when following the removal of the circumstances causing the stay there was not anything which would lead to the conclusion that they were not conducted with necessary diligence and principle of promptness.

- **Decision on Admissibility and Merits AP 2699/11 of 25 June 2014, paragraph 141, published in the *Official Gazette of Bosnia and Herzegovina*, 64/14; bankruptcy; there was no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

The Constitutional Court concludes that there is no violation of the appellant's right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention with regards to the adoption of a decision within the reasonable time in the situation when the enforcement proceedings, which are regarded as urgent under the express law provisions due to the objective circumstances, have been lasted two years and ten months and have not been concluded yet.

- **Decision on Admissibility and Merits No. AP 3595/12 of 25 June 2014, paragraph 31, published in the *Official Gazette of Bosnia and Herzegovina*, 63/14; enforcement procedure, there has been no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

Responsibility of the state for delays in the work of the judiciary

If the court fails to adopt a decision on merits within the time limit of five days without providing any sort of justification, a violation of the appellant's right to a decision adopted by a court within a reasonable time shall occur (Article 6, paragraph 1 of the European Convention in conjunction with Article II(2) of the Constitution) even if the proceedings were suspended in accordance with the government's order.

- **Decision on Admissibility and Merits No. U 23/00 of 2 and 3 February 2001, published in the *Official Gazette of Bosnia and Herzegovina*, 10/01; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

Bearing in mind all details of the present case and difficulties that the ordinary courts encounter in terms of a great number of cases, as well as considering the fact that the administrative body failed to communicate its opinion on the length of the proceedings, the Constitutional Court concluded that the mentioned difficulties were not of such nature as to deprive the appellant of the right to a court decision within „a reasonable time”. Therefore, the Constitutional Court found a violation of Article 6, paragraph 1 of the European Convention regarding decision-making within a reasonable time.

- **Decision on Admissibility and Merits No. AP 45/02 of 30 June 2004, paragraph 72, published in the *Official Gazette of Bosnia and Herzegovina*, 41/04; transfer of the occupancy right from a grandfather to a grandson; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

Fair trial – independent tribunal

Given the fact that administrative customs bodies are not independent institutions but rather they are executive bodies, a violation of Article 6, paragraph 1 of the European Convention can be avoided if decisions adopted by the bodies, which are not independent and impartial, are reviewed or if an appeal is filed with an independent and impartial tribunal of full jurisdiction

- **Decision on Admissibility and Merits No. U 59/03 of 17 May 2004, paragraph 23, published in the *Official Gazette of Bosnia and Herzegovina*, 40/04;**
- **Decision on Admissibility and Merits No. U 106/03 of 27 October 2004, paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina*, 40/04; *minor offence proceedings for failing to pay duty on imported goods***

There is a violation of the right to „an independent tribunal”, as an element of the right to a fair trial, when a legislator amends through its measures the legally valid court decisions, thereby violating the principle of the rule of law under Article I(2) of the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility and Merits No. AP 982/05 of 14 March 2005, paragraph 22, published in the *Official Gazette of Bosnia and Herzegovina*, 57/06; *war damage; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established***

There is a violation of the right to „an independent tribunal” if acts of the legislative or executive authority amend or suspend the enforcement of binding court decisions or when prescribe that opinions of the executive authority are binding on the courts (as the legislator did in the Decree on the Manner of Determining and Settling the Public Debt of the Federation of BiH during the Wartime and Imminent Threat of War) ... Within the meaning of Article 6, paragraph 1 of the European Convention, „the court” shall not be deemed „independent” if seeking and accepting obligatory opinions of the executive authority, given that in such a manner „the judicial function is being subordinated to the executive authority” (see European Court of Human Rights, *Beaumartin v. France*, judgment of 24 November 1994, Series A No. 296 B, paragraph 38).

- **Decision on Admissibility and Merits No. AP 703/04 of 28 June 2005, paragraphs 42 and 47, published in the *Official Gazette of Bosnia and Herzegovina*, 32/05; *failure to enforce a legally valid ruling on enforcement, payment of the debt incurred during the wartime; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established***

The Law on Courts guarantees independence of courts in discharging judicial function and the courts shall adjudicate pursuant to the Constitution and laws of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the cantons. The fact that the work of the courts was funded from the budget of the cantons is not by itself a proof that the court is not independent. The state is obliged to fund the work of the courts, thereby not bringing into question the independence of the courts.

- **Decision on Admissibility and Merits No. AP 971/04 of 28 June 2005, paragraph 21, published in the *Official Gazette of Bosnia and Herzegovina*, 27/06**

Fair trial – impartial tribunal

In order to establish partiality, that is impartiality, subjective and objective tests shall be applied.

- **Decision on Admissibility and Merits No. AP 71/02 of 28 April 2004, paragraph 31, published in the *Official Gazette of Bosnia and Herzegovina*, 34/04; non-contentious proceedings concerning the issuing of an order for canceling the lease contract on the disputed business premises**

The court, which decision was the subject of the appeal, was of improper composition, as a judge, who was to be exempted in order to ensure impartial judgment since her husband was a representative for the damaged party in the respective proceedings, participated in the decision-making. It follows that no fair trial was provided to the appellant before an impartial tribunal within the meaning of Article II(3)(e) of the Constitution of BiH and Article 6, paragraph 1 of the European Convention.

- **Decision on Admissibility and Merits No. AP 98/04 of 28 April 2004, paragraph 22, published in the *Official Gazette of Bosnia and Herzegovina*, 30/04**

Bearing in mind the fact that the appellant failed to state the reason why he deemed that the proceedings before the Cantonal Court and the Supreme Court were unfair and why he claimed that they could not be considered impartial courts, in support of which he failed to attach any evidence whatsoever, the allegations are ill-founded and must be dismissed as such.

- **Decision on Admissibility and Merits No. AP 45/02 of 30 June 2004, paragraph 61, published in the *Official Gazette of Bosnia and Herzegovina*, 41/04; transfer of the occupancy right from a grandfather to a grandson; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

In order to be impartial the court must not be prejudiced with regards to a decision to be made, it must not allow to be influenced by external information, be that position of the public, or any other pressure, but rather it must base its opinion on what has been presented at the trial. Although the judge might have his/her personal emotions, he/she must not be guided by emotions during the hearing in the respective case and forming the respective opinion.

- **Decision on Admissibility and Merits No. U 47/03 of 15 June 2004, paragraph 23, published in the *Official Gazette of Bosnia and Herzegovina*, 40/04; contentious proceedings over the cancellation of a deed of gift**

Allegations of a violation of the principle of impartiality of the court are ill-founded on the grounds that a judge, who had taken part in the investigation, deliberated on the well-foundedness of the complaint against the indictment.

- **Decision on Admissibility and Merits No. AP 255/03 of 14 October 2004, paragraphs 19 to 28, published in the *Official Gazette of Bosnia and Herzegovina*, 15/05**

The appellants' allegations that the courts in Republika Srpska were not impartial and independent since they were allegedly under the pressure of the case itself having to decide on the well-foundedness of criminal liability of the persons of Serb ethnicity, who were charged to have killed a person of Bosniac ethnicity, are absolutely arbitrary and without any substantiating evidence whatsoever.

- **Decision on Admissibility and Merits No. AP 108/04 of 23 March 2005, paragraph 30, published in the *Official Gazette of Bosnia and Herzegovina*, 30/05**

In order to establish subjective partiality of the judge it is necessary to have solid evidence. The very fact that the president of the criminal panel had ordered detention of the appellant for another criminal act, several days before the session at which the challenged judgment was adopted, is not a sufficient argument to claim that the judge at issue was partial.

- **Decision on Admissibility and Merits No. AP 450/04 of 23 March 2005, paragraph 25, published in the *Official Gazette of Bosnia and Herzegovina*, 32/05; criminal proceedings, a criminal act of murder, suspicion as to the impartiality of the judge; no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

There is no violation of the right to a fair trial in the case where a judge, who during the pre-trial investigation had participated as a member of the criminal panel in adopting a decision on extending detention for the appellant, took part in adopting a first instance convicting judgment.

- **Decision on Admissibility and Merits No. AP 543/04 of 23 March 2005, paragraph 29, published in the *Official Gazette of Bosnia and Herzegovina*, 27/06; criminal proceedings, suspicion as to the impartiality of the judge; no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

The fact that the same judge took part in the work of the panel adopting decisions prescribed by law at some earlier stage of the proceedings before the first instance court, which preceded the adoption of a decision on merits, does not constitute a hindrance for the mentioned judge to take part in the work of the panel of the second instance court adopting a decision on appeal against the first instance judgment, nor can it, in itself, constitute a violation of the principle of „impartial tribunal”.

- **Decision on Admissibility and Merits No. AP 524/04 of 12 April 2005, paragraph 20, published in the *Official Gazette of Bosnia and Herzegovina*, 42/05; criminal proceedings, composition of the panel deciding on the appeal; no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH;**
- **Decision on Admissibility and Merits No. AP 525/04 of 18 January 2005, paragraph 23, published in the *Official Gazette of Bosnia and Herzegovina*, 42/05; criminal proceedings, composition of the panel deciding on the appeal; no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

As to the appellant's allegations stated in the appeal that judges who took part in adoption of a second instance judgment of the Cantonal Court deciding on unlawfulness of the

ruling by which the appellant was placed at disposal, also took part in adoption of a second instance judgment, the Constitutional Court does not find that such situation is inconsistent with the requirements of a fair trial under Article 6, paragraph 1 of the European Convention, as it concerns another proceedings while the appellant, beyond arbitrary allegations, failed to offer any evidence that would make the existence of any doubt as to the impartiality of the court for the above referenced reasons plausible.

- **Decision on the Merits No. AP 1112/04 of 13 October 2005, paragraph 33, published in the *Official Gazette of Bosnia and Herzegovina*, 25/06**

The appellants do not offer any concrete evidence whatsoever about the partiality of the court, rather they base their complaint on the fact that the media reports and the strikes of the employees of the company, which the appellants had privatized, were such that „the court worked under pressure”. However, these allegations are not sufficient, as it is not possible to conclude on the basis of anything that decisions were arbitrary or adopted „under pressure”. Thus there is no violation of the right to a fair trial.

- **Decision on the Merits No. AP 215/05 of 12 April 2006, paragraph 72, published in the *Official Gazette of Bosnia and Herzegovina*, 68/06**

The fact that certain judges took part in adoption of a procedural ruling on separating criminal proceedings and consequently in the panel deciding in the first instance on the appellant’s criminal responsibility, does not constitute a violation of the principle of impartiality of the court in itself.

- **Decision on Admissibility and Merits No. AP 23/06 of 15 February 2007, paragraph 31, published in the *Official Gazette of Bosnia and Herzegovina*, 55/07; *criminal proceedings, participation of a judge from the preliminary proceedings in the panel deciding in the first instance on the appellant’s criminal responsibility; no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH***

There is no violation of the principle of „independence” and „impartiality” when the judges adjudicating in war crime panels were appointed by the High Representative for Bosnia and Herzegovina and when the Court of BiH and the Prosecutor’s Office are placed in the same building.

- **Decision on Admissibility and Merits No. AP 1785/06 of 30 March 2007, paragraph 49 and 50 published in the *Official Gazette of Bosnia and Herzegovina*, 57/07**

There is no violation of the right to impartial tribunal as an element of the right to a fair trial when a judge who in the earlier proceedings against the appellant had had a capacity of a republic prosecutor not competent for criminal prosecution in the present case, and who, at the time of the renewed proceedings, was no longer discharging that office nor did he play an active role in the criminal proceedings against the appellant that could have been detrimental to the appellant or affected the outcome of the proceedings against him, participated in the decision-making of the appellate panel of the second-instance court.

- **Decision on Admissibility and Merits No. AP 1187/06 of 13 September 2007, paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina*, 86/07;**

criminal proceedings, no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH

The appellant's allegations as to the partiality of a judge of the Cantonal Court fall within the scope of subjective test, as it was stated that, by avoiding to resolve the status of a temporary user, the judge acted in the interest of that party and to the detriment of the appellant, which indicates the subjective attitude of a competent judge toward the parties to the proceedings, that is a preferential treatment of one party to the detriment of the other. The Constitutional Court holds undisputable that the competent judge concluded in the challenged judgment that it was unnecessary to consider the appellant's allegations about the status of the present user of the apartment, which was not in itself an arbitrary decision, bearing in mind that the appellant did not meet legal requirements for his claim for repossession of the apartment at issue to be granted. The very fact that the judge did not go into examining the appellant's allegations on the merits, is not sufficient to challenge the presumption on her impartiality in this case. Accordingly, the Constitutional Court holds that the appellant's allegations about the violation of the principle of impartiality as a principle of a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 paragraph 1 of the European Convention are manifestly (*prima facie*) ill-founded.

- **Decision on Admissibility No. AP 2364/06 of 3 April 2008, paragraph 8, appeal manifestly (*prima facie*) ill-founded**

There is a violation of the right to impartiality by a court panel in the event where a judge, filing a lawsuit against some of the appellants on the same legal grounds and at the time she deliberated on the appeal, was member of the panel deliberating on the appellant's appeal.

- **Decision on Admissibility and Merits No. AP 1513/06 of 12 June 2008, paragraph 36, published in the *Official Gazette of Bosnia and Herzegovina*, 91/08; compensation of damage for defamation, impartiality; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

Impartiality implies that the court must be free of prejudice with regards to the decision to be taken by it. It must not be influenced by external information or any other pressure but it has to base its opinion only on what was presented at the trial. When deciding whether a court is partial, a difference must be made between subjective and objective approach to the partiality. The subjective test relates to the personal impartiality of the members of the panel and must be presumed until there is proof to the contrary (see, ECtHR, *Hauschildt v. Denmark*, paragraph 47). Whether a judge was biased may be concluded only when it becomes quite clear based on his conduct during the proceedings or the content of the judgement. Under the objective test, it must be determined whether, quite apart from the judge's personal conduct, there are ascertainable facts which may raise doubts as to his impartiality. In this respect even appearances may be of a certain importance. What is at stake is the confidence which the courts in a democratic society must inspire in the public and, above all, as far as criminal proceedings are concerned, in the accused. This implies that in deciding whether in a given case there is a legitimate reason to fear that a particular

judge lacks impartiality, the standpoint of the accused is important but not decisive. What is determinant is whether this fear can be held to be objectively justified (ECtHR, *Fey v. Austria*, judgment of 24 February 1993, paragraph 30).

- **Decision on Admissibility and Merits No. AP 2473/06 of 17 March 2009, paragraph 44, published in the *Official Gazette of Bosnia and Herzegovina*, 50/09; objective and subjective impartiality; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH;**
- **Decision on Admissibility and Merits No. AP 772/06 of 17 September 2009, paragraph 12;**
- **Decision on Admissibility No. AP 1428/07 of 17 September 2009, paragraph 21**

The composition of the panel that decided on the revision-appeal, the member of which was a judge who participated in the adoption of the second-instance decision on the appellant's appeal against the first-instance judgment, amounted to the violation of the appellant's right to an „impartial tribunal” within the meaning of Article II(3)(e) of the Constitution of Article 6(1) of the European Convention.

- **Decision on Admissibility and Merits No. AP 2247/06 of 17 December 2009, paragraph 31, published in the *Official Gazette of Bosnia and Herzegovina*, 23/10; objective impartiality; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court concludes that there has been no violation of the right to a fair trial under Article II(3)(e) of the Constitution of BiH and Article 6(1) of the European Convention when the appellant was tried by the first-instance panel which, at an earlier point, had decided on the appellant's appeal against a decision on detention, which had been taken by the judge in charge of the preliminary procedure, and none of the members of the panel was the judge in charge of the preliminary procedure.

- **Decision on Admissibility and Merits No. AP 1533/07 of 11 February 2010, paragraph 36, published in the *Official Gazette of Bosnia and Herzegovina*, 43/10; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court concludes that there has been no violation of Article II(3)(e) of the Constitution of BiH and Article 6(1) of the European Convention with regards to partiality of the court when the same judge participated in the proceedings against the appellant and took a decision based on a number of presented pieces of evidence, and did not request his disqualification for having participated in a proceeding against another person – co-defendant – which had been conducted at an earlier point and wherein he had taken a decision on the plea agreement, where the appellant did not request disqualification of that judge for any of the reasons provided in the Criminal Procedure Code.

- **Decision on Admissibility and Merits No. AP 900/08 of 11 February 2011, paragraph 33, published in the *Official Gazette of Bosnia and Herzegovina*, 41/11; there has been no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

The Constitutional Court concludes that the appellant's right to a fair trial before an impartial tribunal under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention has been violated as the same judge participated in the court panel which took a decision on appeal, wherein the first instance judgment was quashed and the case was referred back to the first instance court for a new decision, and in the court panel which decided on the revision-appeal in the renewed proceedings.

- **Decision on Admissibility and Merits No. AP 504/08 of 12 October 2011, paragraph 48, published in the *Official Gazette of Bosnia and Herzegovina*, 99/11; civil procedure, a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court concludes that there has been no violation of the right to a fair trial before an impartial tribunal under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention as the fact that two members of the revision-appeal panel of the court participated in taking a procedural decision at an earlier point, whereby the appellant's appeal against a decision on the non-competence of the court to take a decision was granted and the case was referred to the first-instance panel for new proceedings, does not constitute in itself a violation of the principle of impartiality of the court.

- **Decision on Admissibility and Merits No. AP 1498/09 of 19 July 2012, paragraph 29, published in the *Official Gazette of Bosnia and Herzegovina*, 79/12; contentious proceedings against Bosnia and Herzegovina for payment of claims; there has been no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

The Constitutional Court notes that the judge had participated in taking a decision on dismissal of the motion of the appellant's defence counsel to terminate detention after the confirmation of the indictment, whereupon she was the presiding judge of the panel which took a decision whereby the appellant's detention was extended. According to the Constitutional Court, that fact in itself is not a sufficient argument to conclude that the mentioned judge was biased while conducting the criminal proceedings against the appellant. In particular, a decision to extend detention is of procedural nature, wherein the prosecution's motion and the defence counsel's proposal were considered, whereupon it was decided to extend the appellant's detention for the next two months. As to the appellant's complaint of the impartiality on the part of the court, the Constitutional Court notes that the provisions of the RS Criminal Procedure Code does not prevent the participation of a judge as a member of the panel or presiding judge of the panel in taking a decision on the defence counsel's proposal for termination of detention and procedure for the extension of detention. The fact that the judge participated as a presiding judge of the out-of-court panel in taking a decision to extend detention and that three days before the mentioned decision had been taken she participated as a member of the trial panel in taking a decision on dismissal of the defence counsel's proposal for termination of detention of the accused does not mean in any way that the challenged decision was taken by the panel which should have been disqualified in accordance with the law, nor

does that fact raise a reasonable doubt of impartiality of the panel, which was alleged by the appellant's counsel. Therefore, the Constitutional Court holds that the appellant, apart from arbitrary allegations, did not present any evidence, nor did he present any arguments in favour of his claim that the fact that the judge was the member of the panel which took a procedural decisions as prescribed by the law constituted a violation of the principle of impartiality of court. Therefore, this part of the appeal is ill-founded.

- **Decision on Admissibility and Merits No. AP 2152/13 of 6 November 2014, paragraph 31;** *there is no violation of Article 6 and Article II(3)(e) of the Constitution of BiH*

The Constitutional Court concludes that the appellant's right to a fair trial before an impartial tribunal under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention has been violated as the same judge was the member of the panel which took a decision on appeal, whereby the first-instance judgment was quashed and the case was referred back for new proceedings, and the presiding judge of the court panel which took a decision on the revision-appeal in the renewed proceedings.

- **Decision on Admissibility and Merits No. AP 2107/12 of 24 April 2015, paragraph 38, published in the *Official Gazette of Bosnia and Herzegovina*, 44/15;** *contentious proceedings related to compensation for damages; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established*

Arbitrariness in establishing facts and applying the substantive law

A violation of the right to a fair trial exists in the event when a judgment is based on the law which ceased to be in effect at the time of adoption of a disputed judgment.

- **Decision No. U 65/01 of 25 July 2003, paragraph 46, published in the *Official Gazette of Bosnia and Herzegovina*, 38/03;** *transfer of the occupancy right to a common-law spouse; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established*

The principle of a legal state and Article 6 of the European Convention require that the court refers to a certain legal norm. The legal grounds for the judgment must not be arbitrary, i.e. must not be beyond the context of the present case nor may its interpretation be beyond the scope of linguistic meaning.

- **Decision on Admissibility and Merits No. U 45/03 of 17 May 2004, paragraph 29, published in the *Official Gazette of Bosnia and Herzegovina*, 34/04;** *civil procedure for repossession*

Since the competent courts had conducted thorough evidentiary proceedings on the appellant's lawsuit, which included engaging a finance expert and establishing the facts of the case, whereby upon having applied relevant provisions of the law they reached a conclusion to dismiss the appellant's claim, there are no indications that the ordinary courts had arbitrarily applied the law.

- **Decision on Admissibility and Merits No. U 100/03 of 28 May 2004, paragraph 29, published in the *Official Gazette of Bosnia and Herzegovina*, 34/04**

There is arbitrariness in the application of relevant substantive regulations where ordinary courts concluded that the accident had not occurred at work and had not been work-related and that the defendant was not responsible for the damage the appellant suffered. In that manner the ordinary courts disregarded the appellant's right as they failed to apply the law which, as *lex specialis* in the present case, has priority over general laws and must be applied to the present case.

- **Decision on Admissibility and Merits No. U 36/03 of 15 June 2004, paragraph 27, published in the *Official Gazette of Bosnia and Herzegovina*, 38/04; *civil procedure for the compensation of work-related accident***

There are no indications that the ordinary courts had arbitrarily applied the provisions of the substantive law on the expiry of the statute of limitations on periodical giving.

- **Decision on Admissibility and Merits No. U 71/03 of 15 June 2004, paragraph 30, published in the *Official Gazette of Bosnia and Herzegovina*, 34/04**

There is no violation of the right to a fair trial when the Municipal Court rejected an appeal as inadmissible as the Court, under the Civil Procedure Code, is obliged to be mindful of the fact whether the representative for the party has a valid power of attorney, as otherwise it would commit a substantial violation of the civil procedure.

- **Decision on Admissibility and Merits No. U 86/03 of 23 July 2004, paragraphs 22 and 23, published in the *Official Gazette of Bosnia and Herzegovina*, 43/04**

Adoption of the challenged judgments within the meaning of general rules of the contractual law laid down by the Law on Contractual Obligations may not constitute a violation of the appellant's right to a fair trial in relation to the allegations on arbitrary application of the law.

- **Decision on Admissibility and Merits No. AP 122/02 of 26 August 2004, paragraphs 25 and 26, published in the *Official Gazette of Bosnia and Herzegovina*, 43/04; *failure to fulfill an obligation within a given time-limit***

The court concludes that the courts, deliberating on the appellant's request for the merging of imprisonment sentences pronounced by legally binding decisions, acted correctly and applied the relevant provisions of the law, as it is obvious that under the circumstances in this case the appellant's request was related to legal and procedural issues concerning another proceeding and which could not have been discussed before the courts deliberating on the appellant's request for the merging of the sentences, in „the so-called” renewal of the proceedings.

- **Decision on Admissibility and Merits No. U 85/03 of 29 September 2004, paragraph 38, published in the *Official Gazette of Bosnia and Herzegovina*, 10/05**

The Constitutional Court is not competent to examine the established facts and ways in which the lower instance courts had interpreted positive regulations, unless decisions of the lower instance courts are in violation of the constitutional rights. That is the case

when a decision of the ordinary court disregards or erroneously applies constitutional law, when the application of positive regulations is manifestly arbitrary, when the relevant law in itself is unconstitutional or in case of a violation of basic procedural rights, such as the right to a fair trial, the right to access to court, the right to effective legal remedy and in other cases.

- **Decision on Admissibility and Merits No. AP 381/04 of 27 October 2004, paragraph 22, published in the *Official Gazette of Bosnia and Herzegovina*, 19/05; criminal proceedings, challenging the facts of the case established in the proceedings before the first instance court; no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH;**
- **Decision on Admissibility and Merits No. AP 404/04 of 23 March 2005, paragraph 26, published in the *Official Gazette of Bosnia and Herzegovina*, 32/05; proceedings concerning the establishment of the amount of damage compensation; no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH;**
- **Decision on Admissibility and Merits No. AP 405/04 of 12 April 2005, paragraph 21, published in the *Official Gazette of Bosnia and Herzegovina*, 40/05; proceedings concerning the payment of salary compensation, conduct of the Supreme Court in a dispute which value does not exceed BAM 15,000; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established;**
- **Decision on the Merits No. AP 978/05 of 13 September 2005, paragraph 22, published in the *Official Gazette of Bosnia and Herzegovina*, 3/06**

There was no arbitrary or discriminatory application of the law in the case of deliberating on the right to immunity of the appellants.

- **Decision on the Merits No. AP 58/03 of 29 October 2004, paragraph 41, published in the *Official Gazette of Bosnia and Herzegovina*, 11/05**

By its ruling quashing the challenged and first instance judgment and rejecting the appellant's lawsuit, without legal requirements being met for the revision appeal to be admissible, the Supreme Court arbitrarily interpreted the right of access to court, thereby arbitrarily applying the relevant law to the appellant's detriment, thereby violating the appellant's right to a fair trial.

- **Decision on the Merits No. U 107/03 of 19 November 2004, paragraphs 39 and 40, published in the *Official Gazette of Bosnia and Herzegovina*, 23/05**

The ordinary court arbitrarily applied provisions with respect to the scope of examining the appeal, that is, it exceeded the scope of its jurisdiction and examined *ex officio* the allegations on the statute of limitations, although they were not declared in the appeal but only during the first instance proceedings thereby causing a violation of Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 paragraph 1 of the European Convention.

- **Decision on the Merits No. AP 289/03 of 19 November 2004, paragraph 31, published in the *Official Gazette of Bosnia and Herzegovina*, 19/05**

It is beyond the jurisdiction of the Constitutional Court to assess the quality of the conclusions by the ordinary courts with respect to assessment of evidence, unless such

assessment appears manifestly arbitrary. Likewise, the Constitutional Court will not interfere with the manner in which the ordinary courts adopted evidence as probative evidence material. To this end, the Constitutional Court will not interfere with the fact as to which evidence of the parties to the proceedings are being given credence to by the ordinary courts on the basis of the judicial margin of appreciation. That is exclusively the role of the ordinary courts, even when the witnesses' statements at the public hearing and under oath are contradictory.

- **Decision on Admissibility and Merits No. AP 612/04 of 30 November 2004, paragraph 27, published in the *Official Gazette of Bosnia and Herzegovina*, 19/05; criminal proceedings, receiving bribe; no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH;**
- **Decision on Admissibility and Merits No. AP 539/04 of 28 June 2005, paragraph 24, published in the *Official Gazette of Bosnia and Herzegovina*, 27/06; civil proceedings, compensation of damage caused on a vehicle; no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

Application of the Order of the Supervisor for the Brčko District of Bosnia and Herzegovina was arbitrary in the present case, which caused a violation of the appellant's constitutional rights. In doing so, the Constitutional Court did not question the Supervisor's authority with respect to regulating certain relations and accordingly adoption of certain regulations, as this authority is based on the international and legal basis.

- **Decision on Admissibility and Merits No. AP 214/03 of 30 November 2004, paragraph 33, published in the *Official Gazette of Bosnia and Herzegovina*, 15/05; claim aimed at cancellation of unlawful registration of the right to manage real properties – Brčko District**

The Constitutional Court has jurisdiction to examine the manner in which the ordinary courts applied the substantive law, when the circumstances indicate that the application of the law was arbitrary.

- **Decision on Admissibility and Merits No. AP 389/04 of 23 March 2005, paragraph 32, published in the *Official Gazette of Bosnia and Herzegovina*, 27/05; proceedings concerning the cancellation of the gift agreement; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

By judgment granting the revision-appeal in a work-related dispute whereby the claim was related to financial claim not exceeding BAM 15,000.00, the Supreme Court arbitrarily applied Article 364 paragraph 2 of the Civil Procedure Code thereby violating the appellant's right to a fair trial.

- **Decision on Admissibility and Merits No. AP 398/04 of 23 March 2005, paragraph 27, published in the *Official Gazette of Bosnia and Herzegovina*, 32/05;**
- **Decision on Admissibility and Merits No. AP 402/04 of 23 March 2005, paragraphs 25 and 27, published in the *Official Gazette of Bosnia and Herzegovina*, 32/05;**
- **Decision on Admissibility and Merits No. AP 405/04 of 12 April 2005, paragraphs 23 and 24, published in the *Official Gazette of Bosnia and Herzegovina*, 40/05; proceedings for the payment of salaries compensation; conduct of the Supreme Court**

in a dispute which value does not exceed BAM 15,000; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established

As it is evident in the present case that the court acted arbitrarily while establishing facts and applying relevant positive regulations, inconsistent with the position of this court referred to in item 25 of this decision, the Constitutional Court holds it necessary to examine the manner in which the competent courts established facts and applied positive regulations on such facts.

- **Decision on Admissibility and Merits No. AP 311/04 of 22 April 2005, paragraph 36, published in the *Official Gazette of Bosnia and Herzegovina*, 60/05; dismissal of a part of the claim relating to the payment of contributions due to the alleged lack of standing to sue**

Providing evidence by way of indications is not in itself contrary to the principles of a fair trial under Article 6 paragraph 1 of the European Convention.

- **Decision on Admissibility and Merits No. AP 661/04 of 22 April 2005, paragraph 36, published in the *Official Gazette of Bosnia and Herzegovina*, 44/05; criminal proceedings in which a judgment of conviction against the appellant is mainly based on the statement of a witness who made a plea bargain with the Prosecutor's Office, as the sole direct evidence; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

When the present case concerns a different understanding of the text of the respective bank guarantee, whereby the appellant held one position while the ordinary courts had another, there is no violation of the right to a fair trial only because his legal understanding as to the classification of the contents of the respective bank guarantee within certain legal provision differs from the legal understanding by the ordinary courts.

- **Decision on Admissibility and Merits No. AP 1001/04 of 26 April 2005, paragraph 23, published in the *Official Gazette of Bosnia and Herzegovina*, 27/06**

In the absence of explicit legal regulations on what is considered partial success in a litigation, the ordinary courts have responsibility to interpret the provisions of the Civil Procedure Code, in accordance with the principles of lawfulness and fairness and by being mindful, at all times, of the protection of the right to a fair trial of all parties to the proceedings.

- **Decision on Admissibility and Merits No. AP 536/04 of 27 May 2005, paragraph 23, published in the *Official Gazette of Bosnia and Herzegovina*, 67/05; civil proceedings, payment of the civil procedure; no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

There is no violation of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6, paragraph 1 of the European Convention, as the appellant complained about erroneously and incompletely established facts of the case and erroneous and arbitrary application of the substantive law while the Constitutional Court failed to establish any other elements indicating unfair proceedings or arbitrary application of the law.

- **Decision on Admissibility and Merits No. AP 1003/04 of 28 June 2005, paragraph 25, published in the *Official Gazette of Bosnia and Herzegovina*, 80/05;**
- **Decision on Admissibility and Merits No. AP 1008/04 of 20 December 2005, paragraphs 34 and 35, published in the *Official Gazette of Bosnia and Herzegovina*, 45/06;**
- **Decision on Admissibility and Merits No. AP 1019/04 of 13 October 2005, paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina*, 4/06;**
- **Decision on Admissibility and Merits No. AP 1063/04 of 13 October 2005, paragraphs 22 and 23, published in the *Official Gazette of Bosnia and Herzegovina*, 4/06**

A violation of the right to a fair trial is found in a situation when a court in the state where the act had been committed, imposed a single prison sentence which is more unfavorable for the appellant than the sentence imposed in the state where the sentence was delivered.

- **Decision on Admissibility and Merits No. AP 726/04 of 28 June 2005, paragraphs 35 to 37, published in the *Official Gazette of Bosnia and Herzegovina*, 73/05; *criminal proceedings, arbitrary application of the law in pronouncing a sentence for concurrent criminal acts committed in different states; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established***

In the event when a first instance court arbitrarily applied the substantive regulation and legal circumstances changed at the time of the adoption of the second instance ruling, a decision of the second instance court to uphold the first instance ruling was correct.

- **Decision on Admissibility and Merits No. AP 670/04 of 13 July 2005, paragraph 29, published in the *Official Gazette of Bosnia and Herzegovina*, 86/05; *civil proceedings; allegations as to the arbitrary application of Article 75 of the Law on Basis of Ownership and Proprietary Relations, for the reason that the ordinary courts could not prohibit construction work that was approved and taken on the basis of enforceable construction permit; construction permit cancelled at the time of adoption of a decision of the second instance court; no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH***

In case where the law failed to provide for a solution in the absence of a regulation plan, the Appellate Court made arbitrary interpretation of that provision in the manner as to directly affecting the appellant to exercise right to a fair trial.

- **Decision on Admissibility and Merits No. AP 301/04 of 23 September 2005, paragraph 48, published in the *Official Gazette of Bosnia and Herzegovina*, 80/05**

The appellate jurisdiction of the Constitutional Court (Article VI(3)(b) of the Constitution of Bosnia and Herzegovina), in principle, does not imply that the Constitutional Court may examine decisions of the ordinary courts with respect to the established facts of the case or interpretation and application of lower level law, unless such decisions are in violation of the appellant's constitutional rights. This shall be the case, *inter alia*, when the competent bodies apply positive regulations or establish facts of the case in an arbitrary manner. Therefore, the Constitutional Court cannot deal with establishing

the facts related to the amount of the pension as it is a responsibility of administrative authorities.

- **Decision on the Merits No. AP 1028/04 of 2 December 2005, paragraph 30, published in the *Official Gazette of Bosnia and Herzegovina*, 20/06; administrative proceedings and administrative dispute for establishing the amount of pension**

A violation of the right to a fair trial is present in the case when legal provisions relating to refugees or displaced persons or persons deprived of their homes due to wartime circumstances, are applied to a person who is neither a refugee nor a displaced person but rather applied in case of voluntary renunciation of apartment which is quite unrelated to the war conflict.

- **Decision on the Merits No. AP 645/04 of 2 December 2005, paragraphs 32 and 45, published in the *Official Gazette of Bosnia and Herzegovina*, 41/06; civil proceedings, acquiring the right to apartment after the occupancy right holder's contract of use was cancelled; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

There is no violation of the right to a fair trial when the appellant's allegations are exclusively relating to the issue of judicial assessment of evidence in a criminal proceeding and to the application of positive regulations to the established facts of the case unless there are other crucial elements indicating that the assessment of evidence or application of the substantive law was arbitrary.

- **Decision on the Merits No. AP 945/04 of 20 December 2005, paragraph 47, published in the *Official Gazette of Bosnia and Herzegovina*, 43/06;**
- **Decision on Admissibility and Merits No. AP 995/04 of 22 July 2005, paragraph 26, published in the *Official Gazette of Bosnia and Herzegovina*, 4/06;**
- **Decision on the Merits No. AP 1043/04 of 2 December 2005, paragraph 23, published in the *Official Gazette of Bosnia and Herzegovina*, 20/06;**
- **Decision on the Merits No. AP 1089/04 of 13 October 2005, paragraph 34, published in the *Official Gazette of Bosnia and Herzegovina*, 40/06**

There is a violation of the right to a fair trial when a convicting judgment is based on evidence which, neither directly nor indirectly, indicate with certainty that the appellant had committed a criminal offence he is charged with and when the court does not provide a logical and convincing reasoning for its conclusion as to the appellant's guilt and its assessment of evidence deems arbitrary.

- **Decision on the Merits No. AP 5/05 of 14 March 2006, paragraph 39, published in the *Official Gazette of Bosnia and Herzegovina*, 49/06**

There is no arbitrariness in the decision of the Supreme Court in relation to the application of the provisions of the substantive law concerning bank guarantee

- **Decision on Admissibility and Merits No. AP 912/04 of 1 April 2006, paragraph 29, published in the *Official Gazette of Bosnia and Herzegovina*, 57/06;**
- **Decision on Admissibility No. AP 892/06 of 6 July 2007, paragraph 9; contentious proceedings for the payment of monetary claims in respect of the issued bank guarantee**

The ordinary courts have arbitrarily applied the law in relation to the calculation of the statute of limitations regarding the lawsuit for the compensation of damage for the death of a missing person.

- **Decision on the Merits No. AP 1123/04 of 1 April 2006, paragraph 27, published in the *Official Gazette of Bosnia and Herzegovina*, 59/06**

There is no arbitrary application of the provisions of the Law on Enforcement Proceedings when the appellant, in his/her motion for enforcement against the Social Work Center, failed to indicate pursuant to which positive regulations the above referenced Center was obliged to make a payment to him as per the interim Ruling No. OVIII-456/96 of 27 February 1996, since the relevant ruling did not indicate which obligation it was.

- **Decision on the Merits No. AP 1175/05 of 9 May 2006, paragraph 25, published in the *Official Gazette of Bosnia and Herzegovina*, 68/06; enforcement proceedings, enforcement debtor not determined; no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

In contentious proceedings carried out on the requests for the compensation of damage for defamation, for the protection of the right to a fair trial, it is necessary for the courts, while establishing the existence of legal grounds and the amount of damage for defamation, to consistently apply the principles laid down in the relevant provisions of the Law on Obligations, Law on the Protection against Defamation and the Law on Contentious Proceedings by considering specific nature of each particular case. Only in this way is it possible to avoid arbitrary conduct of the ordinary courts in individual cases, as it occurred in the present case.

- **Decision on Admissibility and Merits No. AP 1203/05 of 27 June 2006, paragraph 36, published in the *Official Gazette of Bosnia and Herzegovina*, 7/07; civil proceedings, courts applied the mechanism of „possible occurrence of damage”, not recognized either by the Law on Protection against Defamation or the Law on Obligations, as a condition for establishing well-foundedness of a claim for the compensation of damage for defamation; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The ordinary courts arbitrarily applied the provision of the substantive law in relation to the appellant's request for recognition of a judgment of a foreign court.

- **Decision on Admissibility and Merits No. AP 1570/05 of 27 June 2006, paragraph 45, published in the *Official Gazette of Bosnia and Herzegovina*, 11/07; contentious proceedings, recognition of a judgment of a foreign court**

There is a violation of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6, paragraph 1 of the European Convention in a situation when the Cantonal Court failed to apply the Law on Enforcement Proceedings which was in force and which it was obliged to apply, instead applying the previous Law on Enforcement Proceedings, inconsistent with the provision of the new Law that provides that the application of the new Law is explicitly provided for the cases such as the one at hand.

- **Decision on Admissibility and Merits No. AP 1293/05 of 12 September 2006, paragraph 38, published in the *Official Gazette of Bosnia and Herzegovina*, 7/07; enforcement proceedings, time validity for the enforcement law; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Court of BiH has arbitrarily applied the provisions of the Election Law relating to the candidacy for elections

- **Decision on Admissibility and Merits No. AP 2679/06 of 29 September 2006, paragraph 33, published in the *Official Gazette of Bosnia and Herzegovina*, 9/07; administrative proceedings; arbitrariness in confirming the candidacy in elections; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The reasoning in which the courts only noted that *they could not establish confidently* a crucial fact that the plaintiff had been the last possessor, without elaborating in more detail the basis for such impression or the process of assessment of the relevant evidence, as required by the principle of the free appraisal of evidence, does not meet the requirement of careful and conscientious assessment of evidence.

- **Decision on Admissibility and Merits No. AP 2348/05 of 20 October 2006, paragraph 36, published in the *Official Gazette of Bosnia and Herzegovina*, 9/07; contentious proceedings; crucial facts were not established in a reliable manner; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The appellant's right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6, paragraph 1 of the European Convention shall also be violated in the event when the ordinary courts, by pronouncing a sentence, incompletely and erroneously establish the facts of the case and apply erroneously the substantive law by qualifying the appellant's appeal as being in contempt of court and damage to its authority.

- **Decision on Admissibility and Merits No. AP 198/03 of 20 October 2006, paragraph 47, published in the *Official Gazette of Bosnia and Herzegovina*, 11/07; sentence for contempt of court**

Through arbitrary interpretation of the right and arbitrary refusal to apply obligatory legal position of the Civil Department of the above referenced court, the Supreme Court violated the appellant's right to a fair trial protected under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 paragraph 1 of the European Convention.

- **Decision on Admissibility and Merits No. AP 2141/05 of 20 October 2006, paragraphs 36 and 37, published in the *Official Gazette of Bosnia and Herzegovina*, 12/07; contentious proceedings; the issue related to the starting date for running of the statutory default interest to non-pecuniary damages; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

There is a violation of the right under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 paragraph 1 of the European Convention, in the event when

the Supreme Court in its revision proceedings exceeded its authorities provided for by the Civil Procedure Code in terms of adoption of a decision on revision-appeal, whereby it established some crucial facts by a decision on revision-appeal, inconsistent with the Civil Procedure Code and when it failed to solve a particular legal matter by its decision on revision-appeal so as to make the decision at issue enforceable.

- **Decision on Admissibility and Merits No. AP 1505/06 of 20 October 2006, paragraph 45, published in the *Official Gazette of Bosnia and Herzegovina*, 11/07; civil proceedings; the Supreme Court exceeded legal authority in the proceeding on revision-appeal; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The courts in ordinary proceedings are obliged to apply positive regulations. However, if issues of legal validity or constitutionality of a certain general legal act are raised during the proceedings, then the issue may be forwarded to the competent court, like in the present case to the Constitutional Court of the Republika Srpska, which was not done. This type of *ad hoc* assessment of legal validity of regulations of ordinary courts is not only unlawful but inconsistent with the constitutional principle of the rule of law under Article I(2) of the Constitution of BiH and the principle of legal certainty incorporated in the mentioned article.

- **Decision on Admissibility and Merits No. AP 1603/05 of 21 December 2006, paragraph 35, published in the *Official Gazette of Bosnia and Herzegovina*, 34/07; criminal proceedings; assessment of legal validity by ordinary courts; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

There is a violation of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina in a situation where the court has arbitrarily applied positive regulations whereby, while deliberating on the appeal in the proceedings, it adopted a decision on the initial and not on the specified claim. There is also a violation in the event when it is not evident from the enacting clause and the reasoning of the judgment whether the court granted the claim partially or in full nor were the reasons supporting this offered in the reasoning of the challenged decision.

- **Decision on Admissibility and Merits No. AP 2089/05 of 16 January 2007, paragraph 30, published in the *Official Gazette of Bosnia and Herzegovina*, 34/07; contentious proceedings; decision on the initial and not the specified claim; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court holds that the statute of limitations on exercising the right under Article 143 of the Labor Law starts running the day after the entry into force of the ruling establishing the appellant's laid-off employee status.

- **Decision on Admissibility and Merits No. AP 299/06 of 27 January 2007, paragraph 34, published in the *Official Gazette of Bosnia and Herzegovina*, 38/07; civil proceedings; the Supreme Court exceeded legal authority in the proceedings on revision-appeal; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

In the absence of an explicit legal provision stipulating the starting date to award statutory default interests once the amount of a pecuniary damage to be paid by the party inflicting damage established, the Constitutional Court holds that the ordinary courts have the right to regulate the issue through their case-law.

- **Decision on Admissibility and Merits No. AP 2524/05 of 16 January 2007, paragraph 29, published in the *Official Gazette of Bosnia and Herzegovina*, 38/07; civil proceedings, pecuniary damage, the date from which to award statutory default interest; no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

There is a violation of the right under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 paragraph 1 of the European Convention in the event when the Supreme Court, in the proceedings on the revision-appeal through arbitrary application of the law, fails to decide on admissibility of revision-appeal on the basis of relevant provisions of the law referred to in the transitional and final provisions of the Civil Procedure Code – *Official Gazette of the Federation of Bosnia and Herzegovina* Nos. 42/98 and 3/99.

- **Decision on Admissibility and Merits No. AP 2675/05 of 15 February 2007, paragraph 30, published in the *Official Gazette of Bosnia and Herzegovina*, 70/07; civil proceedings, revision-appeal admissible; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

There is a violation of the right under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 paragraph 1 of the European Convention in the event when a second instance court deliberated on merits of an untimely appeal lodged by a defendant in the proceedings on the appellant's lawsuit.

- **Decision on Admissibility and Merits No. AP 1522/05 of 15 February 2007, paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina*, 55/07; establishment of employment status, compensation of salaries; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The First Instance Disciplinary Commission exceeded the scope of the claim in the present case by finding the appellant responsible for a disciplinary offence which was not included in the disciplinary indictment, and the Second Instance Disciplinary Commission, on the appellant's appeal, modified the first instance decision and found the appellant responsible in the challenged part, noting that it was the result of the scope of the claim having been exceeded. Therefore, the appellant did not have all of the guarantees provided for by Article 6 of the European Convention which guarantees to anyone, against whom „criminal charges” were pressed, the right to a fair trial and public hearing within a reasonable time before „an independent and impartial tribunal”, the right to defense and equal position with the plaintiff.

- **Decision on Admissibility and Merits No. AP 2581/05 of 30 March 2007, paragraph 38, published in the *Official Gazette of Bosnia and Herzegovina*, 50/07; disciplinary proceedings against a judge carried out before the High Judicial and Prosecutorial Council; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

There has been a violation of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention as the Cantonal Court, in desiding on the employer's complaint, arbitrarily misapplied positive regulations and, thus, modified the first-instance judgment by dismissing the appellant's claim as unfounded, since the appellant's employer stated before the court that he did not have information which he should have had in accordance with the law and which was to be used for calculation of compensation for the appellant's reduced salary within the meaning of Article 79(2) of the Law on Pension and Disability Insurance, and, furthermore, did not state in which manner the compensation was to be determined in such a situation, nor did he give the appellant an opportunity to present evidence in support of his claim in the manner considered as regular and acceptable by the Cantonal Court so that he deprived the appellant of the right which he was entitled to in accordance with the law.

- **Decision on Admissibility and Merits No. AP 1475/05 of 30 March 2007, paragraph 45, published in the *Official Gazette of Bosnia and Herzegovina*, 79/07; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The court has applied the law arbitrarily when interpreting the lack of regulations regulating the amount of annual leave allowance as a loss of the appellant's right to annual leave allowance, irrespective of the fact that the basis for this type of compensation or the very right to compensation of annual leave allowance, are provided for by the Law on Judicial and Prosecutorial Service in the Federation of Bosnia and Herzegovina.

- **Decision on Admissibility and Merits No. AP 2587/05 of 23 May 2007, paragraph 42, published in the *Official Gazette of Bosnia and Herzegovina*, 70/07; contentious proceedings, establishing the right to annual leave allowance; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Supreme Court has incorrectly applied the substantive law when basing its judgment on dismissal of the claim for compensation of pecuniary damages on the Law on Health Insurance and the Book of Rules on Terms and Conditions of Referral of an Insurance Beneficiary for Medical Treatment Abroad, taking as a starting point that the under-age appellant underwent medical treatment abroad, without receiving a permission for such a treatment from a competent health institution nor did he comply with the legal procedure for undergoing medical treatment abroad. The Constitutional Court holds as correct the conclusions of the lower instance courts based on the Law on Obligations. The position of the Supreme Court in the challenged decision is not relevant for the settlement of the present dispute, as no retrospective claim had been filed in the proceedings before the courts against the competent health insurance institution.

- **Decision on Admissibility and Merits No. AP 97/06 of 5 June 2007, paragraphs 30 to 32, published in the *Official Gazette of Bosnia and Herzegovina*, 6/08; erroneous application of the substantive law; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

Retroactive payment of contributions may not affect the beginning for exercising the right to pension and determination of the day on which to commence the payment

of pension, especially if taking into account that delayed payment of contributions is made by paying default interest to the Fund. Anything different, in the opinion of the Constitutional Court, would constitute an excessive burden for the appellant who would be in a situation to suffer the consequences of the employer's irregular payment of contributions due to the employer's failure to fulfill its legal obligation as an insurance payer to the Fund as an insurance beneficiary, which also has a legal obligation to control the insurance payer and to undertake appropriate legal measures in the event of failure to pay contributions

- **Decision on Admissibility and Merits No. AP 1330/06 of 16 July 2007, paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina*, 79/07; arbitrary interpretation of the provisions of the Law on Pension and Disability Insurance; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established;**
- **Decision on Admissibility and Merits No. AP 2019/06 of 3 April 2008, paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina*, 41/08**

The ordinary courts have arbitrarily applied the substantive law to the detriment of the appellant's constitutional right to a fair trial in the event when they failed to establish in the ordinary court proceedings the elements of invalidity of the contract stipulated by Article 103 of the Law on Obligations, i.e. that the contract was inconsistent with „the Constitution of RBiH, coercive regulations or moral of the society” and when it does not follow from the established facts that the court settlement was null and void within the meaning of Article 88 of the Law on Obligations. The conclusion of the ordinary courts is fully arbitrary to that end, as the present matter does not concern the contract concluded on behalf of another person without his/her authorization and without subsequently given permission.

- **Decision on Admissibility and Merits No. AP 1783/06 of 13 September 2007, paragraphs 41 to 43, published in the *Official Gazette of Bosnia and Herzegovina*, 86/07; civil proceedings, arbitrary application of the law; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The position of the County Court, according to which default interests are calculated from the date of adoption of the first instance decision, is arbitrary, especially when taking into account provisions of Articles 186 and 277 of the Law on Obligations the County Court failed to assess in its decision, and from which it follows, as already established by the Constitutional Court, that when it comes to pecuniary damage, default interest is awarded from the date the damage occurred and not from the date of adoption of the first instance judgment (filing lawsuit).

- **Decision on Admissibility and Merits No. AP 1433/06 of 13 September 2007, paragraph 29, published in the *Official Gazette of Bosnia and Herzegovina*, 86/07; civil proceedings, payment of damage compensation, default interest and costs of the proceedings to the appellant's attorney; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established;**
- **Decision on Admissibility and Merits No. AP 1757/06 of 8 July 2008, paragraph 44, published in the *Official Gazette of Bosnia and Herzegovina*, 70/07**

The ordinary courts applied the procedural law arbitrarily, since they completely disregarded, while deliberating on the appellant's appeal, the provision of Article 141 paragraph 2 of the Law on Minor Offence Proceedings that stipulates that summons for hearing or questioning are served on the accused personally. This occurred in the present case thus preventing the appellants to participate in the proceedings, propose their evidence and oppose the arguments of the opposing party by their own arguments.

- **Decision on Admissibility and Merits No. AP 1480/06 of 18 October 2007, paragraphs 32 and 33, published in the *Official Gazette of Bosnia and Herzegovina, 2/08; minor offence proceedings; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established***

Validly concluded sales contract on securities and shares of the enterprise „Polirond” d.d., in the period when the laws on securities and the laws on the Commission for Securities and the Securities Register could not have been implemented due to the state's failure to provide for the institutional conditions, must be performed, as the regular transaction of securities as an expression on one hand, disposal of one's own property and investments on the other, is more important than meeting of the public interest incorporated in these laws through complete transactions blockage, pending the implementation of the mentioned laws.

- **Decision on Admissibility and Merits No. AP 2195/06 of 18 October 2007, paragraph 54, published in the *Official Gazette of Bosnia and Herzegovina, 6/08; the right to a fair trial, the right to property, arbitrary application of the law, securities transaction; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established***

The fact that the budget did not provide the funds for the payment of annual leave allowance, which the Cantonal Court gave as one of the reasons for considering that the appellants were not entitled to annual leave allowance can only be interpreted as constituting arbitrariness in applying the law by the Cantonal Court.

- **Decision on Admissibility and Merits No. AP 1315/06 of 8 November 2007, paragraph 44, published in the *Official Gazette of Bosnia and Herzegovina, 6/08; annual leave allowance, Tuzla Canton***

The Constitutional Court does not find arbitrariness in the application of the law in a situation where the ordinary courts established in an undisputed manner that the attorney for the appellant was duly notified of the hearing, which he failed to attend or justify his absence while the defendant did not request that the hearing be held.

- **Decision on Admissibility No. AP 1793/06 of 13 December 2007, paragraph 11; contentious proceedings on the lawsuit for establishment of the property right**

The Constitutional Court holds that there is no arbitrariness in the application of the provisions of the Law on Obligations when ordinary courts concluded that: „the very possibility of running a certain business, such as depositing the amount owed into savings, does not mean as yet „the regular course of affairs” or special circumstances, i.e. a realistic chance. The second instance court correctly concluded that the appellant

was obliged to prove that it was her real intention, i.e. a business move that could be regarded as a probability bordering on certainty and not only a possibility. Otherwise, if the appellant's view were to be upheld, any citizen could choose any business option and claim hypothetically to have suffered damage, as he/she could have made such a move but was prevented from doing so due to the tardiness of the debtor...".

- **Decision on Admissibility No. AP 2121/06 of 13 December 2007, paragraph 14;** *contentious proceedings on the lawsuit for compensation of damage, in the form of the profit loss, due to the debtor's tardiness*

The Constitutional Court holds that a violation of the appellant's right to a fair trial occurred when the Supreme Court, in the process of deliberating on revision-appeal, exceeded the scope of the reasons mentioned in the revision-appeal and arbitrarily applied the provision of the Law on the Constitutional Court of RS.

- **Decision on Admissibility and Merits No. AP 1434/06 of 13 December 2007, paragraph 29, published in the *Official Gazette of Bosnia and Herzegovina*, 12/08;** *revision-appeal; a violation of Article 6 of the European Convention and Article II(3) (e) of the Constitution of BiH established*

Thus, in adopting a decision on the lawfulness of the defendant's ruling of on removing the appellant from the lawyers' register of the defendant, the Supreme Court considered as a crucial reason a possibility for the appellant to be reentered in the defendant's lawyers' register. Aside from the fact that the registration in the defendant's lawyers' register was not the subject of dispute, it is completely illogical and arbitrary to assess the lawfulness of the ruling on removing the appellant from the defendant's lawyers' register by considering the appellant's right to request new registration in the mentioned register. The fact relating to the mentioned right of the appellant should have in no way affected adoption of the decision on the lawfulness of the ruling which the appellant challenged. Therefore, the Constitutional Court holds that the reasoning of the Supreme Court in the challenged decision, in the mentioned sense, did not satisfy the principle of a fair trial under Article 6 paragraph 1 of the European Convention. In addition, the Constitutional Court observes that the legal regulation, which the Supreme Court referred to in the judgment, was misquoted in the challenged judgment of the Supreme Court. In the part of the judgment where it referred to the meeting of requirements under Article 266 paragraph 1 item 4 of the Law on the General Administrative Proceedings, which was in force at the time of adoption of the challenged act, the Supreme Court stated that the mentioned article was in line with the present Article 252 paragraph 1 item 4 of the presently applicable Law on Administrative Disputes. Although it is possible to conclude that it concerned *lapsus calami* and that the Supreme Court, as a matter of fact, referred to the present Law on General Administrative Proceedings, the Constitutional Court holds that this omission on the part of the Supreme Court occurred as a result of insufficiently careful and conscientious approach in adopting the Judgment that the appellant has challenged.

- **Decision on Admissibility and Merits No. AP 1518/06 of 29 March 2008, paragraphs 56 and 57, published in the *Official Gazette of Bosnia and Herzegovina*, 47/08;** *arbitrariness in the case relating to the removal of the appellant from the lawyers'*

register; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established

The Constitutional Court recalls that the agreement of the defendant to withdraw a lawsuit after the lawsuit had been delivered to the defendant, is explicitly stipulated by the provision of Article 59 of the Civil Procedure Code. Agreement of the defendant constitutes a legal assumption for the lawsuit to be considered withdrawn. In the present case, the attorney for the second and fourth defendant directly and unambiguously stated on their behalf that they did not agree to withdrawal of the lawsuit. The Constitutional Court holds that following this statement the court did not have legal grounds to establish, by its ruling, that the lawsuit is considered withdrawn. Also, the Constitutional Court does not hold that, based on the behavior of the attorney for the defendants that followed, indirectly, that it is possible to consider that it follows that the representative for the defendants gave consent for the lawsuit to be withdrawn, as concluded by the County Court, thereby redressing a violation of the law. Namely, the Constitutional Court holds that the effect of complete and explicit statement on the opposition against withdrawal of the lawsuit cannot be rendered ineffective by actions, which in their essence indirectly, based on assumptions, deny the statement given. In view of the aforementioned, the Constitutional Court holds that the County and Basic Court applied arbitrarily the provision of Article 59 of the Civil Procedure Code and that such arbitrariness undoubtedly affected the appellant's right to a fair trial.

- **Decision on Admissibility and Merits No. AP 431/08 of 17 April 2008, paragraphs 29 and 30, published in the *Official Gazette of Bosnia and Herzegovina*, 49/08; *civil proceedings, compensation of pecuniary damage, acquiring with no grounds; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established***

While deliberating on the plaintiffs' appeals, in the proceedings relating to the payment of difference in salaries and other financial rights arising from employment, the County Court erroneously applied the substantive law, for in the disputes at hand the relevant provisions are those provisions of the Labor Law, which is by legal nature *lex specialis* unlike the Law on Obligations. Namely, in accordance with Article 105 of the Labor Law, the plaintiffs had the right to file a lawsuit within a year from the date of learning of the violation (subjective time limit) and at the latest within three years from the date the violation was committed (objective time limit). Therefore, while deliberating on the claims, the County Court arbitrarily applied the legal grounds for decision-making.

- **Decision on Admissibility and Merits No. AP 1258/06 of 12 June 2008, paragraph 32, published in the *Official Gazette of Bosnia and Herzegovina*, 91/08; *arbitrary application of the Law on Obligations in the proceedings related to the payment of salaries, annual leave allowance; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established***

As stipulated by the provisions of the Civil Procedure Code, in the proceeding of deliberating on the appeal the court examines the first instance judgment in the part challenged by the appeal, within the scope of the reasons stated in the appeal. Therefore,

as the County Court considered only the appellant's appeal against the first instance judgment on the merits, it had to confine itself only to the allegations stated in the appeal, and it had to be mindful of the mechanism *reformatio in peus*, i.e. prohibition that it is not possible to modify the first instance decision making it „negative” to the detriment of the party lodging the appeal. The defendant's appeal was considered only from the procedural aspect, i.e. whether the appeal was lodged in a timely fashion and dismissed. Thus, the County Court could have only examined the merits of the appellant's allegations stated in the appeal, in the part she complained against. Thus, the first instance judgment, in the part against which the appellant did not file the appeal, and against which the defendant filed an untimely appeal, became undoubtedly legally binding. Inconsistent with the provisions of Article 230 of the Civil Procedure Code and by acting in this manner, the County Court modified the judgment to the detriment of the party which was the only one who had filed an appeal, by quashing the first instance judgment in the part against which no admissible, complete and timely appeal was filed, thereby completely exceeding the scope of its competence in deliberating in the proceedings on the appeal.

- **Decision on Admissibility and Merits No. AP 1876/06 of 4 September 2008, paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina*, 91/08; arbitrary application of the Civil Procedure Code; labor dispute – payment of salaries; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Supreme Court applied arbitrarily the provision of Article 247 paragraph 2 of the Civil Procedure Code, while deciding on the revision-appeal which the plaintiff withdrew previously and the Supreme Court should have rejected as inadmissible.

- **Decision on Admissibility and Merits No. AP 1116/07 of 17 September 2008, paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina*, 102/08; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

There is no arbitrariness in the legal position of the courts according to which the sales contract concluded on the basis of authorization certified by a foreign court without an „apostille” seal is null and void. The stipulated obligatory form of attestation by „apostille” seal is necessary for the purpose of complying with the principle of state sovereignty and legal certainty, as Bosnia and Herzegovina, with that seal on a foreign public document, receives a guarantee of another state that it involves a competent body and original signature of an official of the respective state, thereby, at the same time, protecting legal interests of other parties to the proceedings that may be subject to legal transaction with a person possessing the certified public document. Therefore, there is a justified public interest for such a procedure and formalities, which the Constitutional Court does not consider as an excessive burden.

- **Decision on Admissibility No. AP 1516/06 of 17 September 2008, paragraphs 17 and 18, published in the *Official Gazette of Bosnia and Herzegovina*, 91/08; legal validity of the sales contract within the meaning of the Law on Sale of Apartments; appeal manifestly (*prima facie*) ill-founded**

There is no arbitrariness on the part of the Supreme Court in assessing that the appellant failed to prove during the course of the proceedings that the will of the plaintiff – the counter-defendant - was the real will to sell the respective real properties, that is that he acquired the ownership right to real properties voluntarily within the meaning of additional provision of Article 17.b) paragraph 2 of the Law on Cessation of Application of the Law on Temporarily Abandoned Real Properties owned by Citizens, since it was undisputedly established that the respective contract was concluded through some sort of coercion, bearing in mind the wartime circumstances, which is confirmed by the fact relating to obvious disproportion between the price and real value of the respective real properties.

- **Decision on Admissibility and Merits No. AP 292/06 of 28 November 2008, paragraph 44, published in the *Official Gazette of Bosnia and Herzegovina, 19/09*; *invalidity of the contract on purchase and sale concluded during the wartime; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH***

Restriction of the right to institute a contentious proceeding for the compensation of severance pay, as interpreted by the Constitutional Court and by the Cantonal Court in the more recent judgments, has legitimate goal and is not absolute nor does it violate the very essence of the right of employees whose right to severance package was recognized since they have a long period of time during which they are entitled to seek court protection in case of failure to pay out the severance package. In view of the aforementioned, the Constitutional Court concludes that the reasoning of the judgment of the Cantonal Court, in relation to the issue of calculation of the statute of limitations, is arbitrary as far as it brought into question the principle of legal certainty and the appellant's enjoyment of the right to a fair trial.

- **Decision on Admissibility and Merits No. AP 3263/06 of 18 December 2008, paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina, 20/09*; *the statute of limitations in the proceedings for the compensation of severance package; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established***

As to the appellant's allegations that his right to a fair trial has been violated for failure to take a final decision in the proceedings for repossession of the apartment, which he instituted before the competent administrative authority, the Constitutional Court concludes that the appellant instituted two proceedings on the same legal matter at the same time. In this connection, the Constitutional Court refers to the opinion of the Commission for Human Rights within the Constitutional Court of Bosnia and Herzegovina (see, Commission for Human Rights within the Constitutional Court, Decision on Admissibility and Merits, No. CH/00/4259, *Dr. Ljiljana Vujić and Others*). According to that opinion of the Commission, it is not justified to conduct parallel proceedings for repossession of the apartment if there is a decision of the CPRC which ordered in its decisions the termination of the procedure for enforcement of the CRPC'S decision. Taking into account such a case-law, the Constitutional Court holds that the administrative authorities and the courts should have interrupted administrative proceedings with regards to the claim for repossession of the apartment in question after

the institution of the procedure for enforcement of the CRPC's decision, i.e. they should have merged these proceedings. Given the fact that the preliminary issue was resolved in the procedure for enforcement of the CRPC's decision, the appellant was entitled to request the continuation of the proceedings. Furthermore, the appellant could have instituted contentious proceedings to establish legal validity of the contract on purchase of the apartment in question in order to present all arguments with regards to his right to the apartment in question.

- **Decision on Admissibility and Merits No. AP 1970/06 of 15 January 2009, paragraph 42, published in the *Official Gazette of Bosnia and Herzegovina*, 26/09; procedure for repossession of an apartment, there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

There has been no violation of the right to a fair trial as the competent authorities were authorized in accordance with the law to adjourn administrative enforcement of the CRPC's decision until the conclusion of the contentious proceedings to establish nullity of the contract on the purchase of the apartment in question.

- **Decision on Admissibility and Merits No. AP 3321/06 of 26 February 2009, paragraph 48, published in the *Official Gazette of Bosnia and Herzegovina*, 33/09; procedure of repossession of the apartment; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The County Court misapplied the substantive law in a manifestly arbitrary manner to the appellant's detriment by modifying a legally binding ruling on enforcement in the appellate proceedings against a ruling imposing a sanction, which, as legally binding ruling was not nor could it be the subject of the appellant proceedings in question.

- **Decision on Admissibility and Merits No. AP 3309/06 of 17 March 2009, paragraph 31, published in the *Official Gazette of Bosnia and Herzegovina*, 48/09; arbitrary application of law in the enforcement proceedings; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

Having interpreted the text of the bank guarantee in question with regards to the provisions of the purchase agreement dated 23 March 2000 by applying the provision of Article 99 of the Law on Obligations and common will of the contractual parties, the Supreme Court concluded that the advance paid by the plaintiff into the account of the seller opened with the appellant's predecessor through the bank guarantee covered not only the quantity shortage of delivered goods but also the quality deficiencies and increase in turnover costs. Furthermore, the Supreme Court took the position that the plaintiff was not obliged to present evidence to prove deficiencies in the quality of delivered goods or increase in transportation costs, since it was provided for by the guarantee. The Constitutional Court holds that the Supreme Court gave clear and specified reasons, which cannot be considered as arbitrary. It does not follow from the allegations set forth in the appeal and submitted documents that the challenged decision violated or disregarded the appellant's constitutional rights.

- **Decision on Admissibility No. 2899/06 of 13 May 2009, paragraph 15; bank guarantee, arbitrariness, appeal manifestly (*prima facie*) ill-founded**

Taking into account the provision of Article 186 in conjunction with Article 277 of the Law on Obligations, the Constitutional Court concludes that in a situation where the courts established that the damage inflicted upon the appellants had occurred on 27 July 1993 (from 21 May to 27 July 1993 the property was repeatedly seized from the appellants' shop - the inventory 1 through 44) and this fact was undisputed by the parties to the proceedings, the County Court applied the substantive law in an arbitrary manner by awarding damage compensation to the appellants from the moment when they had learnt about the damage (1 January 1999), *i.e.* from the date of expert examination by the Institute (22 August 2005). The courts substantiated their conduct by referring to Articles 185 and 189(2) of the Law on Obligations although the said provisions do not govern the issue of statutory default interest, which is governed by the provisions of Articles 277 through 279 of the Law on Obligations. Taking into account the aforementioned reasons, the Constitutional Court holds that the manner in which the Supreme Court and the County Court applied the positive regulations in their decisions is arbitrary and it amounts to a violation of the appellants' right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention.

- **Decision on Admissibility and Merits No. AP 775/08 of 30 May 2009, para 89, published in the *Official Gazette of Bosnia and Herzegovina*, 74/09; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

Article 141 of the Family Law expressly stipulates that the provisions of the Civil Procedure Code shall apply to the procedure for establishing or challenging paternity, unless otherwise prescribed by that law. The application of the principle of civil procedure implies that the court decides within the limits of the claims specified by the parties to the proceedings. Thus, the Constitutional Court holds that the appellant's allegations that the DNA paternity testing was not carried out in the present case did not amount to the violation of the right to a fair trial as the applied Family Law does not stipulates such an obligation.

- **Decision on Admissibility and Merits No. AP 68/07 of 8 September 2009, paragraph 25, published in the *Official Gazette of Bosnia and Herzegovina*, 20/10; the procedure for establishing paternity, the DNA paternity testing, there has been no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

The Constitutional Court has found in the present case that the appellant presented the facts before the courts from which it could be presumed that there was discrimination by the defendant in the application of Article 143 of the Labour Law and, accordingly, the courts in the present case should have placed the burden of proof on the defendant. However, the courts dismissed the appellant's civil action by which she requested the courts to establish that she was discriminated against by the defendant in the application of Article 143 of the Labour Law; the courts reasoned that the appellant did not make it possible for the court to form its opinion on the facts presented to the court by the appellant. In view of the above, the Constitutional Court holds that the ordinary courts failed to safeguard the procedural rights of the appellant so that the appellant had to bear an excessive burden of proving the facts, which were at the disposal of the defendant

only and which should not have been proved by the appellant, but which the defendant should have contested them.

- **Decision on Admissibility and Merits No. AP 1093/07 of 25 September 2009, paragraph 29, published in the *Official Gazette of Bosnia and Herzegovina*, 23/10; labor dispute, a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

Taking into account the provision of Article 143(1) and (2) of the Labour Law, the Constitutional Court concludes that the ordinary courts arbitrarily applied substantive law when they dismissed the appellant's claim, i.e. when they confirmed the appellant's status of lay off employee as of 31 January 2000, notably when the Cantonal Court and Supreme Court established that the right to claim compensation for the layoff status for the period from 1992 to 2000 was barred by the statute of limitations, which constituted a violation of the appellant's constitutional right to a fair trial under Article II(3)(e) of the Constitution of BiH and Article 6(1) of the European Convention.

- **Decision on Admissibility and Merits No. AP 1981/07 of 14 October 2009, paragraph 30, published in the *Official Gazette of Bosnia and Herzegovina*, 99/09; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The view of the County Court that the time limit for filing a motion for counter-enforcement with regards to an invoice started to run from the date of the decision on the revision-appeal to cancel a legally binding document delivered to the lawyer who represented the appellants in the proceedings concluded with a legally binding decision, regardless of the fact that the appellants filed a revision-appeal personally, which was the reason why their motion for counter-enforcement was rejected as untimely and which was the reason why the merits of their motion for exercising their rights was not considered, amounted to a violation of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention.

- **Decision on Admissibility and Merits No. AP 2229/07 of 17 December 2009, paragraph 35, published in the *Official Gazette of Bosnia and Herzegovina*, 23/10; procedure for enforcement/counter-enforcement, a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court concludes that the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention was violated when the Supreme Court failed to give reasons as to whether unlawful evidence and to which extent, which should have been excluded in accordance with the positive law provisions, affected the lawfulness and correctness of the judgment.

- **Decision on Admissibility and Merits No. AP 3225/07 of 14 April 2010, paragraph 41, published in the *Official Gazette of Bosnia and Herzegovina*, 95/10; unlawful evidence, a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

In addition to the fact that the Supreme Court created an inconsistent case-law in the same factual and legal circumstances without giving any objective reason, the Constitutional

Court holds that it does not follow from the judgment of the Supreme Court that the Supreme Court, when interpreting and applying the provision of Article 143 of the Labour Law, dealt with the issue to explain the *ratio legis* of Article 143 of the Labour Law. In deciding the present case, the Supreme Court manifestly failed to explain why the aim of the legislator, when enacting the provision of Article 143 of the Labour Law, was to resolve the employment status of laid off employees and those whose employment status was not regulated only in respect of the period starting from the moment they addressed the employer until 5 May 2000 when the labour relationship of all laid off employees and those regarded as laid off employees was terminated *ex lege* if the employer did not invite them to work until that date. Furthermore, the Supreme Court, if its interpretation of the provision of Article 143 of the Labour Law was valid, did not give reasons for considering the date of 31 December 1991 as the relevant date, which the legislator enacted as the date when the persons had an employment relationship. Furthermore, the Supreme Court failed to explain the significance of Article 143 of the Labour Law to the employees who lost *de facto* their job after 31 December 1991 or those whose employment status was not regulated after that date due to the war conflict in both cases. Next, if Article 143 of the Labour Law could be interpreted in the manner in which the Supreme Court did it in the present case, the Supreme Court did not explain how the years of services would be bridged in order for those employees to exercise the right of retirement and not to have breaks of seven or eight years in the periods of service.

- **Decision on Admissibility and Merits No. AP 2270/07 of 14 April 2010, paragraph 25, published in the *Official Gazette of Bosnia and Herzegovina*, 67/10; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court cannot accept the ordinary court's arguments that the enforcement was not possible because of the organizational schema of the party subject to the enforcement, which does not provide a work position for the appellant. It is true that the organizational scheme does not provide a position of manager, which the appellant held until the unlawful dismissal. However, this means in no way that the ordinary court could conclude that the enforcement was not possible because of the organizational schema of the party subject to the enforcement and suspend the enforcement procedure, all the more so since the appellant's employment relationship with the party subject to the enforcement was terminated unlawfully, as established in the legally binding judgment, the enforcement of which was sought by the appellant. Thus, the Constitutional Court holds that it follows from the challenged decisions that the ordinary courts arbitrarily applied the provision of Article 63(3) of the Law on Enforcement Proceedings when they suspended the procedure for enforcement of the legally binding decision.

- **Decision on Admissibility and Merits No. AP 2968/07 of 29 June 2010, paragraph 36, published in the *Official Gazette of Bosnia and Herzegovina*, 95/10; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court holds that in the present case the ordinary courts established, pursuant to the relevant legal provisions, that the appellants' claim was ill-founded,

whereby they provided in the reasoning of their respective decisions clear and detailed explanations for such a conclusion which, in the opinion of the Constitutional Court, do not indicate any arbitrariness in decision-making. Within the context of the aforementioned, the Constitutional Court observes that the ordinary courts provided the assessment of their presented evidence in their respective decisions, including both evidence proposed by the appellants and evidence put forward by the defendant. Namely, the courts undisputedly established that during the period relevant for the application of Article 143 of the Labor Law the defendant did not employ other employees with the same qualifications as that of the appellants. This significantly distinguishes this case from the case no. *AP 1093/07*, as the defendant proved that the challenged decisions were not adopted in contravention of the provisions of Article 143 of the Labor Law. It follows from the aforementioned that the assessment of evidence in the challenged decision was neither manifestly arbitrary, nor was the evidentiary proceedings abused to the detriment of the appellants within the meaning of the right to a fair trial, nor was any sort of burden imposed upon the appellants, during the proceedings, on in terms of proving their respective allegations.

- **Decision on Admissibility and Merits No. AP 2074/07 of 24 September 2010, paragraph 36, published in the *Official Gazette of Bosnia and Herzegovina*, 48/11; establishment of employment relationship;**
- **Decision on Admissibility and Merits No. AP 1589/08 of 9 February 2011, published in the *Official Gazette of Bosnia and Herzegovina*, 48/11; there has been no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

The Constitutional Court concludes that there has been violation of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 paragraph 1 of the European Convention, since the Cantonal Court, at the time when dealing with the case, disregarded the strict provision of the Law on Central Bank of Bosnia and Herzegovina, which provides for the exclusive application of the convertible mark as the only legal tender in Bosnia and Herzegovina. The Cantonal Court thus did not respect the principle of fairness as the basic standard in deciding the compensation for damages due to death of a close family member.

- **Decision on Admissibility and Merits No. AP 3627/07 of 25 September 2010, paragraph 42, published in the *Official Gazette of Bosnia and Herzegovina*, 26/11; compensation for damages, denomination, conversion, a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court concludes that the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention was violated when the ordinary courts arbitrarily applied the provisions of substantive law, which determine the issue of statute of limitations on the execution of the imposed sanction, as they proceeded with the execution of the sanction although it was barred by the statute of limitations.

- **Decision on Admissibility and Merits No. AP 2402/08 of 25 March 2011, paragraph 31, published in the *Official Gazette of Bosnia and Herzegovina*, 81/11; criminal**

procedure, a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH

The Constitutional Court holds that the fact that the appeal was filed by the prosecutor who was not in charge of responsibility for the indictment, given the relevant provisions of the Criminal Procedure Code of the Brčko District and contrary to the appellants' allegations, does not raise in itself the issue of fairness of the proceedings within the meaning of Article 6(1) of the European Convention. Given the foregoing, the Constitutional Court holds that the appellants' complaints of the violation of Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention are manifestly (*prima facie*) ill-founded.

- **Decision on Admissibility and Merits No. AP 3808/08 of 12 May 2011, paragraph 19;** *there has been no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH*

Bearing in mind that the ordinary courts, based on the evidence presented during the proceedings, established that the appellant had committed the criminal offence on 28 February 1998 and that such finding of facts of ordinary courts does not seem to be arbitrary, neither is arbitrary the reasoning of the courts given for such finding of facts, the Constitutional Court considers that there is no arbitrariness with respect to application of the provisions of substantive law when it comes to establishing the time of the commission of criminal offence and determination of the statute of limitation regarding criminal prosecution since 28 February 1998 was taken as a time of the commission of criminal offence and not 3 January 1998 as it was alleged by the appellant. Considering that 28 February 1998 was established as the time of commission of criminal offense by S.B. (perpetrator of the main offense), the actions of the helper, in the instant case the appellant, regardless of the fact whether they were done earlier, in terms of the time of execution, they are determined by the time of execution of the main criminal offense. Namely, the Constitutional Court considers that the Cantonal Court and Supreme Court gave sufficient and clear reasoning with regards to the established state of facts and application of the provisions of positive legal regulations. In other words, it does not follow from such reasoning that there were circumstances excluding the criminal prosecution and, particularly, the Court points out that the statute of limitation did not commence at the time when the judgment of the Supreme Court was rendered.

- **Decision on Admissibility and Merits No. AP 806/08 of 23 September 2011, paragraph 44;** *initiation of criminal proceedings barred by the statute of limitations; there has been no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH*

The Constitutional Court holds that the Supreme Court applied the relevant provisions of the law in a manifestly arbitrary manner by concluding that the appellant's housing right ceased to exist within the meaning of Article 16(2) of the Law on the Cessation of Application. Furthermore, the Constitutional Court holds that the Supreme Court, in taking its decision, failed to take into account the relevant provisions of the Family Law (which regulates the property relationships between the spouses) and the provisions of the Law on Housing Relations (regulating the determination of the holder of the housing

right after divorce). Thus, the Constitutional Court holds that the challenged decision of the Supreme Court violated the appellant's right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention.

- **Decision on Admissibility and Merits No. AP 2697/08 of 12 October 2011, paragraph 39, published in the *Official Gazette of Bosnia and Herzegovina*, 99/11; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court holds that the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention was violated when the Supreme Court applied the provisions of the Law on Inheritance and Law on Obligations by determining that the agreement on life care was null although it did not determine any prescribed reason for finding nullity.

- **Decision on Admissibility and Merits No. AP 3650/08 of 12 October 2011, paragraph 31; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina was violated when the Supreme Court, in deciding on the revision-appeal in a proceeding to determine the issue whether lawful rulings were taken in the disciplinary procedure, applied the positive regulations in a manifestly arbitrary manner, i.e. applied the provisions of Article 78(2) regulating the statute of limitations on disciplinary procedure instead of the provision of Article 81(4) of the Law on Labor Relationships, which provides for a time limit of 30 days within which disciplinary proceedings must be concluded.

- **Decision on Admissibility and Merits No. AP 2443/08 of 25 October 2011, paragraph 41, published in the *Official Gazette of Bosnia and Herzegovina*, 104/11; labor dispute, violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

The Constitutional Court concludes that there has been a violation of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention, given that the ordinary courts used the discovered narcotics as evidence in the criminal proceedings. More precisely, that was *de facto* the only direct evidence *i.e.* the incriminating evidence against the appellant, which was obtained through the arbitrary application of Article 120(3) of the Criminal Procedure Code of the RS. In the opinion of the Constitutional Court, the evidence (narcotics) in question does not have the necessary quality for the courts to base their decisions on it, as done in the instant case. Therefore, the decisions made in such a manner are arbitrary and in violation of the appellant's right to a fair trial. In addition, the Constitutional Court concludes that there has been a violation of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention, since it is undisputed that the competent prosecutor in the instant case did not carry out the opening and inspection of items temporarily seized from the appellant, as required by the imperative provisions of paragraphs 1 and 2 of Article 135 of the Criminal Procedure Code of the RS.

- **Decision on Admissibility and Merits No. AP 291/08 of 19 November 2011, paragraph 55;** *the quality of evidence, a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established*

As the Cantonal Court did not rectify the omission of the Municipal Court and did not decide on the claim as a whole, the Constitutional Court holds that the Cantonal Court arbitrarily applied the positive regulations in the challenged judgment, both those related to the application of substantive law (Law on Obligations and Law on Amendments to the Law on the Determination and Arrangements for Settlement of Internal Obligations of the Federation of Bosnia and Herzegovina) and procedural provisions (Articles 2 and 176 of the Law on Obligations), which oblige it to deal with the claim as specified, i.e. to decide on the main claim and auxiliary claims, which was omitted by the court in the present case and which amounted to the violation of the appellant's constitutional right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention.

- **Decision on Admissibility and Merits No. AP 846/09 of 23 February 2012, paragraph 42;** *employment-related rights, interests, a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established*

The Constitutional Court finds that in the present case the Appellate Panel of the Court of BiH failed to apply the provision of Article 3(a) of the Law on the Cessation of Application of the Law on Abandoned Apartments that regulates the issue of repossession of the so-called military apartments of those holders of housing rights that had the status of members of either armed forces out of the territory of Bosnia and Herzegovina after 19 May 1992. The Constitutional Court reiterates that the issue of the mentioned provisions was not even raised in the *Đokić* judgment rendered by the European Court. In particular, the essence of the *Đokić* judgment was to provide for the claimant an appropriate compensation for deprivation of the right of repossession of the apartment (restitution). The Constitutional Court reiterates the view it expressed in Decision no. *U 15/11*, which reads that *the Constitutional Court notes that under the system of the European Convention, it is for the national authorities to make the initial assessment both of the existence of a problem of public concern warranting measures of deprivation of property and of the remedial action to be taken. Thus, under the system of the European Convention, the national authorities accordingly enjoy a wide margin of appreciation in determining what is in the public interest while resolving complex issues such as the issue of restitution of the so-called military apartments. The Constitutional Court holds that Article 3(a) of the Law on Cessation of Application of the Law on Abandoned Apartments is the result of such margin of appreciation and it has established in its decision no. U 83/03 that it is in accordance with Article 1 of Protocol No. 1 to the European Convention as it strikes a fair balance between the public interest and holders of occupancy right.*

- **Decision on Admissibility and Merits No. AP 1527/11 of 15 May 2012, paragraph 51, published in the Official Gazette of Bosnia and Herzegovina, 56/12;** *the JNA (military) apartments, there has been no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH*

The Constitutional Court concludes that the appellant's right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention was not violated when the second-instance court modified the first-instance decision and dismissed the appellant's claim for payment of meal allowance for the period after the 2000 General Collective Agreement had entered into force (8 September 2005) in accordance with the provisions of the Industry-Wide Collective Agreement as the Tuzla Canton did not conclude the 2000 Industry-Wide Collective Agreement nor did it adhere to it (*the Constitutional Court's Decision No. AP 1315/06*), and the legal gap which existed in respect of the determination of the employment-related entitlements (salaries, vacation allowance, meal allowance) for the administrative and judicial employees of the Tuzla Canton was filled in when the General Collective Agreement entered into force on 8 September 2005, whereby the amounts of the mentioned entitlements were determined.

- **Decision on Admissibility and Merits No. AP 3417/08 of 15 May 2012, para 71; published in the *Official Gazette of Bosnia and Herzegovina*, 44/12; the rights related to the employment, application of the Wide-Industry Collective Agreement and General Collective Agreement; there has been no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

The Constitutional Court concludes that the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention was violated when the relevant courts arbitrarily applied the provisions of Articles 12 and 54 of the Civil Procedure Code in the appellant's case by giving the interpretation that the determination of the existence of common-law marriage was to be regarded as the determination of a fact, not a legal relationship, as none of the law provisions indicated such an interpretation, but, quite the contrary, the case related to a legal relationship under the provisions of Articles 2, 213, 230 through 230, 263 and 380 of the Family Law

- **Decision on Admissibility and Merits No. AP 2900/09 of 13 June 2012, para 35; published in the *Official Gazette of Bosnia and Herzegovina*, 64/12; the procedure for determination of common-law marriage; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court concludes that the appellant's right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention was violated when the Cantonal Court arbitrarily applied the Law on Minor Offences, i.e. when the Cantonal Court arbitrarily applied positive regulations as the minor offence proceedings were barred by the statute of limitations.

- **Decision on Admissibility and Merits No. AP 3317/09 of 19 July 2012, para 32; published in the *Official Gazette of Bosnia and Herzegovina*, 79/12;**
- **Decision on Admissibility and Merits No. AP 3672/09 of 13 November 2012; published in the *Official Gazette of Bosnia and Herzegovina*, 101/12; minor offence proceedings, statute of limitations; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

There was no violation of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and the right to property under Article II(3)(k) of the

Constitution of Bosnia and Herzegovina as no arbitrary application of the Law on Housing Relations and the Law on Sale of Apartments was established, on the basis of which the ordinary courts granted the claim of the first plaintiff and the second plaintiff and dismissed the appellant's counterclaim as there were no legal conditions to establish the nullity of the ruling on allocation of the disputed apartment, and the ordinary courts gave a reasoning concerning the essential issue in this dispute.

- **Decision on Admissibility and Merits No. AP 2283/09 of 28 September 2012, para 43, published in the *Official Gazette of Bosnia and Herzegovina*, 93/12; there has been no Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

The Constitutional Court concludes that Article V of the Law on the Real Property Transfer Tax, which was applicable at the time of issuing the first-instance ruling, wherein the tax basis on real property - the business premises in question - was determined and the tax was calculated (29 May 2008), does not provide for the exemption from real property transfer tax in the case of „the first sale of newly constructed business premises”, but it stipulates that the real property transfer tax is not to be paid in the case of „the first sale of a newly constructed not inhabited residential building or a newly constructed apartment as a special part of the building”. The Constitutional Court notes that Article 6(1)(d) of the „new” Law on the Real Property Transfer Tax of the Zenica-Doboj Canton, which entered into force on 8 April 2009, stipulates that the real property transfer tax is not to be paid in the case of „the first sale of a newly constructed not inhabited residential building or a newly constructed apartment as a special part of the building or a newly constructed business building or newly constructed business premises as a special part of the building. Thus, the purchase of the business premises in question was not prescribed by the provisions on exemption from tax under Article 5(1) through (10) of the Law on the Real Property Transfer Tax, which was applied to the present case and which expressly prescribes the cases of exemption from the payment of real property transfer tax. According to the reasons given in the challenged judgment, the case does not relate to double taxation imposed on the appellant as the basis for the imposition of the VAT and the real property transfer tax is different and the real property transfer tax in the Zenica-Doboj Canton does not provide for exemption from that tax in case of the obligation of paying the VAT. Furthermore, the provisions of the Law on the VAT exclude in no way the application of the Real Property Transfer Tax in the Zenica-Doboj Canton.

- **Decision on Admissibility No. AP 3247/09 of 23 November 2012, paragraph 20; Decision on Admissibility No. AP 3242/09 of 22 March 2013, paragraph 15; alleged double taxation, appeal manifestly (*prima facie*) ill-founded**

The Constitutional Court concludes that the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention was violated when the ordinary courts arbitrarily applied the provisions of the Civil Procedures Code related to the compensation for the costs of the civil procedure in a situation in which the appellant withdrew the lawsuit when the defendant fulfilled his obligation after the lawsuit had been brought, which he brought because of the defendant's delay. In particular, the ordinary courts arbitrarily applied the provisions of the Civil

Procedure Code regulating the issue of compensation for the costs of the civil procedure when the plaintiff did not succeed in the case as a whole and took a decision so as to consider the beginning of the dispute as a relevant date, and not the beginning of the civil procedure, instead of applying the provisions of Article 390(1) of the Civil Procedure Code, which explicitly regulates the situation wherein the plaintiff who withdraws a lawsuit is obliged to compensate the other party's costs of the civil procedure, unless the lawsuit was withdrawn after the defendant had fulfilled the obligation stated in the claim.

- **Decision on Admissibility and Merits No. AP 2405/09 of 13 February 2013, paragraph 39;** *the costs of the procedure, a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established*

The Constitutional Court concludes that the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention was violated when the ordinary courts arbitrarily applied the procedural provisions and found the appellant guilty for a criminal offence on the basis of evidence gathered during a special investigative action – a secret informer – which could not be ordered according to the law in respect of the specific criminal offence.

- **Decision on Admissibility and Merits No. AP 1158/10 of 28 February 2013, paragraph 55, published in the *Official Gazette of Bosnia and Herzegovina*, 27/13;** *special investigative actions - informer; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established*

The Constitutional Court concludes that the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention was violated when the ordinary courts, in deciding on a dispute which arose from a standard contract, applied the provisions of the General Terms and Conditions forming the constituent part of the Contract, and thus, disregarded the relevant provisions of substantive law, the application of which was neither restricted nor excluded under the General Terms and Conditions and which were crucial for the resolution of the dispute concerned.

- **Decision on Admissibility and Merits No. AP 1336/10 of 25 April 2013, paragraph 29, published in the *Official Gazette of Bosnia and Herzegovina*, 41/13;** *claims based on delivered electric power; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established*

The Constitutional Court holds that the County Court erroneously applied the applicable Law on Minor Offences when it terminated minor offence proceedings against a responsible person. In particular, according to the transitional provisions of the applicable Law on Minor Offences, the former Law on Minor Offences was applicable to the proceedings concerned (which the courts actually applied in the present case). The provisions of Article 68(3) of that Law stipulate that the statute of limitations on the institution and conduct of minor offence proceedings against responsible persons is assessed according to the statute of limitations on the institution of the minor offence proceedings against legal persons, if a sanction is prescribed for the same minor offence committed by the legal person. However, given the circumstances in the present case, the Court holds that the mentioned fact (the termination of the minor offence proceedings

against the responsible person) cannot in itself constitute the violation of the appellant's constitutional rights as the Constitutional Court did not find any arbitrariness in determination of facts and application of substantive law in the decisions rendered by the ordinary court which had applied the provisions of the Law on Trade and Law on Minor Offences and found that the minor offence proceedings against the appellant were barred by the statute of limitations.

- **Decision on Admissibility and Merits No. AP 1315/10 of 12 June 2013, paragraph 41; misdemeanor proceedings, there has been no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

The Constitutional Court concludes that right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention was violated when the Appellate Panel of the Court of BiH, which decided on an appeal filed by the appellant's defence council, modified the decision to the detriment of the appellant by affording the procedural position to the appellant, which he had had before the request had been filed, which amounted to the violation of the procedural provisions, since it examined *ex officio* the challenged decision in the part which was not challenged in the appeal. Therefore, it violated the mechanism of prohibition of modification of decision to a worse one (*reformatio in peius*).

- **Decision on Admissibility and Merits No. AP 4533/12 of 12 June 2013, paragraph 34, published in the *Official Gazette of Bosnia and Herzegovina*, 58/13; replacement of a prison sentence with a fine; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court holds that the Criminal Procedure Code from 1998 did not prescribe the time limit for taking a decision wherein the amount given on the basis of the bail, which failed, was to be paid to the budget of the Canton. In this connection, the Constitutional Court notes that the failure of a bail entails the termination of all rights of the person who gave a value cash on the basis of the bail. The fact entailing the failure of the bail must occur before the execution of the imposed prison sanction is barred by the statute of limitations. Otherwise, given the fact that the security given on the basis of the bail is valid until the beginning of serving the prison sentence, when such a possibility does not exist any longer, the bail has no purpose any longer so that it must be given back to the person who gave it. However, if the bail fails before the expiry of the period of limitation on the execution of the imposed sanction, the fact that the execution of the imposed sanction is barred by the statute of limitations cannot affect the right of the person who gave the value cash on the basis of the bail to request the return thereof. In this connection, the court's decision imposing the payment of the value cash on the basis of the failed bail to the budget of the Canton and the time limit within which such a decision is to be taken are not relevant, i.e. whether such a decision is taken after the period of limitation on the execution of the imposed prison sentence expired. The Constitutional Court concludes that the appellant's allegations that the ordinary courts arbitrarily applied law and, thus, violated the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention are unfounded.

- **Decision on Admissibility and Merits No. AP 1679/10 of 12 June 2013, paragraphs 37 and 38, published in the *Official Gazette of Bosnia and Herzegovina*, 57/13; criminal proceedings wherein it was decided that the appellant did not have the right of return of a cash value based on the bail as the appellant obviously avoided appearing before the court; there has been no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

The Constitutional Court concludes that the appellant's right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina was violated as the court, when taking its decision, applied the relevant provisions of the Law on the Enforcement Procedures in a manifestly arbitrary manner by issuing a ruling to impose on the enforcee an obligation other than that determined in the document on enforcement.

- **Decision on Admissibility and Merits No. AP 3144/13 of 17 September 2013, para 35, published in the *Official Gazette of Bosnia and Herzegovina*, 80/13; enforcement procedure, a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court concludes that the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention was violated when the ordinary courts in the present case established the facts in a manifestly arbitrary manner and arbitrarily applied substantive law to such established facts by concluding that in the circumstances of the present case the criminal prosecution was not barred by the statute of limitations, which constituted a legal obstacle to the institution and conduct of the criminal proceedings, as the limitation period was interrupted by a procedural action, which actually did not meet the criteria prescribed by the law and which was to be taken with the purpose of criminal prosecution of committed criminal offence.

- **Decision on Admissibility and Merits No. AP 3105/12 of 22 October 2013, paragraph 74, published in the *Official Gazette of Bosnia and Herzegovina*, 92/13; criminal prosecution barred by the statute of limitations, a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court concludes that right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention was violated when the ordinary courts dismissed the appellant's claim for compensation of damages caused by the failure to conclude an agreement as the appellant did not request in writing the defendant to conclude the agreement in accordance with the provisions of Article 183 of the Law on Obligations, despite the fact that the first-instance court found that the appellant sent a letter to the defendant in order to inform the defendant of the sustained damage and the amount thereof because the agreement was not concluded.

- **Decision on Admissibility and Merits No. AP 2941/10 of 22 October 2013, paragraph 29, published in the *Official Gazette of Bosnia and Herzegovina*, 89/13; compensation for damages sustained due to the failure to engage the appellant for a job afforded to him through tender procedure; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court concludes that right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1), (2) and (3)(d) of the European Convention was not violated when the ordinary courts, when establishing the facts and presenting evidence, notably the evidence gathered during a special investigative action – secret informer – did not arbitrarily apply the procedural provisions.

- **Decision on Admissibility and Merits No. AP 5746/10 of 15 January 2014, paragraph 48, published in the *Official Gazette of Bosnia and Herzegovina*, 19/14; criminal proceedings, informer; there has been no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

The Constitutional Court concludes that right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention was violated as it follows from the reasons for the judgment that the County Court arbitrarily applied the provisions of Article 6 of the Law on Concessions (*Official Gazette of the RS* No. 25/02 and 91/06) and Article 3(2) and Article 43(3) of the Law on the Government of the RS.

- **Decision on Admissibility and Merits No. AP 1761/10 of 27 September 2013, paragraph 53, published in the *Official Gazette of Bosnia and Herzegovina*, 84/13;**
- **Decision on Admissibility and Merits No. AP 1757/10 of 23 January 2014, paragraph 30, published in the *Official Gazette of Bosnia and Herzegovina*, 26/14; a decision to grant a concession quashed, a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court concludes that right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina was violated with regards to the application of procedural law as the ordinary courts, in the contentious proceedings related to the compensation for difference in salaries, exceeded the limits of its subject-matter jurisdiction and dealt with the compatibility between the Law on Income Tax and the Constitution of the FBiH, which actually falls under the jurisdiction of the Constitutional Court of the FBiH.

- **Decision on Admissibility and Merits No. AP 2840/13 of 12 February 2014, paragraph 37, published in the *Official Gazette of Bosnia and Herzegovina*, 17/14; claims of the plaintiffs/judges of the Cantonal Court for compensation of difference in paid reduced salaries calculated after the adoption of the Law on Income Tax and the salaries paid before the adoption of that Law to the plaintiffs; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court concludes that right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention was violated when the Cantonal Court, in taking its decision, arbitrarily applied the provision of Article IV(a) of the Decision on Amendments to the Decision on the Temporary Regulation of Sale of Apartments and Article 5 of the Law on the Cessation of Application of the Law on Abandoned Apartments.

- **Decision on Admissibility and Merits No. AP 5595/10 of 12 February 2014, paragraph 34, published in the *Official Gazette of Bosnia and Herzegovina*, 17/14;**

determination of the right to conclude an agreement on the use of apartment, a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH) established.

As Article 5 of the Law on Salaries prescribes each year of service as a criterion for exercising the right to the years of service allowance when this regulation or any other regulation does not prescribe that the notion of years of service relates only to the years of service realized in BiH or years of service registered into employment record, or that the years of service to be recognized as the length of service for retirement in BiH or another country cannot be considered as a length of service based on which the length of service allowance is payable, the Constitutional Court holds that Cantonal Court arbitrarily interpreted and applied substantive law by concluding that the appellant did not have the right under Article 5 of the Law on Salaries as the case related to the length of service which was not realized in BiH, i.e. the length of service to be recognized as the length of service for retirement.

- **Decision on Admissibility and Merits No. AP 4771/13 of 12 March 2014, paragraph 46, published in the *Official Gazette of Bosnia and Herzegovina*, 30/14;**
- **Decision on Admissibility and Merits No. AP 1623/13 of 8 May 2014, published in the *Official Gazette of Bosnia and Herzegovina*, 46/14; determination of the amount of years of service allowance, a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

In the opinion of the Constitutional Court, the reasoning offered by the Supreme Court regarding the application of the provision of Article 377 of the Law on Obligations is not indicative of any arbitrariness whatsoever, since the provision of Article 377 of the Law on Obligations may be applied solely to the perpetrator of a criminal offense, and not to a third person who is held responsible for the damage instead of the factual perpetrator of a criminal offense. As a result, only the provision of Article 376 of the Law on Obligations may be applied to the third person. Also, the Constitutional Court observes that the Supreme Court took a stance that conditions have not been met in the present case to establish in the respective civil procedure whether the damage was caused by actions containing elements of a criminal offense, for which, in the opinion of the Constitutional Court, the Supreme Court provided clear and precise reasons which are not indicative of arbitrariness in the application of the substantive law. In addition, the Constitutional Court observes that the appellants in the respective proceedings failed to prove that there existed a legally binding judgment of a criminal court establishing that the members of the armed forces of Republika Srpska had committed a criminal offense against humanity or international law, during perpetration of which the appellants' close relatives had been deprived of life, which judgment would have been binding on a civil court within the meaning of the provision of Article 12 of the Law on Civil Procedure.

Therefore, taking into account the circumstances of the present case as well as the case-law of the European Court in the case of *Baničević*, the Constitutional Court finds that there was nothing in the present case preventing the appellants from filing their civil suit for damages within the time limit referred to in the provision of Article 376(1) and (2) of the Law on Obligations. As a result, the appellants, despite having a lawyer, had put

themselves in a situation facing a risk of the expiry of the statute of limitations on their civil suit. The Constitutional Court took into account that it was not possible to apply the provision of Article 377 of the Law on Obligations in the present case, since the time limits referred to in the mentioned provision apply to the perpetrator of a criminal offense and not to third persons who may be possibly responsible for his/her actions. Further, there was no basis to establish in a civil proceeding the damage caused to the appellants through the perpetration of a criminal offense. Therefore, in the opinion of the Constitutional Court, concerning the present case and applying the statutory time limits for the statute of limitations, it cannot be said that the very statutory time limits for the statute of limitations, or the manner in which they had been applied in this case, violated the very essence of the appellants' right to a fair trial.

- **Decision on Admissibility and Merits No. AP 4128/10 of 28 March 2014, paragraphs 43 and 44, published in the *Official Gazette of Bosnia and Herzegovina*, 35/14; claim for pecuniary and non-pecuniary compensation for damage dismissed upon the defendants' objection that the claim concerned was barred by the statute of limitations; there has been no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

The Constitutional Court holds that the ordinary courts' findings that the plaintiff (Health Insurance Fund of the RS) could file a claim for compensation for damages only against the appellant, despite the fact that an automobile liability insurance was concluded in compliance with the obligation under the law, do not appear arbitrary and erroneous in terms of application of law, which was alleged by the appellant.

- **Decision on Admissibility and Merits No. AP 2684/10 of 28 March 2014, paragraph 36, published in the *Official Gazette of Bosnia and Herzegovina*, 40/14; automobile liability insurance, claim of the Health Insurance Fund of the RS for compensation for damages against the appellant who caused injures to an insured person in a car accident; there has been no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

The Constitutional Court concludes that right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention was not violated as there was nothing in the circumstances of the present case to conclude that the ordinary courts arbitrarily interpreted and applied substantive law when they concluded that the defendant's objection concerning the statute of limitations was founded, which was the reason why they dismissed as unfounded the request of the appellant who did not present any evidence to prove that she was unable to avail herself of the available legal remedies in order to interrupt the period of limitation.

- **Decision on Admissibility and Merits No. AP 1526/10 of 10 April 2011, paragraph 39, published in the *Official Gazette of Bosnia and Herzegovina*, 40/14; statute of limitations, a war is not an insurmountable obstacle to the court protection, i.e. to bring a lawsuit, there has been no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH)**

The Constitutional Court notes that it was determined in the legally binding judgment of 3 September 1992 that the real property in question constituted joint owned property

of the appellant and the second defendant and that the appellant was entitled to a half of that property within the meaning of Article 252 of the Family Law. Furthermore, the Constitutional Court notes that it follows from the facts established by the ordinary courts that the procedure for division of joint owned property of the appellant and the second defendant as spouses is pending. The Constitutional Court notes that the allegations of the Cantonal Court, from the aspect of the application of substantive law and its reference to the provision of Article 460 of the Law on Obligations, appear to be arbitrary, all the more so since the property relationships of spouses are regulated by the provisions of the Family Law, which is a *lex specialis* comparing to all other regulations governing certain situations between spouses (*mutatis mutandis*, Constitutional Court, Decision on Admissibility and Merits no. AP 2697/08 of 12 October 2011, available at the web page of the Constitutional Court www.ustavnisud.ba). Therefore, the Constitutional Court holds that the Cantonal Court arbitrarily applied the relevant provisions of the Law on Obligations and failed to take into account the provisions of the Family Law as a *lex specialis* in the present case by concluding that the appellant as a third person was not authorized – did not have the right of action to request the cancellation of the purchase and sales contract concluded with the defendant within the meaning of the provisions of Article 460 of the Law on Obligations, although she possibly claimed the ownership right of a sold thing.

- **Decision on Admissibility and Merits No. AP 3948/10 of 10 April 2014, paragraph 25, published in the *Official Gazette of Bosnia and Herzegovina*, 43/14; matrimonial property, cancellation of the sales and purchase contract, a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court concludes that the right a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention and 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 were not violated as the ordinary courts, when deciding on the appellant's lawsuit, acted in accordance with the relevant provisions of the Civil Procedure Code by declining competence and rejecting the lawsuit, and by giving clear and detained reasons for considering that the appellant could claim his right by filing a request to initiate administrative proceedings, not ordinary court proceedings, in accordance with the law arrangements and obligations of prescribed by the Civil Procedure Code.

- **Decision on Admissibility and Merits No. AP 1245/11 of 8 May 2014, paragraph 23, published in the *Official Gazette of Bosnia and Herzegovina*, 46/14; refund of prepaid tax, there has been no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

The Constitutional Court concludes that the right a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention was not violated as there was nothing in the present case to lead to the conclusion that the facts were incompletely and erroneously established and that the ordinary courts arbitrarily or erroneously applied substantive law when they concluded that the appellant's claim for compensation for non-pecuniary damage sustained by to the destroyed possibility of

developing and progressing was ill-founded as the appellant failed to present evidence to prove that he would have actually found an employment in the normal course of event or special circumstances.

- **Decision on Admissibility and Merits No. AP 2303/11 of 8 May 2014, paragraph 41, published in the *Official Gazette of Bosnia and Herzegovina*, 56/14; compensation for pecuniary damage due to the destroyed possibility of developing and progressing; there has been no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

The right a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention was violated when the ordinary courts based the judgment of conviction on the verbal order, which did not satisfy the requirements under Article 120(3) of the Criminal Procedure Code of the Republika Srpska, in respect of which the appellant's grandfather surrendered the narcotic which was used as a piece of evidence and which was the basis for rendering the judgment of conviction of the appellant, together with the pieces of evidence obtained through the surveillance of the appellant's telecommunications as they had recourse to „incidental findings”, whereas the criminal offence in question did not fall under the category of the criminal offences referred to in Article 227 of the Criminal Procedure Code of the Republika Srpska so that they could not be used as evidence/information gathered by taking special investigative actions.

- **Decision on Admissibility and Merits No. AP 2400/11 of 8 May 2014, paragraph 39, published in the *Official Gazette of Bosnia and Herzegovina*, 79/14; special investigative actions, unlawful evidence, a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution established**

The Constitutional Court concludes that the Supreme Court arbitrarily applied substantive law, i.e. Article 6(2) of the Law on the Protection against Defamation when it dismissed the appellant's claim by finding that the defendant did not have standing to be sued, since the statement he made was published in newspapers, which constituted a violation of the appellant's right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention.

- **Decision on Admissibility and Merits No. AP 5582/10 of 29 May 2014, paragraph 43, published in the *Official Gazette of Bosnia and Herzegovina*, 61/14; standing to be sued, compensation for damages caused by defamation, a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution established**

The Constitutional Court notes that there are different theories in respect of the time constraints of the validity of constitutional court's decisions (*ex nunc* – from now on) or (*ex tunc* – from the outset) but that the Constitutional Court's task in the present case is not to choose one of those theories. Therefore, the Constitutional Court will take the view, in the context of positive law regulations, with regards to the Supreme Court's opinion on the validity of the decision of the Constitutional Court of the Federation of BiH. In this connection, the Constitutional Court considers as indisputable that the domestic regulations on the validity of laws and by-laws is bound by the date on which they are published in the official gazettes. In the present case, the Law on the Procedure

before the Constitutional Court is extremely clear. The provisions of Articles 40 and 41 of the aforementioned Law stipulate that laws or regulations, which the Constitutional Court of the Federation considers as unconstitutional, will not be applicable from the date when the judgment of the Constitutional Court is published in the Official Gazette of the Federation of BiH. Given the foregoing, the Constitutional Court holds that the Supreme Court's view that the decision of the Constitutional Court of the Federation does not have a retrospective effect cannot be considered arbitrary.

- **Decision on Admissibility and Merits No. AP 3519/11 of 4 July 2014, paragraph 56, published in the *Official Gazette of Bosnia and Herzegovina*, 71/14; *employment-related rights; collective agreement on the right and obligations of employers and employees in the field of health protection, time constraints in relation to the validity of court decisions***

The Constitutional Court notes that the Supreme Court emphasized that pre-contract agreements were not binding upon the Municipality as it was not a party to the agreement. It was noted that a contractual relationship between two persons did not mean that such a relationship was extended to the contractual relationship between one of those persons with a third person. In particular, the Supreme Court pointed to the provisions of Article 148 of the Law on Obligations. Those provisions prescribe that the contract creates rights and obligations of the contractual parties (para 1), that the contract has effects on the universal legal successor of the contractual parties, unless otherwise agreed or unless something else derives from the agreement itself (para 2) and that the contract may provide a right in favour of a third person (para 3). Given the fact that it was determined in the ordinary proceedings that the Municipality was not a contractual party to the pre-contract agreements in question, nor was a right in its favour established in those agreements, the Constitutional Court does not find that the Supreme Court arbitrarily applied substantive law when it dismissed the counter-claim filed by the appellant and her husband against the Municipality by referring to the provisions of Article 148 of the Law on Obligations. Taking into account the fact that the Supreme Court applied Article 148 of the Law on Obligations to the factual findings of the first-instance court and gave clear reasons for its decision, the Constitutional Court does not find anything which would indicate arbitrary conduct of the Supreme Court in applying the mentioned law provisions to the present case.

- **Decision on Admissibility and Merits No. AP 1942/11 of 17 July 2014, paragraph 56, published in the *Official Gazette of Bosnia and Herzegovina*, 71/14; *payment of debt - the amount of the purchase price which the appellants paid to the plaintiff based on the pre-contract agreements in question, there has been no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH***

The right a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention was not violated when the ordinary courts established that the pre-contract agreement and annex to the pre-contract agreement on the purchase of real property was null as it was not concluded in accordance with the provisions of Article 9 of the Law on Real Property Transfer and Article 45 of the Law on Obligations and as the courts obliged the appellant to return what he received to

the plaintiff based on such an agreement and as the lawsuit had been amended before the conclusion of the preliminary hearing in accordance with Article 57(1) of the Civil Procedure Code.

- **Decision on Admissibility and Merits No. AP 4161/11 of 17 July 2014, paragraph 35, published in the *Official Gazette of Bosnia and Herzegovina*, 71/14; return of the amount which was allegedly given on the basis of earnest payment; there has been no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

The Constitutional Court concludes that the appellant's right a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention was violated as the court, in taking its decision, arbitrarily applied the relevant provisions of the Law on Obligations that related to the conditions under which a guarantor was accountable for the fulfilment of the obligations instead of the main debtor and the scope of the obligations based on the guarantee in that case.

- **Decision on Admissibility and Merits No. AP 501/13 of 17 July 2014, paragraph 45, published in the *Official Gazette of Bosnia and Herzegovina*, 71/14; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court concludes that the appellant's right a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article II(3)(k) of the Constitution of Bosnia and Herzegovina and Article 1 of Protocol No. 1 to the European Convention was not violated when the ordinary courts, based on the facts established in the proceedings, which were not brought into question, took decisions to dismiss the appellant's claim for compensation for damages in accordance with the relevant provisions of the Law on Obligations on the Law on Privatization of Companies and the Law on Initial Balance Sheet of Companies and Banks.

- **Decision on Admissibility and Merits No. AP 1591/11 of 17 July 2014, paragraph 34, published in the *Official Gazette of Bosnia and Herzegovina*, 71/14; compensation for damages sustained by the purchase of shares; there has been no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

The Constitutional Court concludes that the challenged decision was in violation of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina when the appellate court applied the provisions of Article 377 of the Law on Obligations with regards to the appellant that was obliged to pay compensation for non-pecuniary damage based on the principle of the presumed responsibility, i.e. objective responsibility, within the meaning of the then provision of Article 180 of the Law on Obligations, which the second-instance court could not have applied given such circumstances, but only the provisions of Article 376 of the Law on Obligations.

- **Decision on Admissibility and Merits No. AP 3979/11 of 17 September 2014, paragraph 40, published in the *Official Gazette of Bosnia and Herzegovina*, 89/14; compensation for non-pecuniary damages according to the principle of presumed**

responsibility, objective responsibility; statute of limitations, a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established

The Constitutional Court concludes that the challenged judgments were in violation of the appellant's right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention in the context of application of substantive law related to the unlawful enrichment when the Higher Commercial Court and Supreme Court concluded that the appellant had collected the bill of exchange without legal basis and when they failed to take into account the changed circumstances which prevented the appellant from executing the agreement as a whole and the circumstances that the plaintiff gave written consent to the modification of the agreement in question in the part determining the price of individual works, thereby clearly expressing the will to extend the scope and authorization in respect of the bill of exchange to the unchanged terms and conditions of the agreement, which was a valid legal basis for the appellant to realize the collection of the bill of exchange, unlike the view of the ordinary courts which took the challenged decisions.

- **Decision on Admissibility and Merits No. AP 2628/13 of 25 September 2014, paragraph 55, published in the *Official Gazette of Bosnia and Herzegovina*, 89/14; collection of the bill of exchange without legal basis, a violation Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court concludes that there was a violation of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention when the ordinary courts arbitrarily applied substantive law in respect of the defendant's standing to be sued and the period of limitation on the appellant's claims in case of the so-called factual expropriation.

- **Decision on Admissibility and Merits No. AP 2986/11 of 18 November 2014, paragraph 37, published in the *Official Gazette of Bosnia and Herzegovina*, 99/14; expropriation de facto, standing to be sued, a violation Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court notes that the defendants did not present any evidence to prove their claims during the entire proceedings before the ordinary courts (despite the existence of material evidence providing that the things in question were seized), whereas the Supreme Court accepted their claims as proved regardless of the minutes on the seizure of the appellant's things by the defendants. As noted above, each party must present evidence in support of its claims. In support of his claims that the things were in possession of the defendants, the appellant presented the minutes on the seizure by the defendants, thus a document drafted by the defendants. Therefore, it is unclear what the appellant could have and should have further proved in such a situation, all the more so since the defendants only claimed that the things in question were not in their possession any more, and it followed from the minutes dated 3 February 1999 that the things were still in their possession. Given the unambiguous requirement prescribed by the Civil Procedure Code (Article 7 paragraph 2), according to which the court is not allowed to base its decision on the claim or objections raised by the parties during the proceedings on the facts the parties have not presented, and the fact that the parties, i.e.

the defendants did not present any evidence, except the claims that the appellant did not present evidence to prove that the things in question were not in their possession, regardless of the evidence to the contrary indicating that the things in question were in their possession, it follows that the challenged decision of the Supreme Court is based on the arbitrary application of law.

- **Decision on Admissibility and Merits No. AP 2276/11 of 9 December 2014, paragraph 44, published in the *Official Gazette of Bosnia and Herzegovina*, 101/14; civil procedure, burden of proof, a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court concludes that there was a violation of the right a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention as the ordinary courts, when taking their decisions to grant the objection regarding the lack of the standing to be sued on the part of the defendant, dismissed the appellant's claim and, thus, arbitrarily applied the relevant provisions of the Law on Obligations regulating the issue of responsibility for damages caused.

- **Decision on Admissibility and Merits No. AP 2845/11 of 9 December 2014, paragraph 24, published in the *Official Gazette of Bosnia and Herzegovina*, 3/15; expropriation, standing to be sued, references AP 2061/10, AP 4051/09, a violation of Article 6(1) of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court concludes that there was a violation of the right a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention as the Constitutional Court found arbitrariness in the reasons for the challenged decisions in respect of the application of substantive law.

- **Decision on Admissibility and Merits No. AP 963/11 of 24 April 2014, paragraph 37, published in the *Official Gazette of Bosnia and Herzegovina*, 56/14; sale of real property by public tender; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court concludes that there was a violation of the right a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention as the manner in which evidence was gathered and used in the proceedings against the appellant affected the proceedings as a whole, which was the reason why the requirements of the fair trial were not fulfilled.

- **Decision on Admissibility and Merits No. AP 460/12 of 10 February 2015, paragraph 36, published in the *Official Gazette of Bosnia and Herzegovina*, 56/14; sale of real property by public tender; quality of evidence - unlawful evidence; follows the case-law referred to in decision AP 291/08; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court notes that the quoted provision of Article 19(4) of the Labour Law stipulates as follows: *If an employee has explicitly or tacitly renewed a fixed term labor contract with the same employer, or has explicitly and tacitly concluded successive*

fixed term labor contracts with the same employer for a period longer than two years, without any interruption between them, such a contract shall be considered an unlimited duration labor contract, unless otherwise stipulated under the collective agreement. In this connection, the Constitutional Court notes that it clearly follows from the linguistic interpretation of the mentioned provision that the fixed term contract is **automatically** transformed into unlimited duration labor contract upon the period of two years of interrupted employment or if a person was employed with the same employer for more than two years. Given the fact that it is indisputable in the present case that the appellants were employed with the defendant for more than two years based on the contract on fixed term labor contract and taking into account the content of the provision of Article 19(4) of the Labor Law, the Constitutional Court holds that the Supreme Court arbitrarily applied the provisions of Article 19(4) of the Labor Law when it dismissed the appellants' claim wherein they requested the court to establish that the fixed term labor contracts were to be considered unlimited duration labor contract. The right to a fair trial under Article II(3)(e) of the Constitution of BiH and Article 6(1) of the European Convention was violated as the Supreme Court arbitrarily applied the provisions of Article 19(4) and Article 103(3) of the Labor Law.

- **Decision on Admissibility and Merits No. AP 561/14 of 10 February 2015, paragraphs 27 to 32, published in the *Official Gazette of Bosnia and Herzegovina, 20/15*; labor relationship, a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court concludes that the ordinary courts considered in detail the effects of the application of the relevant provision of Article 47 of the Law on Sale of Apartments, both its original text and the amendments to that law, with regards to the rights which the appellant [Waqf/Endowment Directorate] could possibly have with regards to the disputable apartments and the defendants' right to property within the meaning of Article 1 of Protocol No. 1 to the European Convention which, within the meaning of Article II(2) of the Constitution of Bosnia and Herzegovina, shall directly apply in Bosnia and Herzegovina and „shall have priority over all other law”, and gave detailed reasons for considering why the appellant's allegations in the circumstances of the case could not amount to a different outcome. Therefore, the Constitutional Court, unlike the appellant's allegations, did not find any arbitrariness in views of the Cantonal Court and Supreme Court that the agreements which the defendant concluded with the Municipality of Centar were null.

- **Decision on Admissibility and Merits No. AP 3806/11 of 26 February 2015, paragraph 55; nullity, restitution, wakf, there was no violation of Article 6 of the European Convention and BiH**

The Constitutional Court concludes that there was a violation of the appellant's right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention as the Court of BiH, in taking its decision, arbitrarily applied the provisions of Article 436(1)(a) and Article 437 of the Criminal Procedure Code of BiH, as it identified the issue of foundedness or unfoundedness of deprivation of liberty with the issue of lawfulness or unlawfulness of deprivation of liberty.

- **Decision on Admissibility and Merits No. AP 4793/14 of 17 March 2015, paragraph 27, published in the *Official Gazette of Bosnia and Herzegovina*, 29/15; publication of press release concerning the judgments in media, a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court concludes that there was a violation of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention when the decisions of the ordinary courts were exclusively based on the evidence (arms and ammunitions found with the appellant during the search of his house) which was gathered through the arbitrary application of relevant provisions of Article 120(3) of the Criminal Procedure Code of RS as the judge in charge of preliminary proceedings failed to draft minutes on verbal order for search and to submit these minutes to the court.

- **Decision on Admissibility and Merits No. AP 4382/12 of 24 April 2015, paragraph 32, published in the *Official Gazette of Bosnia and Herzegovina*, 41/15; criminal proceedings, unlawful evidence, a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court concludes that the right under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention was violated when the testimony given by the witness who was granted immunity from prosecution was not supported by other pieces of evidence as the circumstances of the case cast doubt on the credibility and accuracy of the testimony.

- **Decision on Admissibility and Merits No. AP 1185/11 of 14 May 2015, paragraph 52, published in the *Official Gazette of Bosnia and Herzegovina*, 46/15; criminal proceedings, lawfulness of evidence, a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court considers as lawful, logical and convincing the reasons for the challenged judgment of the Supreme Court and response to the appeal that the failure to present a claim for payment of interests in the first-instance proceedings could not be removed by filing an appeal as the possibility of cancelling the power of attorney, which was issued to the appellant, was of no significance for the plaintiff given the moment of being informed of the damage caused (enforcement procedure) and that expecting the client to bring a lawsuit by himself in order claim his rights under the law, although there was a lawyer engaged as a professional person, was contrary to the purpose and objective of the contractual relationship between the lawyer and client. Therefore, the Constitutional Court could not accept as founded the appellant's allegations that the plaintiff had such a possibility at his disposal and that his claim in labour dispute was successful, which means that he represented him to the best of his knowledge and that he was acting in his best interest. Given the circumstances of the case, the Constitutional Court could not conclude that the challenged judgment of the Supreme Court was not based on the relevant provisions of substantive law and that the application, as alleged by the appellant, was arbitrary so as to bring into question the fairness of the proceedings.

- **Decision on Admissibility and Merits No. AP 735/12 of 17 June 2015, paragraphs 44 and 45, published in the *Official Gazette of Bosnia and Herzegovina*, 58/15;**

responsibility of a lawyer for damage caused; there was no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH

The Constitutional Court concludes that the ordinary courts did not establish any of the reasons for applying the exceptions provided for in Article 13(1)(a) and (b) of the Convention and dismissing the appellant's request for return of kidnapped child nor did they take into account data – in order to consider the circumstances which could possibly amount to the application of the mentioned provisions of the Convention – related to the social origin of the child, which could have been obtained from the central executive authority or another competent authority of Hungary as the place of permanent residence of the child, and moreover, they did not even provide it. Furthermore, the Constitutional Court notes that although the defendant as a mother did not point to the parental incapacity of the appellant, nor did the Center for Social Welfare establish it, the ordinary courts noted during the entire proceedings that the appellant had not proved parental incapacity of the mother (as a reason for which the child should not stay with his mother in Trebinje). This is why the burden of proof was placed on the appellant, who sought return of the child, which was contrary to the provisions of the Convention, instead of placing the burden of proof on the person (or the authority) that opposed the return to prove why the appellant's request for return of the child in Republic of Hungary should not be granted, which the appellant sought in his claim. Given the foregoing, the Constitutional Court notes that the challenged decisions, given the arbitrary interpretation and application of the Convention, are deficient so as to affect the correctness of the decision and bring into question the courts' findings in a very sensitive situation in which the most important issue, both for an individual – the child - and for the parents of the child and the society, had been dealt with as the protection of children is the basic goal of every civilized society.

- **Decision on Admissibility and Merits No. AP 2784/15 of 14 October 2015, paragraphs 45 and 46, published in the *Official Gazette of Bosnia and Herzegovina, 89/15*; the procedure for return of a child, a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court holds, unlike the appellant, that given the circumstances of the case there was nothing to indicate the conclusion that the ordinary courts arbitrarily applied the relevant provisions of the Law on Enforcement Procedures when they decided to terminate the enforcement proceedings in accordance with Article 63(3) and (4) of the Law on Enforcement Procedures, since the requirements for holding the first hearing on public sale were not fulfilled two times because there were no offers exceeding one third of the determined value of the real property.

- **Decision on Admissibility and Merits No. AP 3152/12 of 14 October 2015, paragraph 35; public bid, sale of real property, termination of the enforcement proceedings, there was no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

The responsibility for damage which an employee has sustained at work or in relation to the work is to be determined in accordance with the general rules on responsibility

for damage and is based on the principle of presumed guilt and objective responsibility (Article 154(1) and (2) of the Law on Obligations in conjunction with the relevant provisions of the labour-related legislation, more particularly Article 125 in conjunction with Article 7 of the Law on Civil Servants, and Article 71 of the Labour Law). Damage is considered as being caused at work if the employee sustained it during the performance of the duties within the employment. In the present case, the plaintiff, who was a teacher of mathematics and was employed with the „Second Primary School”, was giving lessons to student D.G. at his home in accordance with the defendant’s decision, namely the relevant department of the Government, and upon recommendation of the expert team of the „Second Primary School”, and sustained a damage during the performance of her duties within the employment. Thus, the plaintiff sustained a damage during the performance of her duties within the employment upon order of her employer/appellant (Brčko District) so that unlike the appellant’s allegations, the courts did not come to an arbitrary conclusion on the appellant’s standing to be sued in the present case. It also follows from the reasons for the contested judgments that the appellant failed to check whether the requirements related to the lessons given by the teacher at student’s home were fulfilled, as the provision of Article 52 of the Law on Education stipulates that lessons may be given at students’ home in case of illness or disability, and the appellant failed to present evidence to prove that the student fulfilled such requirements because it was alleged in the proposal which the expert team submitted the Head of the Department for Education that it was established that the behaviour of the student was the result of illness, although appropriate medical documents in support of the mentioned did not exist. Moreover, it was alleged in the letter that the student in question manifested aggressive behaviour towards other students and that he abused them physically, that the results of corrective measures did not give expected results and that it was concluded without any medical documents that such a deviant behaviour was the result of illness and insufficient socialization of the student so that the appellant and other teachers were requested to give lessons at the family house of the student. The Constitutional Court concluded that there was no violation of the right to a fair trial under Article II(3) (e) of the Constitution of Bosnia and Herzegovina as the courts gave clear arguments for considering that the plaintiff’s claim should have been granted by referring to the relevant provisions of the Law on Obligations in conjunction with the previous of the Law on Civil Servants and Labour Law.

- **Decision on Admissibility and Merits No. AP 3195/12 of 10 November 2015, paragraphs 30 and 34;** *compensation for damages, standing to be sued, there was no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH*

The Constitutional Court notes that the appellant based his claim on the provision of Article 12 of the Law on Prohibition of Discrimination. In this connection, the Constitutional Court notes that the provision of Article 13(2) stipulates that „a revision-appeal is always allowed in the proceedings prescribed by Article 12 of this Law”. However, the Constitutional Court notes that the Supreme Court did not take into account the quoted provision of Article 13(2) of the Law on Prohibition of Discrimination, although it follows from the factual findings of the ordinary courts and documents attached to the case-file

that in the circumstances of the present case, the Law on Prohibition of Discrimination constituted a *lex specialis* compared to the Law on Civil Procedures. Therefore, the Constitutional Court holds that the Supreme Court, by finding in the present case that the minimum amount of the property of the subject of the dispute as a criterion for admissibility of the revision-appeal under Article 237(2) of the Civil Procedures Code was not met, applied the relevant provisions of the Civil Procedure Code in a manifestly arbitrary manner as it failed to take into account the relevant provisions of the Law on Discrimination as a *lex specialis* in the present case.

- **Decision on Admissibility and Merits No. AP 4179/12 of 10 November 2015, paragraph 24;** *procedure for determination of discrimination, revision-appeal; a violation of Article II(3)(e) of the Constitution of BiH established*

The Constitutional Court concludes that there was no violation of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention as there was nothing to indicate in the present case that the Competition Council and the Court of BiH arbitrarily applied the relevant provisions of substantive law when they concluded that the appellant had a dominant position in the relevant market of the VW products in BiH and that its conduct towards the applicant resulted in the abuse of that position in the form of different conditions for the same or similar jobs with third parties, which placed them in an unequal or unfavourable competition position, and in the reduced production, market or technical development to the detriment of consumers.

- **Decision on Admissibility and Merits No. AP 1865/12 of 8 December 2015, paragraph 89;** *procedure before the Competition Council in accordance with Article 28 of the Competition Law with the aim of determining prevention, restriction or distortion of free market competition by the abuse of dominant position on the market; there has been no violation of Article II(3)(e) of the Constitution of BiH*

Fair trial – reasoned judgment

The right to a fair trial does not provide for the court to examine all arguments that the parties presented during the proceedings, but only arguments the court deems relevant. The Court must take into account arguments of the parties to the proceedings, but not all of them have to be presented in the reasoning of the judgment.

- **Decision on Admissibility and Merits No. AP 415/04 of 23 July 2004, paragraph 22, published in the Official Gazette of Bosnia and Herzegovina, 43/04;** *criminal proceedings, equality of the parties to the proceedings, erroneous application of the law; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH;*
- **Decision on Admissibility and Merits No. AP 417/04 of 23 March 2005, paragraph 18, published in the Official Gazette of Bosnia and Herzegovina, 32/05;** *civil proceedings, request for removal of registration of the land from the title deed; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH;*

- **Decision on Admissibility and Merits No. AP 476/04 of 17 December 2004, paragraph 27, published in the *Official Gazette of Bosnia and Herzegovina*, 34/05; criminal proceedings, compensation of the costs of the criminal proceedings; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH;**
- **Decision on the Merits No. AP 978/05 of 13 September 2005, paragraph 22, published in the *Official Gazette of Bosnia and Herzegovina*, 3/06**

There is no violation of the right to a fair trial when the ruling on minor offence is based, *inter alia*, on the statement of the co-accused, who had been convicted earlier for the same offence, if a logical and convincing reasoning was given for the decision of the court, and if there are no elements indicating that assessment of evidence made by the ordinary courts was manifestly arbitrary or that the evidentiary proceedings were abused to the detriment of the appellants within the meaning of the right to a fair trial.

- **Decision on Admissibility and Merits No. AP 628/04 of 12 April 2005, paragraph 25, published in the *Official Gazette of Bosnia and Herzegovina*, 42/05; criminal proceedings; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

The ordinary court has the obligation to describe in the reasoning of the judgment a process of individual assessment of evidence, tying every piece of assessed evidence with other evidence and to reach a conclusion that certain facts were proven.

- **Decision on Admissibility and Merits No. AP 661/04 of 22 April 2005, paragraph 35, published in the *Official Gazette of Bosnia and Herzegovina*, 44/05; criminal proceedings in which the judgment of conviction against the appellant was based, largely, on the statement of a witness who made a plea bargain with the prosecution, as the sole direct piece of evidence; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

There is a violation of the right to a fair trial in the event when the convicting judgment is largely based on the statement of a witness who had made a plea bargain with the prosecutor, whereby the court failed to give a logical and convincing reasoning for the assessment of the mentioned piece of evidence and of other presented evidence but rather the mentioned assessment appears arbitrary.

- **Decision on Admissibility and Merits No. AP 661/04 of 22 April 2005, paragraphs 39 to 41, published in the *Official Gazette of Bosnia and Herzegovina*, 44/05; criminal proceedings, in which the convicting judgment against the appellant was based, largely, on the statement of a witness who made a plea bargain with the prosecution, as the sole direct piece of evidence; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The party to the proceedings cannot have priority over other party with respect to a possibility to present evidence.

- **Decision on Admissibility and Merits No. AP 628/04 of 12 April 2005;**
- **Decision on the Merits No. AP 1124/05 of 9 February 2006, paragraph 24, published in the *Official Gazette of Bosnia and Herzegovina*, 45/06; criminal proceedings, criminal act of tax evasion**

The Constitutional Court will not interfere with a situation when the ordinary courts give credence to evidence of one party to the proceedings on the basis of judicial margin of appreciation. That is exclusively the role of the ordinary courts, even when the statements of witnesses at the public hearing and under oath are contradictory (see European Court of Human Rights, *Doorson v. Netherlands*, judgment of 6 March 1996, published in the Reports, No. 1996-II, paragraph 78).

- **Decision on the Merits No. AP 1103/05 of 9 May 2006, paragraph 22, published in the *Official Gazette of Bosnia and Herzegovina*, 68/06; criminal proceedings, criminal act of fraud**

Element of a fair trial is also a requirement for the court decision to carry the reasons on which it is based. However, what is the extent of the responsibility shall depend on the nature of the decision and can be appraised by the court only in relation to the circumstances of each individual case.

- **Decision on Admissibility and Merits No. AP 1401/05 of 12 September 2006, paragraph 61, published in the *Official Gazette of Bosnia and Herzegovina*, 7/07; civil proceedings**

The Constitutional Court notes that the observation stated in the reasoning of the challenged decision of the Supreme Court that „the appellant in his lawsuit opted for the value of dispute of up to BAM 10,000, that is that he did not specify the value of the subject of dispute *to be exceeding* the amount of BAM 10,000”, as far as the mentioned evidence in the case files (according to which the appellant failed to specify the value of dispute in the lawsuit, yet during the preliminary hearing he did specify the value of dispute in the amount of BAM 10,000), indicates that the present reasoning was not well-argued or clear to a sufficient degree, as it is not possible to observe the basis on which the Supreme Court reached a conclusion in its reasoning that the appellant specified the value of dispute up to the amount of BAM 10,000, that is that he did not specify the value of dispute to exceed the amount of BAM 10,000. Thus, no legal conditions exist for the filed revision-appeal to be decided on, which appears as arbitrary assessment of evidence and arbitrary application of the procedural law. The Constitutional Court holds that such reasoning of the challenged decision of the Supreme Court does not meet the requirement of careful and conscientious assessment of evidence, as the Supreme Court should have examined in more detail in the present case whether the conclusion offered in the reasoning of the challenged decision, meets the requirements laid down in the Civil Procedure Code, as well as requirements of Article 6 of the European Convention, which has the force of constitutional provisions and it has priority over all other law.

- **Decision on Admissibility and Merits No. AP 884/06 of 8 November 2007, paragraphs 30 and 31, published in the *Official Gazette of Bosnia and Herzegovina*, 23/08; revision-appeal, reasoned judgment; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The principle of free appraisal of evidence does not constitute absolute freedom. Such freedom is restricted by general rules and patterns of human thinking, logic and experience. Therefore the ordinary court has the obligation to describe in the reasoning

of the judgment the process of individual assessment of each piece of evidence, tying each assessed piece of evidence with other evidence and reaching a conclusion that a certain fact has been proven.

- **Decision on Admissibility and Merits No. AP 1603/05 of 21 December 2006, paragraph 35, published in the *Official Gazette of Bosnia and Herzegovina*, 34/07; criminal proceedings, assessment of legal validity by ordinary courts; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

Subjective conviction of the court that the appellant had committed a criminal act he was charged with is not sufficient, rather the conclusion of the court must be true and based on objective facts and well-reasoned. The ordinary courts may not just state that they do not give credence to a certain witness only because his/her statement is contradictory to the statement of some other witness they give credence to nor is it sufficient if they subjectively qualify evidence as „arbitrary”.

- **Decision on Admissibility and Merits No. AP 1603/05 of 21 December 2006, paragraph 36, published in the *Official Gazette of Bosnia and Herzegovina*, 34/07; criminal proceedings, assessment of legal validity by ordinary courts; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court does not deny the right of the ordinary courts to give credence to certain evidence, however it would be arbitrary to conclude that certain evidence were not given credence for a mere reason that they were contradictory to other evidence. The Court must provide reasons related to the essence as to why it does not give credence to evidence, and provide reasons supporting the claim that certain evidence are credible and others are not. Only in this manner can the court show a satisfactory level of impartiality and objectivity and fulfill its role which is a stipulated verification of evidence. Therefore, the court must face evidence which are in favor of the appellant and provide reasons as to why it does not give credence to them.

- **Decision on Admissibility and Merits No. AP 2482/06 of 11 March 2008, paragraph 25, published in the *Official Gazette of Bosnia and Herzegovina*, 32/08; arbitrary establishment of the facts of the case; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

There is a violation of the right to a fair trial in relation to the reasoned judgment under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention in a situation where the court failed to give satisfactory, clear and complete reasons in the challenged decision, on the basis of which it would be possible to observe why the court departed from the earlier case-law in the same legal matter that it had considered earlier by interpreting and applying differently the relevant substantive regulations to the same facts.

- **Decision on Admissibility and Merits No. AP 2478/06 of 17 September 2008, paragraph 40, published in the *Official Gazette of Bosnia and Herzegovina*, 102/08; labor dispute, reasoned judgment, reasonable time limit; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court concludes that the issue of use of the truck kipper MAN 16.230 was determined exclusively in accordance with Article 77(1)(1) of the Decree. However, the appellant's claim for compensation of damage in the form of lost gains was not considered in relation to the provisions of Article 189(3) of the Law on Obligations, although the appellant sought it, and that part of his claim was granted in the first-instance judgment of the Municipal Court. It is noted that the appellant was continuously registered to perform transportation activity, and this case relates to the claim for compensation of damages in the form of lost gains for a truck, not a heavy machine. Therefore, the court failed to decide on an important part of the appellant's claim in accordance with the relevant law provisions, which is, according to the Constitutional Court, contrary to the principles of fair trial with regards to the quality of the reasons for the decision.

- **Decision on Admissibility and Merits No. AP 3013/06 of 29 April 2009, paragraph 86, published in the *Official Gazette of Bosnia and Herzegovina*, 50/09; compensation for damages in the form of lost gains, reasoned judgment, reasonable time limit; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court concludes that it follows from the judgments contested in the appeal that there was no good and convincing reasons with regards to the determination of key facts (date and scope of mobilisation of the appellant's funds and determination of the amount of compensation) and application of the relevant law provisions (the issue of registration of activity, compensation for damages in the form of lost gains in accordance with the provisions of the Law on Obligations and determination of the date of the commencement of payment of default interest on awarded amounts), where the outcome of the proceedings which the appellant initiated to claim compensation for damages caused by misappropriation of his property and failure to return it depended on the determination and application of the mentioned provisions. This resulted in a violation of the appellant's constitutional right to a fair trial and the right to property under Article II(3)(e) and (k) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention and Article 1 of Protocol No. 1 to the European Convention.

- **Decision on Admissibility and Merits No. AP 3013/06 of 29 April 2009, paragraph 111, published in the *Official Gazette of Bosnia and Herzegovina*, 50/09; compensation for damages in the form of lost gains, reasoned judgment, reasonable time limit; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court concludes that such reasons for contested decisions are not sufficiently supported by arguments, nor are they sufficiently clear as they do not indicate the basis, evidence and reasons for which the court decided „that the general limitation period under Article 371 of the Law on Obligations was applicable to such a type of claims”, and not the limitation period under Article 374 of the Law on Obligations, which explicitly regulates the issue of statute of limitations on the claims of the legal persons referred to in the agreement of movement of goods and services. In particular, the Constitutional Court notes that the Tariff System exclusively determines the categories and manner of calculation of electric power supply for certain groups of

consumers. Therefore, the Constitutional Court holds that the fact that the Tariff System defines the power supply in the present case as „other consumption” for the purpose of determining the price of supplied electric power cannot be decisive for the conclusion as to which limitation period referred to in the Law on Obligations was to be applied. The Constitutional Court holds that such reasons given by the ordinary courts do not satisfy the minimum standards of the right to a reasoned decision, which forms consisting part of the right to a fair trial under Article 6(1) of the European Convention, which amounted to arbitrariness incompatible with the goal and essence of the mentioned right.

- **Decision on Admissibility and Merits No. AP 3355/07 of 14 April 2010, paragraph 31, published in the *Official Gazette of Bosnia and Herzegovina*, 80/10; reasoned judgment, statute of limitations; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court concludes that there was a violation of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention when the Cantonal Court failed to apply explicit law provisions on interruption of the proceedings for enforcement of the decision of the CRPC and to give appropriate reasons for its decision.

- **Decision on Admissibility and Merits No. AP 2825/07 of 28 April 2010, paragraph 31, published in the *Official Gazette of Bosnia and Herzegovina*, 95/10; reasoned judgment, repossession of the apartment; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court concludes that it does not follow from the contested decision which regulation was the basis for the Supreme Court to conclude that „the term of joint ownership of business share does not exist in the national legislation”. In particular, the Constitutional Court indicates that the provision of Article 264(2) of the Family Law relates to all property acquired as a result of work during a marriage regardless of the type of property, and that the term „joint property” is used in the law. Furthermore, the Constitutional Court notes that the provisions of Article 332(1) and Article 334 of the Law on Business Companies provide that several persons may be owners of a „share” and that „share” may be divided into indivisible parts. Furthermore, the Constitutional Court notes that the Supreme Court notes in the contested decision that the lower-instance courts failed to consider the fact that the appellant had expressly stated at the main hearing that „she did not initiate proceedings for division of property but that she had intention to do so”. However, the Supreme Court did not give reasons for considering that the mentioned fact was important for resolution of the dispute in question but it invoked arbitrarily the failure of the lower-instance court. Taking into account the foregoing, the Constitutional Court holds that the challenged judgment of the Supreme Court does not contain the reasons for satisfying the requirements under Article 6(1) of the European Convention. Given the foregoing, the Constitutional Court concludes that the contested decision of the Supreme Court is in violation of the appellant’s right under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention.

- **Decision on Admissibility and Merits No. AP 1720/08 of 21 December 2010, paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina*,**

48/11; reasoned judgment, business shares; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established

The Constitutional Court cannot conclude that the decision of the Appellate Court violates the appellant's constitutional rights, but quite the contrary, that it contains the answers to the essential question as to why the defendant has not violated the appellant's right to logo and committed the act of unfair competition. The Constitutional Court points out that by comparing the registered logo with the denotation used by the defendant on its memorandum, it would exceed the scope of its jurisdiction, particularly because the appellant did not indicate any unfairness of proceedings in its procedural part but only found the violation of the right to a fair trial in erroneous interpretation of the provisions of the Law on Industrial Property. In view of the above, the Constitutional Court finds that the challenged judgment has not violated the appellant's right to a fair trial.

- **Decision on Admissibility and Merits No. AP 1080/08 of 27 May 2011, paragraph 39, published in the *Official Gazette of Bosnia and Herzegovina*, 99/11; reasoned judgment, right to logo, a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

As to the fulfillment of the law requirement of „invested own funds” for renovation of the apartment in question that the Supreme Court only noted that the first-instance court, having correctly assessed evidence, established that the plaintiff had made reparations in the apartment by investing his own funds. The Supreme Court indicated that the plaintiff had hired workers who had performed the works in the apartment and that the heard witnesses were contractors, and the court expert in finances gave his opinion on the amount of invested funds for necessary costs in respect of the apartment. The Constitutional Court holds that the Supreme Court's decision does not contain quality and convincing reasons with regards to the determination of the key fact as to whether the plaintiff invested his own funds in the renovation of the apartment in question within the meaning of Article 18(a) of the Law on the Cessation of Application, although the outcome of the dispute depended on determination and application of the mentioned law provisions.

- **Decision on Admissibility and Merits No. AP 2269/08 of 8 June 2011, paragraph 33; burden of proof, a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH;**
- **Decision on Admissibility and Merits No. AP 3617/08 of 12 October 2011, paragraph 46; burden of proof, a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court concludes that there is a violation of the right to a fair trial with regard to the right to a reasoned decision under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention as the court did not give sufficient, clear and satisfying reasons which would enable to see why the same court in the administrative dispute, having decided on the same legal issue as that it had considered in the civil procedure, departed from its view by interpreting facts differently and by applying the same substantive legal regulations to it.

- **Decision on Admissibility and Merits No. AP 168/09 of 25 October 2011, paragraph 34, published in the *Official Gazette of Bosnia and Herzegovina*, 97/11; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court, taking into account the facts of the case, notes that its task is not to substitute the national court by giving its own interpretation. However, taking into account the standards of the right to a fair trial, the Constitutional Court holds that the Supreme Court did not give clear and unambiguous reasons for its view relating to the application of substantive law in the present case, which should have clearly and reasonably indicated why it took a different legal view in the contested decision than that taken by the lower-instance courts, all the more so as it follows from the reasons for the judgment that the Supreme Court did not take into account all the facts established by the lower-instance courts, although it was bound by them within the meaning of the relevant provisions of the Civil Procedure Code. In this connection, as it follows from the reasons for lower-instance judgments that the representatives of the defendant, in addition to the representatives of the school and Municipality of Banja Luka, participated in the negotiations related to transportation business, the Constitutional Court holds that the Supreme Court, having fully disregarded this fact, violated the constitutional right of the appellant. The correct application of substantive laws depended on that fact and its connection with other facts, which indisputably falls within the scope of reviewing court under Article 250(1) of the Civil Procedure Code. Therefore, the Supreme Court failed to deal with the appellant's allegations and the lower instance courts' findings in respect of the fact being of the essential importance to the outcome of the dispute and the question whether and which mechanism of contractual law, which were mentioned in the reasons for the ordinary courts, was applicable to the present case. As the Supreme Court did not give clear and unambiguous reasons for its legal view related to the application of substantive law, since it disregarded the factual findings of the ordinary courts, the Constitutional Court holds that the appellant's right to a fair trial under Article II(3)(e) of the Constitution of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention was violated.

- **Decision on Admissibility and Merits No. AP 6/09 of 18 April 2012, paragraph 43; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

Taking into account the standards and principles indicating that the ordinary court's task is to assess the presented facts and evidence and that the Constitutional Court's task is to examine whether the constitutional rights were violated or disregarded, the Constitutional Court cannot conclude that the decision of the Cantonal Court violated the appellant's constitutional rights, but quite the contrary, it gave responses to an essential question as to why the plaintiff's claim was granted, and the appellant's counter-claim was dismissed, all the more so as the appellant did not indicate any unfairness of the procedural part of the proceedings but she complained about the violation of the right to a fair trial as the Cantonal Court erroneously found that she was not divorced. Accordingly, the Constitutional Court finds that the challenged judgment was not in violation of the

appellant's right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention.

- **Decision on Admissibility and Merits No. AP 4013/09 of 15 May 2012, paragraph 41, published in the *Official Gazette of Bosnia and Herzegovina*, 53/12; establishment of the validity of a marriage, i.e. annulment of marriage, there has been no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court cannot conclude that the decisions of the Supreme, Cantonal and Municipal Courts are in violation of the appellant's constitutional rights, but on the contrary, they contain the answers to the essential issues based on the relevant provisions of the substantive law, the provisions of the Civil Procedure Code, first and foremost that the appellant failed to prove legal succession of the defendants after the buyer, nor did it prove that it had fulfilled the obligation to the seller. In addition, the Constitutional Court holds that the buyer as a contracting party, first and foremost, had had the obligation to settle debt to the appellant. However, given the fact that the bankruptcy procedure for the appellant had been concluded, the appellant could have registered its claims in the bankruptcy procedure, which, on the basis of the facts of the case, the appellant obviously failed to do. In view of the aforementioned, the Constitutional Court concludes that the challenged judgments did not violate the appellant's right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention.

- **Decision on Admissibility and Merits No. AP 1106/09 of 26 May 2012, paragraph 30, published in the *Official Gazette of Bosnia and Herzegovina*, 59/12; payment of debt, there has been no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court notes that neither the first-instance court nor the Cantonal Court in the appellate proceedings fulfilled their obligations of giving clear reasons for their decision on the commencement of the limitation period under which the plaintiff was to bring his claim, i.e. the contested decisions do not contain the reasons meeting the requirements under Article 6(1) of the European Convention. Accordingly, the Constitutional Court holds that the appellant's right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention was violated.

- **Decision on Admissibility and Merits No. AP 1630/09 of 27 June 2012, paragraph 25, published in the *Official Gazette of Bosnia and Herzegovina*, 74/12; all-risk insurance, commencement of limitation period, a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court notes that the reasons for the challenged decisions clearly state that the appellant failed to prove that the defendant had had any cause-and-effect relationship with the detrimental event or that it had caused the respective damage through its respective actions. On the other hand, the ordinary courts emphasized in the reasoning of the challenged decisions that the appellant failed to prove in the respective

proceedings that the damage had occurred in connection with hazardous matter or hazardous activity in order to possibly apply the provisions of Articles 158, 173 and 177 of the Law on Obligations, for the reason that the respective detrimental event does not constitute an activity organized by the defendant, rather it constitutes an act of general crime. So, the appellant failed to prove in the respective proceedings that the defendant had any cause-and-effect relationship whatsoever with the detrimental event, or that it had caused the respective damage through its actions. Considering the aforementioned, according to the Constitutional Court, the ordinary courts provided in the challenged decisions a detailed and clear reasoning for their respective positions regarding the established facts and the application of the substantive law, which do not appear to be arbitrary in any part.

- **Decision on Admissibility and Merits No. AP 2084/09 of 28 September 2012, paragraph 30, published in the *Official Gazette of Bosnia and Herzegovina*, 92/12; compensation for damages under former Article 180 of the Law on Obligations - responsibility of socio-political community for damages caused during the war; there was no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

There was a violation of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention as the reasons for the decisions ordering the appellant's husband and the appellant who was registered as the owner of the apartment to leave the apartment were not given.

- **Decision on Admissibility and Merits No. AP 3102/09 of 6 December 2012, paragraph 37, published in the *Official Gazette of Bosnia and Herzegovina*, 1/13; repossession of apartment, a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court observes that the actions related to the perpetration of the continued criminal offence of tax evasion the appellants were charged with were not differentiated in a precise manner. Furthermore, the appellants have for the most part committed continued criminal offence of tax evasion by taking actions at the time when the 1998 Criminal Code of FBiH was in effect i.e. the indictment charged them with having committed the classified form of criminal offence of tax evasion under this law as well. Finally, there was no clear and precise definition of the time of commission of the last action that entered into the continued criminal offence on the basis of which the time of the commission of offence is being determined after all and consequently which law was in effect at the time of the commission of the criminal offence. Considering the foregoing, the reasoning of the first instance court that „there was no room for application of the principle of applying a more lenient law, because the application of that legal institute requires that law is amended once or several times after the commission of the criminal offence and therefore „in the instant case the 2003 Criminal Code of FBiH is applied”, cannot be accepted as reasoning that answers the question of which law should have been applied i.e. which law is more lenient to the perpetrator.

- **Decision on Admissibility and Merits No. AP 1123/11 of 22 March 2013, paragraph 98, published in the *Official Gazette of Bosnia and Herzegovina*, 31/13; continued**

criminal offence, time of perpetration of criminal offence, application of more lenient law, a violation of violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established

The Constitutional Court holds that there was no violation of the right to a fair trial under Article II(3)(e) of the Constitution and Article 6(1) of the European Convention when the ordinary court's failure to explicitly explain in the reasons for the contested decision the manner in which it resolved a specific legal issue in the circumstances of the case was not such to affect the fairness of the proceedings as a whole

- **Decision on Admissibility and Merits No. AP 29/10 of 25 April 2013, paragraph 55;** *time constraints regarding the applicability of criminal law, there has been no violation of violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established*

The Constitutional Court concludes that the appellant's right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention was violated as the operative part of the court's decision indicated the facts and circumstances based on unlawful evidence, i.e. when the contested decision was based on evidence on which it could not have been based within the meaning of the provisions of Article 10(2) of the Criminal Procedure Code.

- **Decision on Admissibility and Merits No. AP 3364/10 of 12 February 2014, paragraph 38, published in the *Official Gazette of Bosnia and Herzegovina*, 21/14;** *criminal proceedings, unlawful evidence, a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established*

The Constitutional Court concludes that there was no violation of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention as the ordinary courts, taking into account the claim as specified and the fact that a cemetery was constructed on the plot of land in question, which was excluded as such from legal transactions, dismissed the appellant's claim for surrender into possession of the plot in question, in respect of which they gave clear reasons supported by arguments, which do not appear arbitrary in any segment.

- **Decision on Admissibility and Merits No. AP 1411/11 of 27 February 2014, paragraph 46, published in the *Official Gazette of Bosnia and Herzegovina*, 22/14;** *delivery of possession of the plot where the defendant constructed a cemetery based on urban development permit; there has been no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH*

The Constitutional Court notes that the Cantonal Court, having dealt with the defendant's appeal, found that the first-instance court had correctly established all decisive facts but it had erroneously concluded that the defendant's rulings were lawful. In particular, according to the Cantonal Court's opinion, the defendant acted in accordance with the provisions of Articles 5 and 6 of the Rulebook when it took the contested rulings, since the ruling on the assessment of the appellant's performance was issued within a time limit of 30 days after the end of the calendar year and it was issued by the mayor. Furthermore, according to the opinion of the Cantonal Court, it clearly follows from the case-file

that the defendant, when issuing the ruling dated 29 January 2003, acted in accordance with the provision of Article 50(4) of the Law on Labor Relations and Salaries of the Employees of the Administrative Authorities of the Federation of BiH as it gave detailed reasons for which the appellant was rated „not satisfactory”. Thus, the Cantonal Court, having decided on the defendant’s appeal, gave clear and precise reasons for which it decided to grant the appeal and modify the first-instance judgment.

- **Decision on Admissibility and Merits No. AP 2185/11 of 8 May 2014, paragraph 24, published in the *Official Gazette of Bosnia and Herzegovina*, 57/14; assessment of an employee’s performance ; there has been no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

The Constitutional Court concludes that the appellant’s right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 of the European Convention was not violated when the Cantonal Court, which granted all circumstances of the case, modified the decision on custody, and having taken into account the age of the child and other circumstances, entrusted care for the minor child to the mother, in respect of which it gave clear and valid reasons based on the Family Law of the Federation of Bosnia and Herzegovina, which gives priority to the interest of the child.

- **Decision on Admissibility and Merits No. AP 373/11 of 10 June 2014, paragraph 42, published in the *Official Gazette of Bosnia and Herzegovina*, 57/14; child custody; there has been no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

The Constitutional Court notes in respect of the appellant’s allegations that the ordinary courts, unlike the allegations set forth in the appeal, gave detailed reasons for their decisions. In this connection, the Constitutional Court did not find any arbitrariness in the findings that the appellant had the right of compensation for non-pecuniary damage in the amount specified in the judgments as he had been detained unlawfully and his life-related activities had been reduced, in respect of which the ordinary courts gave clear and precise reasons when they applied the relevant provisions of the Law on Obligations. Furthermore, the Constitutional Court recalls that the amount of compensation for non-pecuniary damage is to be determined depending on the circumstances of each particular case and, unlike the appellant’s allegations, it is not possible to determine the fixed amounts through the case-law in such cases, as reasoned by the Supreme Court in its judgment. In this connection, the Constitutional Court holds that it follows from the mentioned reasons given in respect of the determination of the amount of compensation for non-pecuniary damage to be awarded to the appellant that there is nothing to indicate arbitrary application of substantive law and that the reasons for the contested decision are in compliance with the standards of the European Convention. According to the Constitutional Court, and unlike the allegations of the appellant, the contested decisions contain the reasons both in respect of the compensation for non-pecuniary damage caused by unlawful deprivation of liberty and detention and with regards to the sustained mental anguish caused by the harm to his honor and reputation, and compensation for damage caused by reduction of life-related activities and in respect of the manner of the determination thereof, and the reasons for referring a part of the

claim related to compensation for pecuniary damage for new proceedings, which do not appear arbitrary or unacceptable in any segment thereof so that the Constitutional Court holds that the mentioned reasons completely comply with the standards of Article 6 of the European Convention. Given the foregoing and the facts that the ordinary courts dealt with all complaints which the appellant reiterated in the appeal and that they gave reasons for considering why they could not take a different decision in the present case, the Constitutional Court holds that in the present case there was nothing which would indicate that the ordinary courts arbitrarily applied the relevant provisions to the detriment of the appellant.

- **Decision on Admissibility and Merits No. AP 2451/12 of 10 June 2014, paragraph 34;** *determination of the amount of non-pecuniary damage caused by unlawful deprivation of liberty and detention; there has been no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH*

The Constitutional Court notes that the Cantonal Court, having accepted the Municipal Court's findings that the present case related to an unnamed agreement and that the real will and the goal of the contractual parties were to regulate their rights and obligations in that agreement with the aim of jointly participating in a public tender for the purchase of the shares of the „Bihać Brewery”, gave clear reasons for concluding that the mentioned agreement, the execution of which was sought by the plaintiffs, was valid and that it was not contrary to the Law on Securities, Law on Business Entities and other regulations; in this connection, it cited the provisions of Articles 10 and 40 of the Law on Securities and Article 210(1) of Business Entities. Furthermore, the Constitutional Court notes that Article 10 of the Law on Securities stipulates that the ownership of securities shall be acquired on the day of conclusion of legal business whereby the transfer of ownership of securities has been carried out, and that Article 40 of the same law stipulates that purchasing, selling or pledging securities shall be carried out on the basis of an agreement in writing, and Article 210(1) of the Law on Business Entities stipulates that a shareholder is entitled to sell his/her shares or to transfer them to another person on another basis. Furthermore, the Constitutional Court notes that the Cantonal Court gave sufficient reasons in its judgment for concluding that the agreement with regards to the transfer of shares, within the meaning of Article 78 of the Law on Obligations, started to be in effect from the time referred to in Article 10 of that agreement and the plaintiffs as foreign investors could not register foreign investments at the relevant authority before the appellant fulfilled his obligation under Article 10 of the agreement, i.e. before a valid document on the transfer of a number of shares was issued to them, which the appellant did not fulfil, although he acquired the shares of the „Bihać Brewery” in the process of privatization. Furthermore, the Constitutional Court notes that in the contested judgment the Supreme Court, unlike the appellant's allegations, gave responses to all those allegations set forth in the revision-appeal of the appellant that it considered as relevant to the decision in the present case. In this connection, the Constitutional Court also notes that the Supreme Court explained that the Cantonal Court, unlike the appellant's allegations, had acted in compliance with the instructions given in the ruling of annulment, that it had examined the first-instance judgment by correctly applying procedural law and had assessed all complaints which were relevant to the correct decision, that it had correctly

concluded that the agreement had all characteristics of a partnership agreement which it interpreted by correctly applying the provisions of Article 99 of the Law on Obligations, that it had correctly established that it was legally valid and that the appellant had failed to fulfill his obligation of handing over the shares to the plaintiffs. The Constitutional Court holds that the Supreme Court gave valid, clear and logical reasons for its decision as required by Article 6(1) of the European Convention.

- **Decision on Admissibility and Merits No. AP 1853/11 of 10 June 2014, paragraph 34;** *fulfilment of obligations under the agreement, transfer of shares, there has been no violation of Article 6 the European Convention and Article II(3)(e) of the Constitution of BiH*

The Constitutional Court notes in respect of the reasons given by the Appellate Panel that the mentioned Panel did not claim that the Criminal Code was more lenient for the appellant given the minimum sanction prescribed by the law. In particular, the Constitutional Court observes that the Appellate Panel, having compared the Criminal Code of the SFRY and Criminal Code of BiH from the aspect of the minimum sanction prescribed by the law, established that the Criminal Code of BiH was not more lenient for the appellant. However, the Constitutional Court observes that in the present case the Appellate Panel decided to apply the Criminal Code of BiH in order to avoid combining the former law and the new law and found that the appellant was not in less favorable position in that manner as the 10-year prison sentence could be imposed both in accordance with the former law and the new law. With regards to the given reasons, the Constitutional Court reminds of the provisions of Article 4(2) of the Criminal Code of BiH, which obliges the Court of BiH to apply the law which is more lenient for the perpetrator when taking a decision so that the reasons given by the Appellate Panel do not essentially correspond to the cited provision. Taking into account the cited Article, the Constitutional Court holds that Appellate Panel, when applying substantive law, should have explicitly established which law was more lenient for the appellant from the aspect of the minimum sanctions prescribed by the law and relevant provisions related to the concurrence of offences, and then, applied more lenient law. The Constitutional Court notes that the Appellate Court did not have such an approach, and the reasons given in respect of application of substantive law under Article 175(a) and (b) of the Criminal Code of BiH do not meet the requirements under Article 6(1) of the European Convention.

The Constitutional Court concludes that in the circumstances of the present case the Appellate Panel gave arbitrary reasons with regards to the application of Article 175 of the Criminal Code of BiH to the appellant's actions which were classified as the war crime committed against prisoners of war so that the appellant's right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention was violated.

- **Decision on Admissibility and Merits No. AP3280/13 of 7 October 2014, paragraphs 58 and 59, published in the *Official Gazette of Bosnia and Herzegovina*, 92/14;** *criminal proceedings, war crime, a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established*

The Constitutional Court concludes that the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention was violated as the reasoning for the contested judgment, which was a final decision on the perpetration of a criminal offence and criminal accountability, does not contain the reasons from which it would have followed that responses to the essential issues raised in the appeal were given with regards to the conclusion on the existence of the criminal offence and criminal accountability.

- **Decision on Admissibility and Merits No. AP 3623/13 of 7 October 2014, paragraph 104, published in the *Official Gazette of Bosnia and Herzegovina*, 89/14; criminal proceedings, a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court concludes that the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention was violated when the Supreme Court failed to give clear and unambiguous reasons for considering that the Cantonal Court had arbitrarily applied substantive law in the situation where disputable facts were partially proved by the appellant (recruitment of employee) and partially they proved to be indisputable (the manner of recruitment) in conjunction with the provision of Article 143(8) of the Labor Law which was the basis of the appellant's claim.

- **Decision on Admissibility and Merits No. AP 4566/11 of 21 October 2014, paragraph 35, published in the *Official Gazette of Bosnia and Herzegovina*, 93/14; the Constitutional Court decided on the merits of the claim in the present case, since the Cantonal Court rendered a judgment, which was clear, precise and supported by arguments in respect of the application of the provision of Article 143(8) of the Labour Law and the reasons thereof meet the requirements under Article 6(1) of the European Convention, which was the reason why it remained in force - a labour dispute lasted more than 14 years); a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court concludes that the appellants' right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention and 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 were violated as the ordinary court failed to give the reasons in the contested judgment in respect of the real place of residence of the defendants and as it failed to examine to which extent the connection of the defendants with the premises in question was strong and permanent and whether the defendants established their residence in another place, as prescribed by the standards of the right to a fair trial under Article 6 of the European Convention, which was the reason why it could not be concluded whether the interference with the appellants' right to property was lawful, whether the disputable joint premises constituted the defendants' home and which of the two rights „prevailed” within the meaning of the provisions of the European Convention.

- **Decision on Admissibility and Merits No. AP 2453/11 of 6 November 2014, paragraph 40, published in the *Official Gazette of Bosnia and Herzegovina*, 93/14;**

the appellants' claim for repossession of the joint premises which were used by the defendants based on the facilities use agreement which was concluded between the appellants as holders of condominium ownership of the premises in question and defendants; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established

The Constitutional Court concludes that the Supreme Court, in its contested decision, dismissed the appellant's claim whereby it sought the court to establish his portion of co-ownership of the part of the State capital of the first-defendant and, in this respect, the right to be registered as owner of the mentioned capital. Furthermore, the Constitutional Court notes that the Supreme Court gave detailed reasons for finding that the appellant's claim was unfounded. The Constitutional Court holds that the appellant's allegations on the arbitrariness in application of substantive law are unacceptable as the appellant did not present any argument in support of those allegations. The Constitutional Court holds that the Supreme Court gave detailed reasons with regards to the relevant provisions being the basis for its decision, which cannot be considered as arbitrary or contrary to the right to a reasoned decision under Article 6(1) of the European Convention.

- **Decision on Admissibility and Merits No. AP 3821/11 of 18 November 2014, paragraph 27;** *privatization of the State capital; there has been no violation of Article 6 the European Convention and Article II(3)(e) of the Constitution of BiH*

The Constitutional Court notes that the Appellate court did not deal with the appellant's complaints which were of crucial importance in the present case. It notably points to the appellant's claims that the Receipt Note was signed by the person not known to the appellant. On the other side, the appellate court generally concluded that „the appellant properly received the warrant”. According to the Constitutional Court, the question to know whether someone received a document properly or whether someone received a document at all is of particular importance for the fairness of the proceedings as a whole and such issues may be the basis for complaint under Article 68(1)(a) of the Law on Minor Offences (serious violation of the proceedings), which is to be considered by the appellate court. Given the foregoing and taking into account the case-law of the European Court, the appellate court failed to deal with the complaints which were of crucial importance for the appellant. This resulted in the fact that the reasons for the contested judgment of the appellate court did not satisfy the standards related to the reasoned judgment within the meaning of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention.

- **Decision on Admissibility and Merits No. AP 4839/11 of 18 November 2014, paragraph 40, published in the Official Gazette of Bosnia and Herzegovina, 101/14;** *delivery, minor offence warrant, a violation of Article 6 the European Convention and Article II(3)(e) of the Constitution of BiH established*

The Constitutional Court concludes that the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention was violated as the reasons for the contested decisions with regards to the mandatory

application of more lenient law are reduced to the comparison between the Criminal Code of BiH and Criminal Code of the SFRY, more particularly to the question which of the two laws prescribes more severe sanction for the perpetrator (the appellant) as the main argument was that the Criminal Code of SFRY prescribes death penalty (as well) in case of the offence in question. None of the Panels of the Court of BiH that dealt with the case in question gave reasons with regards to the question which of the two laws prescribes more lenient penalty in case of perpetration of the criminal offence of war crime against civilians. According to the Constitutional Court, this should have been done given the tendency of the Court of BiH of imposing more lenient sanction on the appellant (given the fact that the imposed sanction was below the minimum penalty prescribed by the law) so that this was the reason why Article 173 of the Criminal Code of BiH and Article 142 of the Criminal Code of the SFRY should have been compared, i.e. the reasons with regards to which of the two laws prescribes (i) more lenient penalty for the appellant should have been given and then the court should have decided which of the two laws was more lenient from the aspect of the minimum penalty prescribed by the law and then, accordingly, should have applied more lenient law.

- **Decision on Admissibility and Merits No. AP 3312/12 of 27 November 2015, paragraph 80, published in the *Official Gazette of Bosnia and Herzegovina*, 4/16; criminal proceedings, application of more lenient law; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

Fair trial – tribunal established by law

There is a violation of the right to a fair trial when the tribunal established by law fails to conduct criminal proceedings.

- **Decision No. U 34/01 of 22 June 2001, paragraphs 21 to 25, published in the *Official Gazette of Bosnia and Herzegovina*, 20/01; criminal proceedings were not conducted by a tribunal established by law, subject-matter jurisdiction; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

A tribunal „established by law” within the meaning of Article 6 paragraph 1 of the European Convention, was not deliberating on a revision-appeal, as an extraordinary legal remedy, when the court sitting in chamber decided in the proceedings on revision-appeal, although the Civil Procedure Code provides that the Grand Chamber deliberates in the proceedings on revision-appeal.

- **Decision on Admissibility and Merits No. AP 421/04 of 25 February 2005, paragraphs 26 and 29, published in the *Official Gazette of Bosnia and Herzegovina*, 40/05; proceedings on revision-appeal, incorrect composition of the chamber of the court; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established)**

In the instant case, Article 23 of the Criminal Procedure Code of BiH, which must be read in conjunction with Article 13 of the Law on the Court of BiH, prescribes the subject matter jurisdiction, i.e. criminal jurisdiction, of the Court of BiH, and, in this context, there is no dilemma that the Court of BiH is „the court defined beforehand by

law as competent to adjudicate in criminal matters within the scope of its jurisdiction". Furthermore, Article 449 of the Criminal Procedure Code of BiH stipulates the conditions under which the Court of BiH can, *i.e.* cannot, take over a case falling under its jurisdiction, which was pending before another court at the time when the Criminal Procedure Code of BiH entered into force. The Constitutional Court holds that the Court of BiH has given sufficient reasons as to the basis of its jurisdiction, which is corroborated by the mentioned laws and which cannot be assessed as arbitrary. In view of the above, the Constitutional Court holds that the Court of BiH, by its decision to take over the case after the County Court had confirmed the indictment and scheduled the main trial following the entry into force of the Criminal Procedure Code of BiH, has not violated the appellant's right to a fair trial in respect of the requirements that he be tried by „a tribunal established by law”.

- **Decision on Admissibility and Merits No. AP 519/07 of 30 January 2010, paragraphs 53 and 54, published in the *Official Gazette of Bosnia and Herzegovina, 20/10; war crime, there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH***

The Constitutional Court establishes that there is a violation of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention where the Cantonal Court in the challenged judgment failed to provide the reasons on decisive facts in relation to committing minor children into care, and the decision does not contain clear and well-argued reasons on which it was based, that is to say where the challenged decision does not contain the reasoning meeting the requirements under the standard of the right to a fair trial.

- **Decision on Admissibility and Merits No. AP 3012/13 of 9 October 2013, paragraph 32, published in the *Official Gazette of Bosnia and Herzegovina, 86/13; parental guardianship; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established***

The Constitutional Court thus observes that both ordinary courts in fact dismissed the appellant's claim on several grounds, thereby failing to provide for either of them a clear and logical reasoning. Thus, in the end, it remained unclear as to what the reasons were for which the appellant's claim was dismissed, whether because of the fact that the appellant was not a member of a family household of his grandfather and grandmother within the meaning of Article 6 of the Law on Housing Relations and accordingly whether given the degree of kinship only the community of life mattered or economic community of 10 years was required, or because the appellant had no legal interest for establishment, or because he was not an unlawful user of the respective apartment within the meaning of Article 30 of the Law on Housing Relations, or because the defendant had no standing to be sued. Based on the aforementioned, it follows that neither the Municipal nor the Cantonal Courts fulfilled their respective obligations in an appellate proceeding to state clear reasons on which they based their decision that the appellant's claim was ill-founded, that is to say that the challenged decisions did not contain the reasoning meeting the requirements referred to in Article 6(1) of the European Convention, which leads to arbitrariness, which is incompatible with the goal and essence of the mentioned

right, which is the reason why the Constitutional Court cannot examine whether the ordinary courts had applied correctly the substantive law in the challenged decisions. However, bearing in mind the positions alleged in this decision that the Constitutional Court would not substitute the ordinary courts' assessment of facts and the application of the substantive law, the Constitutional Court will not go examine the manner in which the ordinary courts should interpret the provisions of the Law on Housing Relations, the Law on the Sale of Apartments with Occupancy Right and the Law on Civil Procedure, since that falls within the jurisdiction of the ordinary courts and not the Constitutional Court.

- **Decision on Admissibility and Merits No. AP 712/12 of 21 July 2015, paragraphs 35 and 36, published in the *Official Gazette of Bosnia and Herzegovina*, 69/15; occupancy right, member of a family household; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

Right to a public hearing

Administrative dispute, in the present case, was conducted at one instance and only the proceedings before the Supreme Court of the Federation of Bosnia and Herzegovina has the character of an ordinary court proceedings. Thus, the proceedings at issue must be conducted so as to meet the requirements of „a public trial” and the requirements related to the right of the public to control judiciary.

- **Decision No. U 148/03 of 28 November 2003, paragraph 58, published in the *Official Gazette of Bosnia and Herzegovina*, 1/04; failure to hold a public hearing in an administrative dispute; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

Failure to hold a public hearing in a situation where the appellant did not request so explicitly in the lawsuit and where the appellant's views are related to the timeliness of the respective request, considering the contents of the appeal against the first instance ruling and the contents of the lawsuit in the administrative dispute that the court is already familiar with, does not constitute an omission indicative of a violation of the right to a fair trial.

- **Decision on the Merits No. AP 85/06 of 15 February 2007, paragraph 32, published in the *Official Gazette of Bosnia and Herzegovina*, 38/07; administrative proceedings, failure to hold a public hearing in an administrative dispute; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

There is no violation of the right to a fair trial in a situation where the appellant was heard in an administrative proceeding, and the court decided the administrative dispute without an oral hearing, and the appellant did not request in particular the holding of an oral hearing.

- **Decision on Admissibility and Merits No. AP 450/07 of 10 June 2009, paragraph 32, published in the *Official Gazette of Bosnia and Herzegovina*, 82/09; administrative proceedings, failure to hold a public hearing in an administrative dispute; there is no**

violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH

Presumption of innocence

Decision of the court to suspend the proceedings in accordance with the Law on Amnesty and the relevant decision on the costs of the proceedings, does not express the opinion as to the guilt of the accused within the meaning of Article 6 paragraph 2 of the European Convention.

- **Decision No. U 24/01 of 28 September 2001, paragraph 27, published in the Official Gazette of Bosnia and Herzegovina, 5/02; amnesty; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

In the present case, the less lenient law for the appellant was not applied, that is the principle „*in dubio pro reo*” was not violated.

- **Decision on Admissibility and Merits No. AP 378/04 of 23 March 2005, paragraph 23, published in the Official Gazette of Bosnia and Herzegovina, 32/05; criminal proceedings related to the act of incitement of prostitution**

The very fact that evidence on which the court based its judgment were challenged during the trial does not prove a violation of the principle *in dubio pro reo*, or the right to presumption of innocence, if the court provided convincing and logical arguments as to why it dismissed evidence offered by the appellant, and why it accepted such evidence on which it based its judgment.

- **Decision on the Merits No. AP 767/04 of 17 November 2005, paragraph 26, published in the Official Gazette of Bosnia and Herzegovina, 17/06; criminal proceedings; alleged violation of the presumption of innocence (*in dubio pro reo*), impartiality of the court, violation of the right to defense; there is no violation of Article 6 paras 1 and 2 and paragraph 3 items b and c of the European Convention and Article 13 of the European Convention**

Considering the previous convictions by a court during adjudication in the manner prescribed by law, it does not constitute in itself a violation of the right to a fair trial and the presumption of innocence, whereby the challenged judgments are not exclusively based on criminal record, but also on statements of other witnesses and other material evidence.

- **Decision on the Merits No. AP 579/05 of 9 May 2006, paragraph 29, published in the Official Gazette of Bosnia and Herzegovina, 77/06**

On account of the application of the principle *in dubio pro reo*, the facts that the accused is charged with must be established with certainty, unlike the facts which are in favor of the accused, and which are considered as established even when they are only probable, i.e. when there is a doubt about their existence.

- **Decision on Admissibility and Merits No. AP 1603/05 of 21 December 2006, paragraph 41, published in the Official Gazette of Bosnia and Herzegovina, 34/07;**

criminal proceedings, assessment of legal validity by ordinary courts; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established

The Constitutional Court concludes that there is a violation of the right under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(2) of the European Convention in relation to the statements of public officials of Dragan Lukač – Director of the Federation of BiH Police Administration, Šemsudin Mehmedović – delegate in the Parliamentary Assembly of Bosnia and Herzegovina and Bakir Izetbegović – a member of the Presidency of Bosnia and Herzegovina, because they constituted a statement on the appellant’s „guilt”, and they, as such, prejudged the assessment of facts by the competent court authorities and encouraged the public to believe that the appellant was guilty before his guilt was proven in accordance with the law.

- **Decision on Admissibility and Merits No. AP 4319/14 of 18 December 2014, paragraph 39, published in the *Official Gazette of Bosnia and Herzegovina*, 8/15; criminal proceedings; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

There is a violation of the principle *in dubio pro reo*, which is guaranteed by Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(2) of the European Convention in a situation where the ordinary court when doubting the existence of certain facts fails to establish facts that are in favor of the appellant.

- **Decision on Admissibility and Merits No. AP 1328/13 of 17 June 2015, paragraph 40, published in the *Official Gazette of Bosnia and Herzegovina*, 58/15; offense proceedings; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

Minimum rights of the accused

■ Information on the nature and type of the accusation

With Article 6 of the European Convention requiring that the appellant be informed in the shortest period possible of the accusation against him, it is not implied that he must be informed about it in the arrest warrant, but in the shortest period possible.

- **Decision on the Merits No. AP 86/05 of 13 October 2005, paragraph 29, published in the *Official Gazette of Bosnia and Herzegovina*, 17/06**

As to the appellant’s allegations, the Constitutional Court points out that the Supreme Court had undisputedly incorporated into the foundation of the accusation certain facts and circumstances which the very court found to be „relevant for correct consideration of the entire incriminating event...”, as stated in the reasoning of the challenged judgment. However, the Constitutional Court holds that objective identity of the indictment was disturbed thereby in the manner which could bring into question the appellant’s enjoyment of the right to a fair trial, as the identity was preserved considering that the appellant was convicted for the same act he was accused of.

- **Decision on Admissibility and Merits No. AP 2323/06 of 3 April 2008, paragraph 35, published in the *Official Gazette of Bosnia and Herzegovina*, 47/08; criminal proceedings, exceeding the scope of the accusation**

■ Information in the language he/she understands

The appellant's right to be informed promptly and fully in a language which he understands, of the nature and cause of the accusation against him, shall not be violated when in the proceedings before the court the finding and opinion of an expert in the field of traffic were used as evidence by showing a diagram of braking force made on a computer with the textual part in German language, which the appellant did not understand, whereby the court assessed as evidence the finding and opinion of the expert and not the diagram.

- **Decision on Admissibility and Merits No. AP 1158/05 of 12 April 2006, paragraphs 34 and 37, published in the *Official Gazette of Bosnia and Herzegovina*, 59/06; criminal proceedings, use of the finding and opinion of the expert while using the report on vehicle technical inspection made in German language; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

■ Adequate time for the preparation of defense

There is no violation of the right under Article 6(3)(b) of the European Convention, considering the established facts from the case file of the criminal case and especially bearing in mind the fact that the appellant and his newly appointed defense counsel stated that they did not need additional time to prepare the defense.

- **Decision on Admissibility and Merits No. AP 639/03 of 14 October 2004, published in the *Official Gazette of Bosnia and Herzegovina*, 8/05**

There is no violation of the right to adequate time for the preparation of defense under Article 6 paragraph 3(b) of the European Convention, when such allegations are based exclusively on arguments that evidence presented at the main hearing and attached to the case file were not communicated to the appellant directly, in a situation when the appellant had cross-examined such evidence and had not requested from the court additional time for the preparation of defense. In addition, there is no violation of the principle of impartiality of the court when the appellant did not justify and prove such claims.

- **Decision on Admissibility and Merits No. AP 651/08 of 28 October 2008, paragraph 42, published in the *Official Gazette of Bosnia and Herzegovina*, 18/09; criminal proceedings, equality of the parties to the proceedings; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

■ Adequate facilities for the preparation of defense

The very presence of an official in adjacent rooms separated by glass, as stipulated by the then applicable law, is not desirable, yet it does not violate the rights protected by the

Constitution within the meaning of Article 6 of the European Convention. Otherwise, the right to defense could be considered „illusory”, „theoretical” and unfeasible in practice.

- **Decision No. U 2/02 of 27 June 2003, paragraph 29, published in the *Official Gazette of Bosnia and Herzegovina*, 41/03; criminal proceedings, the right to defense; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

However, a question arises as to whether it is possible, within the meaning of Article 6 of the European Convention, bearing in mind all the circumstances of the present case, to note that the appellant, by having the time allotted for one conversation between the appellant and his defense counsel limited to ten minutes with the presence of the prison ward, was deprived of the right to communicate freely with his defense counsel, namely that it violated his right referred to in Article 6(3)(b) of the European Convention (*to secure time and conditions necessary for the preparation of the defense*). In the opinion of the Constitutional Court the mentioned fact is an omission on the part of the competent bodies (which is indicative based on the case file of the appeal, as well as on the reply of the Basic Court wherein the appellant’s objection was not explicitly challenged in that a prison ward was present during the conversation). However, based on the aforementioned, it was not possible to observe that the appellant and his defense counsel complained that they were not provided for appropriate conditions for defense, and that the court, which had the responsibility regarding the continuation of the proceedings, failed to react. Also, it is not possible to observe that the appellant complained during the proceedings that he was deprived of the right to communicate freely with his defense counsel. In addition, based on all the other circumstances of this case, it follows that there were no other limitations in the contacts between the appellant and the defense counsel, i.e. it does not follow that the respective proceedings, essentially, made it impossible for the appellant to communicate with the defense counsel to such an extent that a violation of his right to defense under Article 6(3)(b) of the European Convention occurred. That means that, primarily bearing in mind the subsequent free communication between the appellant and his defense counsel that the appellant nevertheless had conditions secured for the preparation of the defense in accordance with Article 6(3)(b) of the European Convention. In that respect, the Constitutional Court finds that the appellant’s allegations concerning the violation of this aspect of the right to a fair trial were ill-founded.

- **Decision on Admissibility and Merits No. AP 3138/08 of 9 March 2011, paragraph 44, published in the *Official Gazette of Bosnia and Herzegovina*, 48/11; criminal proceedings, the right to defense; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

■ The right to defend oneself

The right to defense shall be violated in a situation where the accused was not secured a stipulated right to defend himself or through assistance of defense counsel, whereas the decision of the court is exclusively or mainly based on the statement of a person who identified oneself as the representative for the accused legal person, without a stipulated power of attorney issued by the accused.

- **Decision on the Merits No. AP 599/04 of 13 October 2005, paragraphs 30 to 32, published in the *Official Gazette of Bosnia and Herzegovina*, 17/06; minor offense proceedings, the accused (legal person) did not have legal representation; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

■ The right to legal assistance

The presence of the defense counsel while carrying out procedural action, as well as the main hearing, is obligatory only in the event of compulsory defense. In the present case, given that it concerns optional defense, there were no legal restrictions that would make it impossible for the appellant to use his right to expert defense. Bearing this in mind, as well as the fact that the appellant voluntarily, without coercion, waived the right to the defense counsel's assistance at the main hearing, the first instance court was not obliged to postpone the main hearing in such a situation.

- **Decision on Admissibility and Merits No. AP 502/04 of 30 November 2004, paragraph 21, published in the *Official Gazette of Bosnia and Herzegovina*, 19/05; criminal proceedings, justified absence of defense counsel at the main hearing; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

There is no violation of the right to defense as an element of the right to a fair trial in the event when the Supreme Court adopted a decision, in accordance with the law, at the session of the chamber attended by the appellant who agreed that the session of the chamber of the Supreme Court be held without his defense counsel being present.

- **Decision on Admissibility and Merits No. AP 2050/05 of 16 January 2007, paragraph 38, published in the *Official Gazette of Bosnia and Herzegovina*, 34/07; session of the chamber held without the lawyer with the consent of the accused; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

There is no violation of the appellant's right to defense counsel under Article 6(3)(c) of the European Convention in a situation where the appellant was informed of this right, and did not request from the court to appoint a defense counsel *ex officio*, and the courts assessed that, given the nature of the accusation against the appellant, the potential punishment that may be imposed, the complexity of the case and the material status of the appellant, it was not necessary.

- **Decision on Admissibility and Merits No. AP 877/07 of 29 April 2009, paragraph 36, published in the *Official Gazette of Bosnia and Herzegovina*, 50/09; criminal proceedings, there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

■ **The right to examine prosecution witnesses under the same conditions**

In the present case, there was a violation of the principle under Article 6(3)(d) of the European Convention, guaranteeing to the accused persons the right to summon and examine any witness whose testimony they consider relevant for their respective case and to examine any witness they call or whose testimony the plaintiff relies on.

- **Decision on Admissibility and Merits No. U 146/03 of 26 March 2004, paragraph 27, published in the *Official Gazette of Bosnia and Herzegovina*, 24/04; additional hearing of a protected witness; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

There is a violation of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(3)(d) of the European Convention for the reason that the challenged convicting judgments were based exclusively on the statements of witnesses that the appellant was in no position to examine at any stage of the proceedings.

- **Decision on Admissibility and Merits No. U 117/03 of 29 October 2004, paragraph 23, published in the *Official Gazette of Bosnia and Herzegovina*, 24/05; judgment based exclusively on the testimonies of witnesses whom the appellant had no chance to examine; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

There was no violation of Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(3)(d) of the European Convention since in the present case previously given statements of witnesses were read at the main hearing, without them being present in person at the main hearing in the capacity of witnesses. However, the ordinary courts had valid reasons for such a procedure based on Article 333 paragraph 1 item 1 of the Criminal Procedure Code.

- **Decision on Admissibility and Merits No. AP 105/03 of 30 November 2004, paragraph 30, published in the *Official Gazette of Bosnia and Herzegovina*, 15/05; criminal act of human trafficking – reading statements given during the investigation**

Therefore, a condition stated under Article 6(3)(d) of the European Convention providing that in the event when the accused cannot directly pose questions to the prosecution witness, the judgment establishing his guilt cannot be based exclusively on statements of witnesses read at the main hearing, has been met.

- **Decision on Admissibility and Merits No. AP 91/04 of 23 March 2005, paragraph 32, published in the *Official Gazette of Bosnia and Herzegovina*, 30/05**

Using statements of anonymous witnesses as evidence while establishing the well-foundedness of criminal charges may lead to a violation of the right to a fair trial under Article 6 of the European Convention in two cases: a) when the judgment is based exclusively on the testimony of an anonymous witness and b) when the accused or his defense lawyer are not given a chance to challenge a testimony of anonymous witness during the course of the trial, or to give their respective opinion about it.

- **Decision on the Merits No. AP 506/04 of 23 September 2005, paragraph 25, published in the *Official Gazette of Bosnia and Herzegovina*, 80/05; criminal proceedings, the right to defense; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

There is no violation of the right to a fair trial or the right to defense in the event when the appellant was not communicated a ruling determining a hearing of a protected witness if such an omission, that occurred during the preparations of the main hearing, was redressed at the main hearing, when the appellant had a chance to state her opinion and to challenge the statement of the protected witness while the challenged judgments were not exclusively based on the testimony of the protected witness.

- **Decision on the Merits No. AP 506/04 of 23 September 2005, paragraph 30, published in the *Official Gazette of Bosnia and Herzegovina*, 80/05; criminal proceedings, the right to defense; there no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

The right of the accused to be allowed to examine prosecution witness has no absolute effect, i.e. this right of the accused is not unlimited. For instance, there are cases when the law does not allow for the accused to directly examine the prosecution witness, in which testimonies of the so-called *protected witnesses* are being used. In addition, there are situations when, due to objective circumstances, it is not possible to hear at the main hearing a witness who had already deposited a testimony in the preliminary proceeding without the accused or his defense counsel being present.

- **Decision on the Merits No. AP 679/04 of 13 September 2005, paragraph 25, published in the *Official Gazette of Bosnia and Herzegovina*, 86/05; criminal proceedings, statements of witnesses given during the pre-trial investigation were read out at the main hearing; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

Presenting evidence *by reading* the testimonies of witnesses at the main hearing, in the manner stipulated by law, does not constitute in itself a violation of the right to a fair trial, while the challenged judgments are not based exclusively on the above referenced testimonies, but also on the testimonies of other witnesses and other material evidence.

- **Decision on the Merits No. AP 679/04 of 13 September 2005, paragraph 26, published in the *Official Gazette of Bosnia and Herzegovina*, 86/05; criminal proceedings, statements of witnesses given during the pre-trial investigation were read out at the main hearing; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

There is no violation of the right to a fair trial in the event when the challenged judgments are not based only on the testimonies of witnesses that the appellants objected to, and the procedural omissions related to the testimonies of such witnesses that they gave by way of a petition before the investigative judge were redressed at the main hearing as the first instance court heard them directly and read out their testimonies, with the consent of the parties, from the minutes taken before the investigative judge.

- **Decision on the Merits No. AP 1083/04 of 13 October 2005, paragraph 33, published in the *Official Gazette of Bosnia and Herzegovina*, 22/06**

There is no violation of Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) and (3)(d) of the European Convention, for the reason that the reading of the testimony of a witness who was unable to attend the main hearing „due to important reasons”, in the manner stipulated by the law, did not constitute in itself a violation of the right to a fair trial, while the challenged judgments were not based exclusively on such testimonies, but rather on the testimonies of other witnesses and other material evidence.

- **Decision on the Merits No. AP 977/04 of 17 November 2005, paragraph 29, published in the *Official Gazette of Bosnia and Herzegovina*, 20/06**

Article 6 of the European Convention does not grant to a party an unrestricted right to hear witnesses before the court and to propose the presentation of other evidence.

- **Decision on the Merits No. AP 2345/05 of 14 March 2006, paragraph 32, published in the *Official Gazette of Bosnia and Herzegovina*, 66/06; discretion of the court to assess as to whether the testaments of the proposed witnesses or presentation of other proposed evidence would be relevant for decision-making in the present case**

There is a violation of the appellant’s right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) and (3) c) and d) of the European Convention, in the situation when it was undisputedly established that witnesses were heard before the first instance court, the appellant was not present during their hearing and that expert analysis by the expert in the field of traffic was determined and carried out without giving a chance to the appellant to give his opinion about the selection of an expert or about the expert finding prior to the adoption of a first instance decision, while the appellant was not informed of the session of the appellate panel to be held before the second instance court.

- **Decision on the Merits No. AP 481/05 of 14 March 2006, paragraph 50, published in the *Official Gazette of Bosnia and Herzegovina*, 57/06**

There shall be no violation of Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 (1) and (3)(d) of the European Convention, as reading the statement of a witness who was unable again to attend the main hearing „due to important reasons” in the manner prescribed by law, does not constitute in itself a violation of the right to a fair trial, and the challenged judgments are not based exclusively on such a testimony, but also on the testimonies of other witnesses and other material evidence.

- **Decision on the Merits No. AP 154/05 of 12 April 2006, paragraph 34, published in the *Official Gazette of Bosnia and Herzegovina*, 49/06**

The principle of the right to a fair hearing or the adversarial principle shall not be violated if the testimony of only one of the witnesses was read at the main hearing without directly hearing the respective witness, whereby all other evidence and facts suggest that the person at issue, as the appellant in the present case, committed a certain criminal act and that he/she is criminally liable.

- **Decision on the Merits No. AP 800/05 of 9 May 2006, paragraph 25, published in the *Official Gazette of Bosnia and Herzegovina*, 77/06**

There shall be no violation of Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(3)(d) of the European Convention, for the reason that the reading of the testimonies of witnesses who were unable to attend the main hearing „due to important reasons” in the manner prescribed by law, does not constitute in itself a violation of the right to a fair trial, while the challenged judgments are not based exclusively on such testimonies but also on other material evidence.

- **Decision on Admissibility and Merits No. AP 1492/05 of 12 September 2006, paragraph 24, published in the *Official Gazette of Bosnia and Herzegovina*, 7/07;**
- **Decision on Admissibility and Merits No. AP 223/06 of 15 February 2007, paragraphs 26 to 28, published in the *Official Gazette of Bosnia and Herzegovina*, 38/07; *criminal proceedings, reading witnesses’ testimonies; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH***

There is a violation of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(3)(d) of the European Convention for the reason that the challenged convicting judgments are based exclusively on the testimony of the damaged party whom the appellant was in no position to examine at any stage of the proceedings.

- **Decision on Admissibility and Merits No. AP 2238/05 of 17 November 2006, paragraph 22, published in the *Official Gazette of Bosnia and Herzegovina*, 12/07; *judgment based exclusively on the testimony of the damaged person whom the appellant had no chance to examine; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established***

[...] The Constitutional Court observes that the appellants and their defense counsels, throughout the entire duration of the proceedings before ordinary courts, did not challenge the manner in which the ordinary courts presented evidence or requested new presentation of evidence by hearing witnesses. Quite the contrary the court read, with the consent of the appellants and plaintiff alike, the statements of some of the witnesses who had been heard during the proceedings – investigation, upon requests or at the main hearing. Considering the aforementioned, and especially the fact that the appellants did not challenge in the proceedings before the ordinary courts the indirect presentation of evidence, but agreed to it instead, the Constitutional Court is of the opinion that their right to defence under Article 6(3)(d) of the European Convention was not violated.

- **Decision on Admissibility and Merits No. AP 3159/06 of 15 January 2009, paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina*, 28/09; *criminal proceedings, reading witnesses’ testimonies from the investigation stage; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH***

■ **The right to attend and to hear defence witnesses under the same conditions**

The right to a fair trial shall not be violated in the event when the ordinary courts, on the basis of evidence available to them, decide that presentation of certain evidence in the proceedings upon the proposal of the accused and his defence counsel is not purposeful, and provide valid reasons in the reasoning of such a decision whereby no other indications suggest that the proceedings were unfair.

- **Decision on the Merits No. AP 1076/04 of 13 September 2005, paragraph 29, published in the *Official Gazette of Bosnia and Herzegovina*, 22/06;**
- **Decision on the Merits No. AP 215/05 of 12 April 2006, paragraph 98, published in the *Official Gazette of Bosnia and Herzegovina*, 68/06**

In order to establish a violation of the appellant's right to call witnesses, the appellant must prove that calling a witness was necessary for establishing the truth and that failure to call witnesses prejudged the outcome of the appellant's case (see, the European Commission of Human Rights, *X v. Switzerland*, 28, Decisions and Reports, paragraph 136).

- **Decision on the Merits No. AP 662/04 of 20 December 2005, paragraph 37, published in the *Official Gazette of Bosnia and Herzegovina*, 41/06; disciplinary proceeding against the judge conducted before the High Judicial and Prosecutorial Council; there is no violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

In the event when the ordinary courts had a reasonable justification as to why they dismissed the appellant's request for the presentation of evidence through additional expert analysis by an expert neuropsychiatrist, such dismissal, under the circumstances when the facts for which the expert analysis were being sought had already been established, is a discretionary right of the court and it does not constitute a violation of Article 6 of the European Convention.

- **Decision on the Merits No. AP 257/05 of 20 December 2005, paragraph 26, published in the *Official Gazette of Bosnia and Herzegovina*, 37/06**

In the event when the appellant had a chance to propose to the Basic Court to hear a witness but failed to do so and was not prevented to propose the hearing of such persons in the complaint against the indictment and subsequently during the course of the main hearing, even he was unaware of the fact as to whether such persons were available to the prosecution bodies, there is no violation of his rights under Article 6(3)(d) of the European Convention.

- **Decision on the Merits No. AP 85/05 of 20 December 2005, paragraph 24, published in the *Official Gazette of Bosnia and Herzegovina*, 37/06**

As to the testimonies of witnesses and other presented evidence, Article 6 of the European Convention does not provide for a possibility for the court to examine all allegations, arguments and evidence presented and proposed by the parties during the course of the proceedings, but only those that the court considers relevant and necessary for lawful

decision-making. This discretion, which any court has in a contradictory proceeding, exists for the sake of efficiency of the proceedings.

- **Decision on Admissibility and Merits No. AP 74/05 of 23 February 2006, paragraph 37, published in the *Official Gazette of Bosnia and Herzegovina*, 37/06**

There is no violation of the right to a fair trial in the event when the appellant failed to submit any evidence whatsoever proving that the first instance court had arbitrarily dismissed his proposal for hearing witnesses, or that there is anything in the case suggesting such arbitrariness or that the evidentiary proceedings were misused to the detriment of the appellant. Quite the contrary, it follows from the first instance judgment that the appellant had and used a chance to present his evidence as well as to examine prosecution evidence in the same way as the prosecution.

- **Decision on the Merits No. AP 215/05 of 12 April 2006, paragraph 62, published in the *Official Gazette of Bosnia and Herzegovina*, 68/06**

The Constitutional Court concludes that the challenged judgments, in the portion of the decision confiscating property gain from the appellants, violated the right of access to court as the segment of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention in a situation when the appellants, as the persons from whom the property gain was confiscated, were not offered procedural protection before the first instance court, within the meaning of the provision of Article 414 of the Criminal Procedure Code of FBiH, which the Supreme Court failed to observe and correct in due time.

- **Decision on the Merits No. AP 2062/11 of 17 July 2014, paragraph 41, published in the *Official Gazette of Bosnia and Herzegovina*, 71/14; the confiscation of property gain from third persons; criminal proceedings; there is a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

■ Free assistance of an interpreter

There is no violation of the right to a fair trial in the event when the hearing of the appellant, who does not understand the language in official use in court, in the preliminary proceeding before the investigative judge, at the appellant's explicit request, was attended by a selected and not certified court interpreter.

- **Decision on the Merits No. AP 1030/04 of 13 October 2005, paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina*, 4/06**

ARTICLE 7 OF THE ECHR – NO PUNISHMENT WITHOUT LAW

No punishment without law

The Constitutional Court holds that the courts applied the law which was more lenient for the appellant and that in the present case there is no violation of the appellant's rights under Article 7 of the European Convention.

- **Decision on Admissibility and Merits No. AP 114/02 of 27 October 2004, paragraph 34, published in the *Official Gazette of Bosnia and Herzegovina*, 60/04; the issue of the application of a more lenient law to the criminal act of abuse of office**

The allegation of the appellant that the proceedings were conducted and that he was convicted of „a continued criminal offence”, which as such was not prescribed in the Criminal Code, is ill-founded, as such application of the law is favorable for the accused. Had not such mechanism been in place, the accused would have been tried for each criminal offense committed and separate sentences pronounced for each of the offenses. Thus, accordingly, by applying provisions on concurrence of criminal offenses he would be given a single sentence, which is undoubtedly less favorable for the appellant than when applying the mechanism of extended criminal offence, and when tried and determining a sentence prescribed for one offense.

- **Decision on the Merits No. AP 86/05 of 13 October 2005, paragraphs 59 and 60, published in the *Official Gazette of Bosnia and Herzegovina*, 17/06**

There is no violation of Article 7 of the European Convention, because the criminal offense of trafficking in humans is a permanent criminal offense, which perpetration had started before the entry into force of the new Criminal Code of BiH prescribing that offense, which perpetration and consequences continued even after the entry into force of that law.

- **Decision on the Merits No. AP 3388/06 of 17 March 2009, paragraph 48, published in the *Official Gazette of Bosnia and Herzegovina*, 50/09; the confiscation of property gain acquired through criminal offense; there is no violation of Article 7 of the European Convention**

The Constitutional Court concludes that there is no violation of Article 7(1) of the European Convention when the appellants were found guilty of a continued criminal offense of tax evasion, which was as such first and foremost prescribed by an Entity law and subsequently by a BiH law, thus in the present case the BiH law was applied since the appellants continued to perpetrate the criminal offense even after the entry into force of the BiH law, and could assume that the continuation of their behavior after the entry into force of the BiH law (on 1 March 2003) carried a risk for them to be convicted of a continued criminal offense under the provisions of the law that were in force at the time they committed the last action of perpetration. Also, there is no violation of Article 7(1) of the European Convention when the ordinary courts established that the appellants were responsible for criminal actions fulfilling the elements of the essence of criminal offenses of tax evasion and abuse of office or authority, and the mentioned criminal offenses were „prescribed by law” at the time of the perpetration and the appellants could understand from the contents of the provisions which criminal actions and omissions might make them criminally liable.

- **Decision on Admissibility and Merits No. AP 3133/11 of 27 March 2015, paragraph 59, published in the *Official Gazette of Bosnia and Herzegovina*, 34/15; criminal proceedings; continued criminal offense; there is no violation of Article 7 of the European Convention**

Prohibition of retroactive application of the law

It is not necessary to examine separately whether the challenged rulings of the Constitutional Court of the Federation of Bosnia and Herzegovina violated the principle of prohibition of retroactive application of the law, particularly when bearing in mind that the Constitutional Court, in its Decision no. *U 24/03* of 22 September 2004, established that the provisions of the Law on Immunity of Bosnia and Herzegovina and the Law on Immunity of the Federation of Bosnia and Herzegovina are in compliance with the Constitution of Bosnia and Herzegovina and that they do not have retroactive effect prohibited by Article 7 of the European Convention.

- **Decision on Admissibility and Merits No. AP 58/03 of 29 October 2004, paragraph 45, published in the *Official Gazette of Bosnia and Herzegovina*, 11/05; immunities**

The Constitutional Court concludes that there is a violation of Article 7(1) of the European Convention, on the ground that there is a realistic possibility in the present case that the retroactive application of the BiH Criminal Code was to the detriment of the appellant in respect of the sentencing, which is contrary to Article 7(1) of the European Convention, irrespective of the fact that, given the prescribed range of the prison term, this does not mean that the appellant would have received a lower imprisonment sentence had the SFRY Criminal Code been applied in his case. Namely, it is of crucial importance that the appellant could have received a lower sentence had this Code been applied.

- **Decision on Admissibility and Merits No. AP 325/08 of 27 September 2013, paragraph 54, published in the *Official Gazette of Bosnia and Herzegovina*, 80/13; war crime; change of the case-law taken in the case no. AP 1785/06**

The Constitutional Court concludes that also in respect of the criminal offence War Crimes Against Civilians under Article 173 of the Criminal Code of BiH, for which the appellant was declared guilty under paragraph 3 of the challenged judgment, the violation of Article 7(1) of the European Convention has not occurred, i.e. by the retroactive application of the Criminal Code of BiH, although this criminal offence at the time of the perpetration thereof had been regulated as a criminal offence under the Criminal Code of SFRY, as in the appellant's case there exists no realistic possibility that the retroactive application of the Criminal Code of BiH would be to the appellant's detriment as regards the determination of punishment, since, even if the Criminal Code of SFRY was applied to this criminal offence, the appellant could not have been sentenced to the more lenient punishment as he was sentenced for the concurrence of criminal offences to long-term imprisonment of 28 years and that that penalty, under the relevant provisions of the Criminal Code of BiH applied at the time of the adoption of the challenged judgments, absorbed the prison sentence of 10 years, which was imposed on the appellant for the criminal offence of war crimes against civilians. Therefore one cannot say that the appellant has not been secured an effective protection relative to the imposing of the higher sentence.

- **Decision on Admissibility and Merits No. AP 2789/08 of 28 March 2013, paragraph 71, published in the *Official Gazette of Bosnia and Herzegovina*, 42/14; war crime**

**ARTICLE 8 OF THE ECHR – RIGHT TO RESPECT
FOR PRIVATE AND FAMILY LIFE, HOME AND
CORRESPONDENCE**

The right to home under Article 8 of the European Convention offers protection from unjustified interference with the existing home, but it does not give the right to larger or better home.

- **Decision No. U 22/01 of 1 September 2001, paragraph 24, published in the *Official Gazette of Bosnia and Herzegovina*, 33/01; the right to adequate accommodation; there is no violation of Article 8 of the European Convention and Article II(3.f) of the Constitution of BiH**

In order to establish whether the present case concerns a violation of Article 8 of the European Convention, first it is necessary to establish whether the disputed apartment was the appellant's „home” within the meaning of Article 8 paragraph 1 of the European Convention and whether the measures the appellant refers to relate to „the interference” of public authorities with the respect for such „home”. Second, for „the interference” to be justified, it must be „in accordance with the law”. This condition of lawfulness, in accordance with the meaning of the term European Convention, comprises several elements: (a) the interference must be based on national or international law; (b) the law concerned must be appropriately available so that an individual is appropriately informed of the circumstances of the law that can be applied to the case at issue, and (c) the law must be phrased with appropriate accuracy and clarity so as to allow an individual to adjust to it one's actions accordingly (see the European Court of Human Rights, *Sunday Times v. The United Kingdom*, judgment of 26 April 1979, series A, No. 30, paragraph 49

- **Decision on Admissibility and Merits No. AP 380/04 of 26 April 2005, paragraph 20, published in the *Official Gazette of Bosnia and Herzegovina*, 40/05; the transfer of occupancy right to a child; there is no violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH;**
- **Decision on Admissibility and Merits No. AP 1812/05 of 8 July 2006, paragraph 32, published in the *Official Gazette of Bosnia and Herzegovina*, 87/06; apartments occupied on the basis of occupancy right**

The Constitutional Court concludes that there is a violation of the appellant's right to respect for home, privacy and family life, since the warrant of the Court of BiH, based on which the search was conducted, lacked a minimum of specification in terms of the existence of reasons suggesting that there exists a likelihood that someone (*perpetrator or accomplice*) or something (*the traces of a criminal offence or objects relevant to the proceedings*) would be found with the appellant, which clearly stems from the contents of the provisions of the Criminal Procedure Code and represents a guarantee of justification for issuing a search warrant.

- **Decision on Admissibility and Merits No. AP 2120/09 of 26 May 2012, paragraph 45, published in the *Official Gazette of Bosnia and Herzegovina*, 59/12; apartment search; there is a violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH**

The Constitutional Court concludes that there is no violation of the appellant's right to private life and correspondence under Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention, when the appellant, pursuant to Article 119(3) of the Criminal Procedure Code of BiH, was informed of the completion of special investigative actions immediately after the court discontinued such actions, i.e. when the Prosecutor's Office of BiH proposed to the court to order detention against her; and when the Court of BiH made it possible to the public to see the record of the entire hearing for ordering detention, because it held that the interest of the public to be informed about this case prevailed over the appellant's right to the protection of right under Article 8 of the European Convention; because both types of interference were „in conformity with the law” and „necessary in a democratic society” within the meaning of Article 8(2) of the European Convention.

- **Decision on Admissibility and Merits No. AP 1758/15 of 30 June 2015, paragraph 123, published in the *Official Gazette of Bosnia and Herzegovina*, 58/15; criminal proceedings; there is no violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH**

Private life

There is no violation of the right to respect for private and family life, home and correspondence under Article 8 of the European Convention due to the cutting off of a telephone line.

- **Decision No. AP 21/02 of 17 May 2004, paragraphs 38 and 39, published in the *Official Gazette of Bosnia and Herzegovina*, 40/04; proceedings on the appellant's request for the compensation of damage due to the cutting off of a telephone line**

The fact that not event almost ten years after the cessation of the war operations in Bosnia and Herzegovina the competent authorities had not managed to submit information to the appellants regarding the fate of the members of their families that had gone missing during the war conflict in Bosnia and Herzegovina, is sufficient to the Constitutional Court to conclude that the rights to private and family life were violated in respect of the members of families of missing persons.

- **Decision on Admissibility and Merits No. AP 129/04 of 27 May 2005, published in the *Official Gazette of Bosnia and Herzegovina*, 58/05;**
- **Decision on Admissibility and Merits No. AP 143/04 of 23 September 2005, published in the *Official Gazette of Bosnia and Herzegovina*, 80/05;**
- **Decision on Admissibility and Merits No. AP 228/04 of 13 July 2005, published in the *Official Gazette of Bosnia and Herzegovina*, 58/05; missing persons**

The press statements as to the appellant's activity as a commander of a military unit during the war cannot be considered private, but rather „public function” the appellant had discharged during the war. In the event when the publication of an article does not interfere with the appellant's private sphere, as is the case here, there is no violation of the right to „private life” guaranteed by Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention.

- **Decision on Admissibility and Merits No. AP 427/06 of 5 June 2007, paragraph 38, published in the *Official Gazette of Bosnia and Herzegovina*, 6/08; defamation, connection between the protected rights to private life under Article 8 of the European Convention and values protected by Article 10 of the European Convention**

There is no violation of the right to „private life” guaranteed by Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention in a procedure concerning paternity determination when such a procedure is conducted in accordance with the law, which is clear and published, when it is in the public interest and in accordance with the principle of proportionality between the public interest in a democratic society and the right of the appellant to private life.

- **Decision on Admissibility and Merits No. AP 68/07 of 8 September 2009, paragraph 38, published in the *Official Gazette of Bosnia and Herzegovina*, 20/10; paternity determination, DNA test application to determine paternity, there is no violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH**

Family life

There is no violation of the right to a family life under Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention in the present case whereby a decision on children’s custody and support was adopted on the basis of expert assessment of all crucial facts in the best interests of children, by considering children’s wishes and on the basis of positive legal provisions. This decision does not hinder the right of access to children that the appellant has, nor does it end his family life with children and it does not terminate the authenticity of their family relations. It is in the interest of the social community to secure the best possible conditions for children’s protection and upbringing, if the parents cannot come to an agreement.

- **Decision on Admissibility and Merits No. AP 60/03 of 23 July 2004, paragraph 30, published in the *Official Gazette of Bosnia and Herzegovina*, 43/04; positive protection of family life**

While adopting the challenged decision on awarding the custody of children to the mother, the courts complied with Article 93 of the Family Law, thereby examining all facts related to awarding the custody of children to one of the parents. In such cases the court sees its role primarily in overseeing lawfulness in the process of decision-making and adopting quality decisions on entrusting children to the future care (see, *inter alia*, judgment of the European Court *Olsson v. Sweden*, of 27 November 1992, series A, No. 250, paragraph 90, and the judgment of the European Court, *Johansen v. Norway*, of 7 August 1996, 23 EHRR 33, paragraph 64).

- **Decision on Admissibility and Merits No. AP 83/03 of 29 September 2004, paragraphs 24 to 26, published in the *Official Gazette of Bosnia and Herzegovina*, 54/04**

A decision awarding custody of a child to the mother after divorce does not hinder the right of access to children that the appellant has, nor does it end his family life with a

child and it does not terminate the authenticity of their family relations. Therefore, there is no violation of Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention.

- **Decision on Admissibility and Merits No. AP 346/04 of 18 January 2005, published in the *Official Gazette of Bosnia and Herzegovina*, 38/05**

There is a violation of the appellant's right to private and family life, in the event where in the course of administrative dispute proceedings it was not established whether the forced removal of the appellant from the country would be justified within the meaning of Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention.

- **Decision on Admissibility and Merits No. AP 41/09 of 28 March 2009, paragraph 30, published in the *Official Gazette of Bosnia and Herzegovina*, 33/09; family life, the expulsion of an alien; a violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH established**

There is no violation of the right to respect for family life under Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention, when the appellant's claim for modification of the decision of the Social Work Center on the custody of a child was dismissed, because the appellant failed to prove that altered circumstances existed, in order for the court, within the meaning of Article 143 of the Family Law, to adopt a new decision, and when it followed from the circumstances of the present case that the decision of the Cantonal Court did not place an exaggerated burden on the appellant and that the decision was proportionate to the legitimate goal sought to be achieved – the protection of rights and interests of a child, therefore „it was necessary in a democratic society” within the meaning of Article 8(2) of the European Convention.

- **Decision on Admissibility and Merits No. AP 3073/09 of 7 April 2011, paragraph 57, published in the *Official Gazette of Bosnia and Herzegovina*, 65/11; modification of the decision on the custody of a child; there is no violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH**

Interference with family life

By publishing news that the appellant was removed from office and that the money from a cash-registry where he had worked went missing, no violation of the appellant's right to private and family life could have occurred.

- **Decision on Admissibility and Merits No. AP 1031/04 of 26 April 2005, paragraph 22, published in the *Official Gazette of Bosnia and Herzegovina*, 48/05**

The Constitutional Court concludes that there is no violation of the appellant's right to private life under Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention, when the interference with the private life was effected through the use of transcripts and records of the appellant's intercepted telephone conversations, the reports of undercover investigators and telephone calls records which were found to be lawful evidence in terms of valid regulations, and they were necessary

in a democratic society for the purpose of achieving the legitimate goal of preventing and detecting criminal offences and the protection of the rights of others, and that there is no violation of the appellant's right to private life under Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention, given that the mentioned evidence did not relate to the appellant.

- **Decision on Admissibility and Merits No. AP 1655/11 of 25 June 2014, paragraph 55, published in the *Official Gazette of Bosnia and Herzegovina*, 71/14; the lawfulness of evidence, criminal proceedings; there is no violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH, and Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH**

Term „home”

Possessing and occupying real property suggests that the respective real property may be considered home, which, in the broadest sense of the term, may be defined as a place where person lives.

- **Decision on the Merits No. AP 1049/05 of 14 March 2003, paragraph 42, published in the *Official Gazette of Bosnia and Herzegovina*, 59/06**

An apartment where the appellant lived long enough, in a common-law marriage with the occupancy right holder, in order to be considered a member of a household, shall be his/her home within the meaning of Article 8 of the European Convention.

- **Decision No. U 65/01 of 25 July 2003, paragraph 54, published in the *Official Gazette of Bosnia and Herzegovina*, 38/03; transfer of occupancy right to common-law partner; a violation of Article 8 of the European Convention established**

One may consider as „home” an apartment over which no occupancy right has been acquired, rather it was used on the basis of a ruling on the use of apartment as the building was not provisionally accepted as finished, but there were other elements suggesting that „home” did exist.

- **Decision on Admissibility and Merits No. U 102/03 of 28 April 2004, paragraph 32, published in the *Official Gazette of Bosnia and Herzegovina*, 30/04; administrative proceedings and administrative dispute for the repossession of apartment over which no occupancy right had been acquired as the building had not been provisionally accepted as finished**

Since this concerns a socially-owned apartment, which the appellant was allocated during the regular allocation of apartments in accordance with normative provisions of the owner of apartment and the established rank-list, undoubtedly this issue is about home within the meaning of Article 8 of the European Convention.

- **Decision on Admissibility and Merits No. U 26/03 of 30 June 2004, paragraph 27, published in the *Official Gazette of Bosnia and Herzegovina*, 38/04; contentious proceedings for eviction of unlawful apartment occupant**

The Constitutional Court holds that the appellant legally used the apartment at issue, as his grandfather lived in it, whom with he had a lifelong support agreement. Therefore,

the apartment at issue may be considered the appellant's home within the meaning of Article 8 of the European Convention.

- **Decision on Admissibility and Merits No. AP 45/02 of 30 June 2004, paragraph 72, published in the *Official Gazette of Bosnia and Herzegovina*, 41/04; transfer of occupancy right from a grandfather to a grandson; there is no violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH**

An apartment where the appellant had lived with her mother up until 1993, and then left as a result of the war, just to return to and exercise her right to return as a refugee in accordance with Annex 7, shall be considered the appellant's „home” within the meaning of Article 8 of the European Convention.

- **Decision on Admissibility and Merits No. AP 21/03 of 22 September 2004, paragraphs 35 and 36, published in the *Official Gazette of Bosnia and Herzegovina*, 54/04**

The apartment where the appellant has lived for 14 years, where he has engaged in his usual activities, and where he has continued to live after his grandmother's death, where he started his family and where he has lived to this day, shall constitute the appellant's „home” within the meaning of Article 8 of the European Convention.

- **Decision on Admissibility and Merits No. AP 323/04 of 17 December 2004, paragraph 22, published in the *Official Gazette of Bosnia and Herzegovina*, 34/05**

The apartment where the appellant had lived for a long time with his grandmother, and continued using it after her death shall be his home regardless of the fact that he was not registered at the address of the apartment at issue.

- **Decision No. U 1/02 of 17 December 2004, paragraph 36, published in the *Official Gazette of Bosnia and Herzegovina*, 8/04; the transfer of occupancy right to grandson, contract on lifelong support; a violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH established**

The term „home” comprises a rented home, as well as a privately-owned home and apartments occupied on the basis of occupancy right.

- **Decision on Admissibility and Merits No. AP 380/04 of 26 April 2005, paragraph 22, published in the *Official Gazette of Bosnia and Herzegovina*, 40/05; the transfer of occupancy right to a child; there is no violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH;**
- **Decision on Admissibility and Merits No. AP 455/04 of 12 April 2005, paragraph 21, published in the *Official Gazette of Bosnia and Herzegovina*, 22/06; the repossession of apartment; there is no violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH**

Within the meaning of Article 8 of the European Convention a „home” shall be also an apartment that a person has moved into on the basis of the ruling on allocation of apartment, even if the contract on the use of apartment has not been concluded.

- **Decision on Admissibility and Merits No. AP 455/04 of 12 April 2005, paragraph 21, published in the *Official Gazette of Bosnia and Herzegovina*, 22/06; the**

repossession of apartment; there is no violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH

An apartment which is occupied on the basis of a lease agreement shall be considered home within the meaning of Article 8 of the European Convention.

- **Decision on Admissibility and Merits No. AP 418/04 of 22 April 2005, paragraph 23, published in the *Official Gazette of Bosnia and Herzegovina*, 40/05; the repossession of apartment on the basis of lease agreement, JNA apartment; there is no violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH**

The Constitutional Court concluded that the mentioned apartment should be considered the appellant's home within the meaning of Article 8 of the European Convention, as the appellant was a lawful holder of the occupancy right over the said apartment up until 1992, when she left Bosnia and Herzegovina due to the war.

- **Decision on the Merits No. AP 1082/04 of 13 September 2005, paragraph 22, published in the *Official Gazette of Bosnia and Herzegovina*, 8/06; the appeal dismissed as the preclusive time limit for the repossession of apartment was missed**

Business premises where the appellant practices law may be considered in the present case the appellant's home within the meaning of Article 8 of the European Convention, considering the nature of the appellant's practice and the manner in which the appellant uses the premises at issue.

- **Decision on Admissibility and Merits No. AP 301/04 of 23 September 2005, published in the *Official Gazette of Bosnia and Herzegovina*, 80/05**

„Home” is a factual state of affairs, which does not require existence of legal grounds.

- **Decision on the Merits No. AP 663/04 of 13 October 2005, paragraph 23, published in the *Official Gazette of Bosnia and Herzegovina*, 86/05; exercising the right to apartment; a violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH established**

An apartment where the appellant lives on the basis of agreement on use shall be considered home of the appellant, although she has not obtained a legal status of an occupancy right holder over the respective apartment.

- **Decision on the Merits No. AP 645/04 of 2 December 2005, paragraph 39, published in the *Official Gazette of Bosnia and Herzegovina*, 41/06; civil proceedings, acquiring the right to apartment after canceling the agreement on use to the occupancy right holder; a violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH established**

The fact that the appellant's occupancy right has ceased *ex lege*, pursuant to Article 5 paragraph 3 of the Law on Cessation of the Application of the Law on Abandoned Apartments, does not represent an obstacle for the disputed apartment to be considered his home.

- **Decision on the Merits No. AP 964/04 of 3 December 2005, paragraphs 23 and 24, published in the *Official Gazette of Bosnia and Herzegovina*, 20/06**

Given the facts that the appellant had lived for a long time with her grandfather in the disputed apartment, and that she has continued to use it even after his death, the apartment at issue represents her „home” within the meaning of Article 8 of the European Convention.

- **Decision on the Merits No. U 49/03 of 27 May 2006, paragraphs 33 and 34, published in the *Official Gazette of Bosnia and Herzegovina*, 7/07; administrative proceedings for the transfer of occupancy right**

The term „home” comprises a rented home, as well as a privately-owned home (see the European Court of Human Rights, *Gillow v. Great Britain*, judgment of 24 November 1986, series A, No. 109, paragraph 46. f, *Kroon v. The Netherlands*, judgment of 27 October 1994, series A, No. 297-C, paragraph 31). In accordance with this interpretation, the Constitutional Court expanded the scope of Article 8 of the European Convention to include apartments occupied on the basis of occupancy right (see the Constitutional Court, Decision no. *U 8/99* of 11 May 1999, published in the *Official Gazette of Bosnia and Herzegovina*, 24/99).

- **Decision on Admissibility and Merits No. AP 1812/05 of 8 July 2006, paragraph 33, published in the *Official Gazette of Bosnia and Herzegovina*, 87/06; apartments occupied on the basis of occupancy right**

The existence of continuity of children living with occupancy right holder in a shared household at the time of death of a parent is a precondition for one to acquire the status of a family household member (see the Constitutional Court, Decision no. *U 1/02* of 26 September 2003, published in the *Official Gazette of Bosnia and Herzegovina*, 8/04; Decision no. *U 12/01* of 25 February 2002, published in the *Official Gazette of Bosnia and Herzegovina*, 20/02, and Decision no. *U 140/03* of 21 January 2004, published in the *Official Gazette of Bosnia and Herzegovina*, 6/04).

- **Decision on Admissibility and Merits No. AP 1812/05 of 8 July 2006, paragraph 34, published in the *Official Gazette of Bosnia and Herzegovina*, 87/06; apartments occupied on the basis of occupancy right**

What is not considered a „home”

A part of apartment with co-occupancy status, which the appellant’s husband moved in without the consent of the owner of apartment, cannot be considered a home within the meaning of Article 8 of the European Convention.

- **Decision No. U 6/01 of 31 August 2001, published in the *Official Gazette of Bosnia and Herzegovina*, 33/01**

The appellant did not allege any interference whatsoever with his home, but deemed that he had the right to be allocated an adequate apartment. Thus the subject of his appeal is the right to acquire an apartment and not the interference with an already acquired right.

- **Decision on the Merits No. U 70/03 of 30 January 2004, paragraph 25, published in the *Official Gazette of Bosnia and Herzegovina*, 11/04;**

- **Decision on Admissibility and Merits No. U 94/03 of 17 May 2004, paragraph 29, published in the *Official Gazette of Bosnia and Herzegovina*, 34/04;**
- **Decision on Admissibility and Merits No. AP 910/04 of 15 June 2005, paragraph 32, published in the *Official Gazette of Bosnia and Herzegovina*, 73/05**

The respective premises cannot be considered „home” of the appellant within the meaning of Article 8 of the European Convention, as the appellant did not acquire any right over the apartment at issue, but she used the apartment with the consent of the occupancy right holder up until the moment the relations between the appellant and the occupancy right holder became unbearable.

- **Decision on Admissibility and Merits No. U 17/03 of 17 May 2004, paragraph 27, published in the *Official Gazette of Bosnia and Herzegovina*, 34/04; contentious proceedings for the establishment of the right to unhindered use of apartment over which the defendant is the occupancy right holder**

Considering the information following from the court case-file, which the appellant did not challenge, that the appellant did not permanently reside at the disputed apartment, as in 1980, by moving to his family house, he had ceased to use the disputed apartment for good, which he had considered his home up until that moment, the respective apartment is not the appellant’s „home” within the meaning of Article 8(1) of the European Convention.

- **Decision on Admissibility and Merits No. U 43/03 of 17 May 2004, paragraphs 27 and 28, published in the *Official Gazette of Bosnia and Herzegovina*, 34/04; contentious proceedings for the establishment of occupancy right**

An apartment shall not be considered the appellant’s home when the appellant, by leaving for abroad to work in 1969, in fact ceased living in a common household with his mother, and was neither living nor running errands and attending to his business as usual. That is to say he did not establish sufficiently strong ties in order for that apartment to be considered his home within the meaning of Article 8 of the European Convention.

- **Decision on Admissibility and Merits No. AP 142/02 of 15 June 2004, paragraph 24, published in the *Official Gazette of Bosnia and Herzegovina*, 40/04; the right to transfer the occupancy right after death of the occupancy holder; the fact related to permanent living and occupancy**

An apartment over which the appellant lost the status of occupancy right holder and the legal basis to use the apartment according to a legally binding judgment of 12 February 1991, that is prior to 30 April 1991, as a starting point for settlement of all property-related disputes resulting from the war in Bosnia and Herzegovina shall not be considered the appellant’s home.

- **Decision on Admissibility and Merits No. AP 85/03 of 26 August 2004, paragraph 27, published in the *Official Gazette of Bosnia and Herzegovina*, 48/04**

An apartment where the appellant lived occasionally with her sister, and was at the same time an occupancy right holder over another apartment shall not be considered the appellant’s home.

- **Decision on Admissibility and Merits No. AP 238/03 of 29 September 2004, published in the *Official Gazette of Bosnia and Herzegovina*, 54/04**

In the proceedings before the Constitutional Court, the appellant failed to submit evidence undisputedly proving that throughout her entire stay abroad she failed to establish sufficiently strong ties to the apartment of her parents, in order for that apartment to be considered her home within the meaning of Article 8 of the European Convention.

- **Decision on Admissibility and Merits No. AP 280/04 of 29 September 2004, paragraph 26, published in the *Official Gazette of Bosnia and Herzegovina*, 54/04**

The apartment which the appellant had never moved into, i.e. which she had never lived in nor ran errands or attended to her business as usual cannot be considered her „home” within the meaning of Article 8 of the European Convention.

- **Decision on Admissibility and Merits No. AP 258/03 of 29 September 2004, paragraph 31, published in the *Official Gazette of Bosnia and Herzegovina*, 54/04**

The disputed apartment shall not be the appellant’s „home” despite the fact that immediately after the war he tried to return to the apartment, which his ex-wife made impossible, as, even before the divorce, he had founded his new home by purchasing an apartment in Niš, where he has lived and worked and which was undisputedly established in the proceedings before the courts which deliberated on this issue.

- **Decision on Admissibility and Merits No. U 121/03 of 22 September 2004, paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina*, 2/05; divorce, establishment of new home and pre-war apartment**

Throughout his entire stay outside Zenica, the appellant failed to establish sufficiently strong ties to the apartment of his father, in order for the apartment to be considered his home within the meaning of Article 8 of the European Convention.

- **Decision on Admissibility and Merits No. AP 342/04 of 27 May 2005, published in the *Official Gazette of Bosnia and Herzegovina*, 78/05**

The Constitutional Court holds that, in the proceedings before this court, she failed to submit evidence which undisputedly prove that after the end of the war in Bosnia and Herzegovina up until the death of her mother she was prevented, due to objective reasons or reasons beyond her control, from returning to the disputed apartment and continuing using it together with her mother.

- **Decision on Admissibility and Merits No. AP 377/04 of 18 January 2005, paragraph 31, published in the *Official Gazette of Bosnia and Herzegovina*, 40/05**

In the event when the appellant, of his free will, moved out of the disputed apartment for work and relocation to another place prior to the beginning of the conflict in BiH and failed to use the disputed apartment thereafter for 14 years, such apartment shall not be the appellant’s „home” within the meaning of Article 8 paragraph 1 of the European Convention.

- **Decision on Admissibility and Merits No. AP 293/05 of 23 February 2005, paragraph 37, published in the *Official Gazette of Bosnia and Herzegovina*, 37/06**

Apartment or a part of the apartment shall not be considered home within the meaning of Article 8 of the European Convention if „used unlawfully” or if „the person illegally moved in”.

- **Decision on Admissibility and Merits No. AP 418/04 of 22 April 2005, paragraph 21, published in the *Official Gazette of Bosnia and Herzegovina*, 40/05; the repossession of apartment on the basis of lease agreement, JNA apartment; there is no violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH;**
- **Decision on Admissibility and Merits No. AP 455/04 of 12 April 2005, paragraph 21, published in the *Official Gazette of Bosnia and Herzegovina*, 22/06; the repossession of apartment; there is no violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH**

An apartment with the occupancy right may not be considered home of a member of a family household if the respective member failed to establish sufficiently strong ties to the pre-war residence (in the present case as a result of a stay abroad).

- **Decision on Admissibility and Merits No. AP 380/04 of 26 April 2005, paragraph 24, published in the *Official Gazette of Bosnia and Herzegovina*, 40/05; the transfer of occupancy right to a child; there is no violation of Article 8 of the European Convention**

If agreement on the use of apartment has never been concluded nor the appellant has ever moved into it, this apartment may not be considered a home.

- **Decision on Admissibility and Merits No. AP 477/04 of 27 May 2005, paragraph 34, published in the *Official Gazette of Bosnia and Herzegovina*, 78/05; civil proceedings, handover of the possession of apartment; there is no violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH**

If the appellant had never moved into the disputed apartment or had never lived in it and ran his usual errands, such apartment may not be considered the appellant’s „home” within the meaning of Article 8 of the European Convention.

- **Decision on the Merits No. AP 281/05 of 28 June 2005, paragraph 31, published in the *Official Gazette of Bosnia and Herzegovina*, 60/05**

There is no violation of the right to respect for home, as the challenged decision established that the appellant did not meet conditions prescribed by law for the transfer of occupancy right from the deceased occupancy right holder to her, so that the disputed apartment is not the appellant’s „home” within the meaning of Article 8 of the European Convention.

- **Decision on Admissibility and Merits No. AP 971/04 of 28 June 2005, paragraph 34, published in the *Official Gazette of Bosnia and Herzegovina*, 27/06; contentious proceedings for the transfer of occupancy right**

An apartment may not be considered a home if the reason for ceasing to use the apartment was a voluntary cessation to use it and voluntary surrender of apartment for use.

- **Decision on the Merits No. AP 818/04 of 23 September 2005, paragraph 32, published in the *Official Gazette of Bosnia and Herzegovina*, 3/06; administrative proceedings, the repossession of apartment the appellant left in order to move into another apartment; there is no violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH**

The appellant's right to home was not violated, as the appellant did not establish a common household on a permanent basis with her mother, the occupancy right holder, nor did she have a legally recognized status of a member of her family household at the time of her death. Therefore the disputed apartment may not be considered her home.

- **Decision on the Merits No. AP 1036/04 of 13 September 2005, paragraph 35, published in the *Official Gazette of Bosnia and Herzegovina*, 4/06**

An apartment may not be considered „home” of the appellant, who, as a legal person, is the owner and occupancy right holder over the respective apartment and not the person using the apartment at issue for the purpose of living in it.

- **Decision on Admissibility No. AP 769/06 of 10 January 2008, paragraph 18; the appeal *ratione materiae* incompatible with the Constitution**

[...] It is indisputable that the appellant possess the CRPC Decision of 2 September 2003, which confirmed that on 1 April 1992 he was the occupancy right holder on the respective apartment. However, in the opinion of the Constitutional Court that cannot constitute a sufficient argument that would lead to a conclusion that the respective apartment constituted the appellant's „home” within the meaning of Article 8(1) of the European Convention, bearing in mind all the circumstances of the present case. In that respect, the Constitutional Court once again emphasizes that the appellant of his free will and without duress, primarily because of the nature of the work he performed (military service), severed the ties with the respective apartment and requested the issuance of a confirmation note on the handover of the respective apartment in order to regulate the right to be allocated another apartment (in the area of the present-day Republika Srpska), which is the reason why he gave up the claim for the repossession of the respective apartment. Therefore, the Constitutional Court concludes that the respective apartment cannot be considered „home” of the appellant within the meaning of Article 8(1) of the European Convention.

- **Decision on Admissibility and Merits No. AP 292/08 of 29 June 2010, paragraph 39, published in the *Official Gazette of Bosnia and Herzegovina*, 101/10; JNA apartment; there is no violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH**

Interference with the right to home

Court decisions and, previously, administrative acts, dismissing the appellant's claim for the repossession of apartment on the grounds that he had not concluded an agreement on the use of apartment and could not therefore be considered an occupancy right holder, unjustifiably prevented the repossession of apartment to the appellant – a refugee from

Bosnia and Herzegovina, who had been, up until 30 April 1991 (date set by property laws), on the basis of the ruling on the allocation of apartment, in factual possession of apartment. As a result, the appellant's right to respect for home under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the right to peaceful enjoyment of property under Article 1 of Protocol No. 1 to the European Convention, guaranteed by Article II of the Constitution of Bosnia and Herzegovina, in particular Article II(5) of the Constitution („Refugees and displaced persons”) were violated.

- **Decision No. U 14/00 of 4 May 2001, published in the *Official Gazette of Bosnia and Herzegovina*, 33/01**

Authorities may interfere with the right to respect for home if the following three conditions are fulfilled: first, interference must be in accordance with the national law, i.e. the law must be available and it must not be arbitrary, second, interference must have a legitimate goal, and third, interference must be proportionate to the goal sought to be achieved. If established that the interference with the exercise of the right was „in accordance with the law”, the next step is to establish whether it was justified. Establishment of such justification is done by way of a test comprised of two parts: a) establishing whether the interference has legitimate goal and b) whether appropriate balance has been struck between the interests of the applicants and the interests of the society (the so-called test of proportionality).

- **Decision on Admissibility and Merits No. U 26/03 of 30 June 2004, paragraph 30, published in the *Official Gazette of Bosnia and Herzegovina*, 38/04; contentious proceedings for the eviction of an unlawful occupant of apartment**

The interference of authority with the appellant's right to home is in accordance with the law, in the event when the appellant was a lessee of a military apartment on the basis of a concluded agreement on lease. Namely, he was not able to exhaust the subject matter ownership-related authorizations from the mentioned agreement, that is, he did not have the occupancy right over the apartment, nor did he possess the ruling on the use of apartment, which constituted the minimum of ownership authorization related to the disputed apartment, on which the well-foundedness of the request for the repossession of the apartment was based.

- **Decision on Admissibility and Merits No. AP 418/04 of 22 April 2005, paragraph 26, published in the *Official Gazette of Bosnia and Herzegovina*, 40/05; the repossession of apartment on the basis of lease agreement, JNA apartment; there is no violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH**

The interference with the right to home is in accordance with the law and is „a necessary measure in a democratic society” in the event when the agreement on the use of apartment ceased to be in effect *ex lege*, that is it was annulled by the application of the Law on the Cessation of the Application of the Law on Abandoned Apartments.

- **Decision on Admissibility and Merits No. AP 455/04 of 12 April 2005, paragraph 26, published in the *Official Gazette of Bosnia and Herzegovina*, 22/06; the**

repossession of apartment; there is no violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH

The omission of the public authorities to proceed in accordance with the appellant's request for the repossession of apartment in the period, which represents „a reasonable time limit” under Article 6 of the European Convention, „brought about or at least enabled a situation” whereby the appellant was prevented from enjoying his home for a prolonged period of time, for over seven years, thereby violating their positive obligation under Article 8 of the European Convention.

- **Decision on Admissibility and Merits No. AP 1070/05 of 9 February 2006, paragraph 68, published in the *Official Gazette of Bosnia and Herzegovina*, 45/06; proceedings related to the repossession of apartment to the pre-war occupancy right holder**

It follows unambiguously from the case-file that the appellant had moved out of the disputed apartment on the basis of the ruling issued by the competent municipal body, which ordered that a building where the apartment was located be pulled down. It follows from this that the challenged decisions of the ordinary courts not granting the appellant's request for establishment of her occupancy right over the respective apartment did not prevent the appellant from using her accommodation, i.e. home. Therefore, no interference with her enjoyment of the right to respect for home took place.

- **Decision on the Merits No. AP 703/05 of 12 April 2006, paragraph 49, published in the *Official Gazette of Bosnia and Herzegovina*, 77/06**

In the process of transfer of the occupancy right from a deceased occupancy right holder to a granddaughter whose „home” is the said apartment, the application of the provision of Article 2 of the Law on Amendments to the Law on Housing Relations, which narrowed the circle of possible members of family household through by eliminating grandchildren, after the entry into force of the Law on Striking out Articles in the Law on Amendments to the Law on Housing Relations whereby the mentioned Article was stricken out, constitutes arbitrary application of the law and does not constitute „interference” on the basis of the law. Therefore this concerns the violation of the right to respect for home under Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention.

- **Decision on the Merits No. U 49/03 of 27 May 2006, paragraph 44, published in the *Official Gazette of Bosnia and Herzegovina*, 7/07; administrative proceedings for the transfer of occupancy right**

When it comes to the issue of whether the disputed facility may be considered the appellant's „home” within the meaning of Article 8 of the European Convention, the Constitutional Court finds that it was indisputably determined in the proceedings that the appellant had used the facility in question for a number of years, from which he had been evicted, as he alleged, on 19 November 2007. In this connection, the facility in question constitutes the appellant's home. The next question to be considered is whether the challenged decisions amounted to the interference with the appellant's right and whether the interference was justified, i.e. whether it had a legitimate aim. The Constitutional

Court finds that the appellant is of the opinion that his right to home was violated by the fact that he had spent a major part of his life in that facility, that he renovated it and adapted it to his need, that it was his home regardless of its construction features and that the facility in question was confiscated from him, which was the reason why he ended up in the street. The Constitutional Court reiterates that the appellant requested the court to determine that he acquired the right of ownership over the facility in question, the compensation for the demolition of the facility in question and to secure for him an alternative apartment, which was refused by the ordinary courts. The Constitutional Court further reiterates that the appellant filed a submission wherein he alleged that he had been evicted from the facility in question on 19 November 2007, and wherein he neither alleged nor submitted decisions based on which he was evicted. Even if he had submitted it, the Constitutional Court could not assess whether they would be admissible at all. At any rate, the decisions in question interfered in no way with the appellant's right to home.

- **Decision on Admissibility and Merits No. AP 2049/09 of 28 September 2012, paragraph 53, published in the *Official Gazette of Bosnia and Herzegovina*, 102/12; auxiliary facility located next to the housing barracks on the socially-owned land**

Correspondence

[...] In the present case, the appellant referred to his right to correspondence in a situation that is not permitted by law and when sending messages via mobile telephone from the prison to persons he instructs on how to conduct themselves in the proceedings. While assessing all of the afore-mentioned, the Constitutional Court holds that the appellant has no „justified request” raising the issue of the right to correspondence referred to in the Constitution of Bosnia and Herzegovina or the European Convention, which should be examined on the merits. Therefore, the Constitutional Court concludes that the allegations on the violation of the right to correspondence referred to in Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention are manifestly (*prima facie*) ill-founded.

- **Decision on Admissibility No. AP 813/08 of 21 July 2010, paragraph 16**

Lawfulness within the context of Article 8 of the ECHR

In the context of the General Framework Agreement, the goal of eliminating the effects and traces of ethnic cleansing is considered as having such fundamental significance that in certain cases it affects the validity of legal transactions which would, otherwise, fulfill presumptions of civil law... The Court considers that it was clearly established that S. Z. had concluded a contract on exchange under the influence of her vulnerable position as a result of her ethnic affiliation at the time when the politics of ethnic cleansing had been pursued in the large part of Bosnia and Herzegovina and it is clear that the contract was not in accordance with her wishes under normal circumstances. Thus one must presume that B. V., at least in a general way, was aware of the reasons which made S. Z. agree to the contract.

- **Decision No. U 15/99 of 15 December 2000, published in the *Official Gazette of Bosnia and Herzegovina*, 13/01; The Constitutional Court resolved the case on the merits by declaring the contract on exchange of real properties null and void**

The Constitutional Court considers that the eviction of the appellant was in conformity with the law, that is that it was based on Article 22 paragraph 3 and Article 30 paragraph 2 of the Law on Housing Relations, that the law was accessible as it was published in official gazettes that are public and any person interested might familiarize oneself with its respective contents.

- **Decision on Admissibility and Merits No. AP 45/02 of 30 June 2004, paragraphs 76 to 79, published in the *Official Gazette of Bosnia and Herzegovina*, 41/04; the transfer of occupancy right from grandfather to grandson; there is no violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH**

Considering that the administration bodies and ordinary courts justified their interference with the appellant's home by the application of the legal provision, which had been previously established as the provision that should not have been applied in the present case, it follows that the interference with the appellant's home was not based on the law, as in the present case it was not possible to apply the provision of Article 2 paragraph 3 of the Law on Cessation of the Application of the Law on Abandoned Apartments, or any other provision on the basis of which it would be possible to deny to the appellant the return to the apartment at issue.

- **Decision on Admissibility and Merits No. AP 979/04 of 23 September 2005, paragraph 49, published in the *Official Gazette of Bosnia and Herzegovina*, 48/05; administrative procedure for the repossession of apartment**

The provision of the Law on the Cessation of the Application of the Law on Abandoned Apartments, allowing for *ex officio* decision-making on the status of the appellant as a temporary user of the apartment for which no return claim had been filed, is a measure serving the significant public interest of securing alternative accommodation with the aim to solve thousands of unsettled property claims in the most efficient way possible.

- **Decision on Admissibility and Merits No. AP 2133/05 of 20 October 2006, paragraph 33, published in the *Official Gazette of Bosnia and Herzegovina*, 9/07; the status of a temporary occupant of apartment for which no repossession claim had been filed; there is no violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH**

Establishing *ex officio* that the appellant's temporary right to use the respective apartment has ceased, placing the apartment under the temporary management of the Municipality and its repossession to the owner constitutes lawful interference with the appellant's rights serving the legitimate goal, that is making possible a just and lawful division of the housing fund during the peacetime, in accordance with priorities prescribed in Article 7 of the Law on Return, Allocation and Sale of Apartments and the provisions of relevant general acts of an employer, that is of the party allocating an apartment for use.

- **Decision on Admissibility and Merits No. AP 2133/05 of 20 October 2006, paragraph 33, published in the *Official Gazette of Bosnia and Herzegovina*, 9/07;**

the status of a temporary occupant of apartment for which no repossession claim had been filed; there is no violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH

The interference with the right to home was not in conformity with „law” on the grounds that the actions of the SFOR members in particular cases exceeded the scope of what has been provided for by the national law and the international documents norms.

- **Decision on Admissibility and Merits No. AP 2582/05 of 16 January 2007, paragraph 93, published in the *Official Gazette of Bosnia and Herzegovina*, 38/07; arrest by SFOR and search of apartment; a violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH established**

There is no violation of the right to home when the appellant, as a former member of the household of the occupancy right holder, who, under the Law on the Cessation of the Application of the Law on Abandoned Apartments, may be treated as „a displaced person”, failed to initiate the procedure of repossession of the apartment in accordance with the Law on the Cessation of the Application of the Law on Abandoned Apartments, thereby losing her right to „home” and the legal interest to challenge the status of occupancy right holder of the third person over the respective apartment. Furthermore, even if she had the legal interest, given that she was a signatory to the agreement on determining the occupancy right holder over the apartment which was her home, she could have challenged the legal validity of the agreement only by meeting the time limits provided for by the Law on Obligations, which she missed.

- **Decision on Admissibility and Merits No. AP 1822/06 of 27 February 2008, paragraphs 29 and 30, published in the *Official Gazette of Bosnia and Herzegovina*, 27/08; occupancy right; there is no violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH**

There is no violation of the right to respect for home under Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention in relation to the appellant’s allegations on the failure to issue final decisions on his claims for the repossession of apartment, where legal authorization of the competent bodies to terminate the procedure of the enforcement of the CRPC decision existed. By referring to the position of the Human Rights Commission within the Constitutional Court, the Constitutional Court concluded that the competent administrative bodies could not conduct parallel procedures regarding the appellant’s claim for the repossession of apartment vis-à-vis the procedure of the enforcement of the CRPC decision.

- **Decision on Admissibility and Merits No. AP 1970/06 of 15 January 2009, paragraph 52, published in the *Official Gazette of Bosnia and Herzegovina*, 26/09; the procedure for the repossession of apartment; there is no violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH**

The Constitutional Court holds that the challenged court decisions violated the appellant’s right to home under Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention, as they amount to unlawful interference with the appellant’s right. The interference is unlawful because ordinary courts granted the

plaintiff's claim for the eviction of the appellant from the apartment in question over which she acquired the ownership right, through the application solely of the provision of Article 43 of the Law on the Basis of Ownership Relations, and they disregarded the existence of a legally binding ruling of the Basic Court no. Rs-6/90 from 1990, which established the plaintiff's obligation to provide for the necessary accommodation for the appellant as a condition for his eviction from the apartment in question.

- **Decision on Admissibility and Merits No. AP 646/08 of 10 June 2009, paragraph 35, published in the *Official Gazette of Bosnia and Herzegovina*, 82/09; a violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH established**

The Constitutional Court concludes that in the respective proceedings, namely in the proceedings in which no final decision has been adopted for over five years and in which the case has been constantly referred back from the higher to the lower instance body, as a result of which the appellant is unable to exercise his right to apartment, the appellant's right to a fair trial within a reasonable time under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention was violated. Therefore, the Constitutional Court holds that the appellant's right to home under Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention was violated.

- **Decision on Admissibility and Merits No. AP 814/07 of 14 October 2009, paragraph 50, published in the *Official Gazette of Bosnia and Herzegovina*, 99/09; the length of the proceedings for the adoption of a ruling substituting the agreement on the use of apartment after the adoption of the decision of the Constitutional Court of BiH, which established in the same case the violation of the appellant's right to home; a violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH established**

There is a violation of the right to home under Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention, where an authorized person in the course of executing a warrant for the search of apartment, contrary to an explicit legal provision, fails to serve the person at whose place the search is being carried out with a search warrant prior to starting the search.

- **Decision on Admissibility and Merits No. AP 3376/07 of 28 April 2010, paragraph 49, published in the *Official Gazette of Bosnia and Herzegovina*, 95/10; special investigation actions; a violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH established**

The Constitutional Court concludes that the failure of the competent authorities to complete the procedure of the execution of the conclusion on the permission to carry out execution constitutes the interference with the appellant's right to home, which does not meet the criterion „in conformity with the law” referred to in Article 8(2) of the European Convention, which resulted in the violation of the appellant's right to home under Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention.

- **Decision on Admissibility and Merits No. AP 3377/09 of 18 April 2012, paragraph 57, published in the *Official Gazette of Bosnia and Herzegovina*, 47/12; the entry into the possession of apartment; a violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH established**

The interference of the public authorities with the appellant's right to home had been carried out in conformity with the law, which the Constitutional Court found to be in the public interest and that it did not allow the repossession of apartment to a person who had remained, after 19 May 1992, in the service of any armed forces outside the territory of Bosnia and Herzegovina, or the registration in the books of the ownership right on that apartment, although the ordinary courts established in the proceedings before them that the legally binding contract existed, since the challenged decisions of the ordinary courts referred them to seek in accordance with the law the prescribed compensation instead of the natural restitution.

- **Decision on Admissibility and Merits No. AP 1205/08 of 13 July 2012, paragraph 67, published in the *Official Gazette of Bosnia and Herzegovina*, 79/12; JNA apartments; a violation of Article 1 of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of BiH established; there is no violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH**

The Constitutional Court concludes that there is a violation of the right to home under Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention, because the interference with the appellant's right is unlawful, since she, as a factual user of electric power within the meaning of Article 75(4) of the Law on Ownership Relations, was thwarted from enjoying the use of her „home” within the meaning of Article 8 of the European Convention.

- **Decision on Admissibility and Merits No. AP 926/13 of 25 April 2013, paragraph 24, published in the *Official Gazette of Bosnia and Herzegovina*, 47/12; the disturbance of the possession of the family house and of the right to use electric power; a violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH established**

Proportionality within the context of Article 8 of the ECHR

The interference with the appellant's home, reflected in the loss of the specific appellant's right due to the missed deadline (the right to request the eviction of the second defendant from the apartment at issue), as well as the right of the second defendant to be protected from eviction on the grounds of years-long unlawful use of the disputed apartment, as no request for her eviction had been filed within the deadline prescribed by law, is proportionate to the legitimate goal sought to be achieved, that being the introduction of legal discipline into mutual relations between physical and legal persons, as well as legalization of years-long factual relation, which, after the lapse of a certain period of time, ought to become a legal relation.

- **Decision on the Merits No. AP 1049/05 of 14 March 2003, paragraphs 45 and 46, published in the *Official Gazette of Bosnia and Herzegovina*, 59/06; missing the deadline for requesting the eviction of unlawful user**

The Constitutional Court holds that a differing interpretation and application of the amended Article 6 paragraph 2 of the Law on Housing Relations would be incorrect and would not lead to a legitimate goal and would result in putting the appellant, as a member of a family household, in an unequal position with regards to exercising the right to apartment.

- **Decision on Admissibility and Merits No. U 160/03 of 23 July 2004, paragraph 30, published in the *Official Gazette of Bosnia and Herzegovina*, 43/04; the transfer of occupancy right to grandchildren in the Republika Srpska; a violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH established**

The interest of the owner of apartment to use one's apartment cannot have priority over the interest of a refugee who returned to one's home to continue using the disputed apartment as one's own and to restitute the condition as it had been when the appellant had to leave her home due to the war circumstances.

- **Decision on Admissibility and Merits No. AP 21/03 of 22 September 2004, paragraph 40, published in the *Official Gazette of Bosnia and Herzegovina*, 54/04**

The interest of the defendant to dispose of the disputed apartment as an official apartment for resolving housing needs of its employees cannot have priority over the appellant's interest to exercise her rights on the apartment she had used with her family for eight years (on the basis of the ruling on the allocation of apartment) prior to the onset of war circumstances and to which she intends to return and to live in it with her family on a permanent basis.

- **Decision on the Merits No. AP 663/04 of 13 October 2005, paragraph 30, published in the *Official Gazette of Bosnia and Herzegovina*, 86/05; exercising the right to apartment; a violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH established**

In the event when the appellant failed to file a timely request for the repossession of apartment over which he had had the occupancy right, and has been in possession of the disputed apartment for almost three years along with his ill wife, whereby all of their movables were in the apartment and the disputed apartment being restored by them, the appellant showed unambiguous wish and intention to continue living with his family in the disputed apartment. Therefore, the interference with the appellant's right to respect for his home was not proportionate to the legitimate goal.

- **Decision on the Merits No. AP 964/04 of 3 December 2005, paragraph 31, published in the *Official Gazette of Bosnia and Herzegovina*, 20/06**

In the event when the ordinary courts dismiss the request of the appellant for his occupancy right to be constituted on the apartment he has used on the basis of the agreement on life-long support with the deceased occupancy right holder, such interference with the appellant's home is based on the law and it is in compliance with the principle of

proportionality, i.e. the requirement for a fair balance between the general interest of the community and respect for the right of an individual.

- **Decision on the Merits No. AP 587/05 of 12 April 2006, paragraph 47, published in the *Official Gazette of Bosnia and Herzegovina*, 77/06; the challenged decisions are declaratory decisions which did not order the appellant to move out of the apartment at issue, and accordingly there was no interference with her home**

A decision dismissing the appellant's request for asylum and ordering him to leave the territory of Bosnia and Herzegovina for a period of 4 years is not proportionate to the goal sought to be achieved, namely the protection of immigration policy and economic welfare of the country and is necessary in a democratic society.

- **Decision on Admissibility and Merits No. AP 1788/05 of 20 September 2006, paragraph 63, published in the *Official Gazette of Bosnia and Herzegovina*, 9/07; the expulsion of an alien and the right to family life, there is no violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH**

There is a reasonable relation between the interference and the legitimate goal in cases where the persons participating in the armies of foreign states are not allowed to repossess apartments (see Decision of the Commission for Human Rights no. CH/00/5152 of 6 July 2005), i.e. a view that persons who failed to show their loyalty for their country cannot enjoy equal protection as those who did (see Decision of the Commission for Human Rights no. CH/98/874 of 8 February 2005).

- **Decision on Admissibility and Merits No. AP 2044/05 of 20 September 2006, paragraph 29, published in the *Official Gazette of Bosnia and Herzegovina*, 34/07; JNA apartment; there is no violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH;**
- **Decision on Admissibility and Merits No. AP 1512/06 of 3 April 2008, paragraph 40, published in the *Official Gazette of Bosnia and Herzegovina*, 41/08; JNA apartment; there is no violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH**

The interest in canceling co-occupancy relations in a new ownership structure over the entire housing fund and the interest of the plaintiff – counter defendant to expand his occupancy to the disputed apartment and thereby use the 117 m² apartment are not proportionate to the measure according to which the appellant must leave the disputed apartment regarding which she had concluded a *bona fide* agreement on the use, which was retroactively annulled and in which she has lived with her family since 1989.

- **Decision on Admissibility and Merits No. AP 1498/05 of 12 September 2006, paragraph 41, published in the *Official Gazette of Bosnia and Herzegovina*, 7/07; co-occupancy; a violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH established**

By enacting the Law on the Sale of Apartments with Occupancy Right (*Official Gazette of the Federation of Bosnia and Herzegovina*, 27/97, 11/98, 22/99, 27/99, 7/00, 25/01, 61/01, 15/02 and 54/04) the conditions and terms were laid down for selling apartments

with occupancy right and their transformation from social into private ownership, owing to which the issues related to the use of housing premises lose their public and legal character and become primarily the issues of private and legal character. Therefore, the privatization of apartments results in the loss of a legitimate goal, namely in the failure to establish co-occupancy relations and settlement of the existing ones for the purpose of more rational use of the housing premises, that existed at the time of the enactment of the law. The Constitutional Court, therefore, concludes that the mentioned measures do not have the legitimate goal and cannot be considered necessary in a democratic society for any purpose referred to in Article 8 paragraph 2 of the European Convention.

- **Decision on Admissibility and Merits No. AP 1498/05 of 12 September 2006, paragraph 73, published in the *Official Gazette of Bosnia and Herzegovina*, 7/07; co-occupancy; a violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH established**

In the present case where the appellant's communication with the outside world was restricted solely to contacts with his defense attorney, whereby this restriction applied during a limited time limit and in connection with the purpose and reasons for which the detention was imposed as prescribed by law, there was no violation of the reasonable relationship of proportionality between the protection of the legitimate goal that is sought to be achieved, on the one hand, and the protection of the appellant's right to private and family life, on the other hand.

- **Decision on Admissibility and Merits No. AP 3263/08 of 3 July 2009, paragraph 37, published in the *Official Gazette of Bosnia and Herzegovina*, 82/09; the ban on visits and telephone contacts with other persons except with the defense attorney during the detention; there is no violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH**

The Constitutional Court concludes that there is a violation of the right to home under Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention, because the ordinary courts, in adopting the challenged decisions, failed to carry out an appropriate analysis as required by the standards of the European Court established through the case-law of that court regarding the striking of a fair balance between the rights referred to in Article 8 of the European Convention and Article 10 of the European Convention.

- **Decision on Admissibility and Merits No. AP 2043/12 of 22 December 2015, paragraph 40, published in the *Official Gazette of Bosnia and Herzegovina*, 10/16; the compensation for damage for the injury to reputation, slander; a violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH**

Necessary measure in a democratic society

Bearing in mind that the appellant was not in a position to exercise the right to return to his home, although the situation in which temporary allocation of apartments had been justified was over long ago, the „interference”, which could have been justified at the beginning and in conformity with the principle of „necessity”, does not constitute, eight

years after the end of the war, the necessary „interference in a democratic society” with the appellant’s right to return to his home.

- **Decision on Admissibility and Merits No. U 102/03 of 28 April 2004, paragraph 36, published in the *Official Gazette of Bosnia and Herzegovina*, 30/04; administrative procedure and administrative dispute for the repossession of apartment over which no occupancy right was acquired as the building was not provisionally accepted as finished**

Dismissing the appellant’s proposal to establish that he was the occupancy right holder over the disputed apartment constitutes a measure which was not „necessary in a democratic society” and, therefore, it is not proportionate to the legitimate goal sought to be achieved.

- **Decision on Admissibility and Merits No. AP 323/04 of 17 December 2004, paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina*, 34/05**

The competent bodies did not violate the appellant’s right to home by establishing in the proceedings conducted that the appellant had no right to repossess the apartment, as he missed the preclusive statutory time limit for filing the claim for repossession, since the interference was based on the law and necessary „interference in a democratic society”.

- **Decision on Merits No. AP 1082/04 of 13 September 2005, paragraph 31, published in the *Official Gazette of Bosnia and Herzegovina*, 8/06;**
- **Decision on Admissibility and Merits No. AP 4/05 of 27 May 2005, paragraph 47, published in the *Official Gazette of Bosnia and Herzegovina*, 58/05**

A person who lived in an apartment on the basis of a temporary ruling issued by the occupancy right holder cannot have a status of unlawful user of apartment, and therefore the respective person could not be protected against eviction from the respective apartment in accordance with the provisions of Article 30 of the Law on Housing Relations.

- **Decision on Admissibility and Merits No. AP 2148/05 of 16 January 2007, paragraph 43, published in the *Official Gazette of Bosnia and Herzegovina*, 38/07; persons without a status of unlawful user of apartment, there is no violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH**

There is no violation of the right to respect for private and family life under Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention where the search of his housing and catering facility had been carried out on the basis of a warrant issued in accordance with the relevant provisions of the Criminal Procedure Code of FBiH, which is the reason why it constitutes a necessary measure in a democratic society in the interest of public order and peace, and the very fact that the thing alleged in the search warrant had not been found during the search in no way indicated that the search was unlawful, or that the appellant’s mentioned constitutional right to respect for private and family life was violated.

- **Decision on Admissibility and Merits No. AP 2148/05 of 16 January 2007, paragraph 43, published in the *Official Gazette of Bosnia and Herzegovina*, 50/09**

There is no violation of the right to family life under Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention when the appellant's right to live with his underage children was revoked due to substantial neglect of parental duties given the fact that the circumstances of the present case indicate that such a measure is „necessary in a democratic society” within the meaning of Article 8 of the European Convention.

• **Decision on Admissibility and Merits No. AP 717/08 of 9 July 2010, paragraph 33, published in the *Official Gazette of Bosnia and Herzegovina*, 101/10**

The present case concerns the appellant who has an interest in the apartment in question, which he wishes to use as his home. On the other hand, it concerns the plaintiff - counter-defendant that has an interest in the apartment in question (over which the plaintiff - counter-defendant has the right of disposal) situated in the shacks; the plaintiff-counter-defendant wishes to use the apartment in question for one's own purposes (and not to lease it to the appellant). In assessing whether the interference with the appellant's right to home was „necessary in a democratic society”, the Constitutional Court holds that the important fact shows that the appellant has been uninterruptedly occupying the apartment in question for almost 20 years and that the plaintiff - counter-defendant, before the war conflict, allocated that apartment for use. Hence, in the view of the Constitutional Court, there has been no urgent social need justifying the interference with the appellant's right to respect for home. The Constitutional Court holds that the mentioned interest of the plaintiff - counter-defendant to use the apartment in question for one's own purposes cannot prevail over the interest of the appellant to continue to use the apartment in question as his home, wherein he and his family have been living for almost 20 years (see, *mutatis mutandis*, Constitutional Court, Decision on Admissibility and Merits no. AP 21/03 of 22 September 2004, paragraph 40, published in the *Official Gazette of BiH* no. 54/04, and Decision on the Merits No. AP 663/04 of 13 October 2005, paragraph 30, published in the *Official Gazette of BiH*, 86/05).

• **Decision on Admissibility and Merits No. AP 1164/08 of 27 May 2011, paragraph 34, published in the *Official Gazette of Bosnia and Herzegovina*, 99/11; premises for special purposes in the present case constitutes a home; a violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH**

The Constitutional Court finds that the reasoning which was given by the Court, based on the established facts that are undisputed – that the removal of the appellant in order to protect national interest is a necessary measure in a democratic society and proportionate to the legitimate goal – is satisfactory and does not indicate any arbitrariness. The Constitutional Court holds that the aforementioned satisfies the principle enunciated in its Decision no. AP 1222/07, according to which the courts must carefully examine the grounds for decision-making and consider whether the interference with the right can be justified in the circumstances of the case. Furthermore, the Constitutional Court finds that the appellant was ordered to leave Bosnia and Herzegovina since the appellant failed to prove that he and his family would be in danger if they stayed in Iraq. Therefore, the Constitutional Court holds that the challenged decisions are a measure necessary in a democratic society to achieve the rule of law and that there is a reasonable relationship of

proportionality between the legitimate aim of the protection of public order and national security in BiH, on the one hand, and of the protection of the appellant's right to family life, on the other hand.

- **Decision on Admissibility and Merits No. AP 1483/10 of 23 September 2011, paragraph 60, published in the *Official Gazette of Bosnia and Herzegovina*, 99/11; alien, temporary stay; there is no violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH**

Restrictions on the rights referred to in Article 8 – interests referred to in paragraph two

The Constitutional Court emphasizes that the interference with the appellant's home in the present case fulfills the criterion of justification and necessity, since the owner of the respective apartment was the *DD Fabrika sode Lukavac* with a large number of employees, whereby there was a need to resolve housing issues of the employees, which was eventually in the interest of the „economic welfare of the country”.

- **Decision on Admissibility and Merits No. AP 45/02 of 30 June 2004, paragraph 80, published in the *Official Gazette of Bosnia and Herzegovina*, 41/04; the transfer of occupancy right from grandfather to grandson; a violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established; there is no violation of Article 8 of the European Convention and Article II(3)(f) of the Constitution of BiH**

The challenged judgments are in compliance with the law and are considered necessary in a democratic society for the protection of a lawful owner of apartment, that is such interference was provided for by law and is a necessary measure in a democratic society for the protection of rights and freedoms of others.

- **Decision on Admissibility and Merits No. U 26/03 of 30 June 2004, paragraph 34, published in the *Official Gazette of Bosnia and Herzegovina*, 38/04; contentious proceedings for the eviction of unlawful user of apartment**

Decisions of the ordinary courts dismissing the appellant's claim for the establishment of the existence of occupancy right over the disputed apartment constitutes the interference with the appellant's right to home and does not meet a criterion of justification and necessity in a democratic society. It is not possible to conclude that in the present case the interest of the owner of apartment had priority over the appellant's interest, i.e. that denying the appellant's right to use the disputed apartment as his home is „a necessary measure in a democratic society”, in accordance with some of the goals laid down in Article 8 paragraph 2 of the European Convention.

- **Decision on Admissibility and Merits No. U 77/03 of 19 November 2004, paragraph 33, published in the *Official Gazette of Bosnia and Herzegovina*, 23/05**

ARTICLE 9 OF THE ECHR – FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

Freedom of thought

Freedom of thought may be viewed as the protection applicable to the stage prior to the very expression of thought. If the court finds that the freedom of expression is not applicable in the present case, the same must be concluded with regards to the freedom of thought.

- **Decision No. U 39/01 of 6 April 2002, paragraph 27, published in the *Official Gazette of Bosnia and Herzegovina*, 25/02; imposing a disciplinary measure for serious violation of labor obligations; there is no violation of Article 9 of the European Convention and Article II(3)(g) of the Constitution of BiH**

Restriction on freedom – interests

There is no restriction on the appellant's freedom of religion where the Canon Law has not been applied to the proceedings before the ordinary courts since such a conduct is in accordance with the constitutional framework regulating the legal status of religious communities.

- **Decision on Admissibility and Merits No. AP 286/06 of 29 September 2007, paragraph 48, published in the *Official Gazette of Bosnia and Herzegovina*, 86/07; application of the Canon Law; there is no violation of Article 9 of the European Convention and Article II(3)(g) of the Constitution of BiH**

ARTICLE 10 OF THE ECHR – FREEDOM OF EXPRESSION

Freedom of expression

The freedom of expression is not absolute and it is subject to limitations. Almost not a single human right and freedom, irrespective of their priority or importance, is and can be absolute and unlimited in a democratic society. Since the absolute freedom and absolute right are *contradictio in adjecto*, the manner in which a legal principle is interpreted and applied remains decisive and disputable at the same. Therefore, the key role and duty of the independent judiciary is to determine the limit between justified and necessary and unjustified and unnecessary restrictions, which confirm a principle as a rule or deny it as a mere statement.

- **Decision on Admissibility and Merits No. AP 1005/04 of 2 December 2005, paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina*, 45/06**

Article 10 of the European Convention does not allow the allegations as to the facts and comments to go unpunished even if the journalists do it at the expense of politicians

and public personalities, unless there is evidence that may reasonably support such an allegation, or if a journalist or editor published it in good faith and took reasonable steps to check reliability of evidence as much as possible.

- **Decision on the Merits No. AP 1064/05 of 14 March 2006, paragraph 30, published in the *Official Gazette of Bosnia and Herzegovina*, 94/05**

The courts' failure to make a correct distinction between the value judgments and facts could in principle could have a bearing on the determination of the damage amount, since the seriousness of the consequences on the reputation of a person would depend on the „scope” of the expressed defamation. Since the ordinary courts, according to the principle of proportionality, failed to strike a fair balance between the freedom of media and the second-defendant's rights to reputation, they exceeded their margin of appreciation by doing so.

- **Decision on Admissibility and Merits No. AP 1203/05 of 14 March 2006, paragraph 53, published in the *Official Gazette of Bosnia and Herzegovina*, 7/07; civil proceedings, there is no fair balance in respect of damage compensation for defamation; the violation of Article 10 of the European Convention and Article II(3) (h) of the Constitution of BiH established**

Damage compensation awarded in a civil litigation as a compensation for damage caused to one's dignity or reputation constitutes clear interference with the exercise of the right to freedom of expression.

- **Decision on the Merits No. AP 1064/05 of 14 March 2006, paragraph 32, published in the *Official Gazette of Bosnia and Herzegovina*, 94/05;**
- **Decision on Admissibility and Merits No. AP 1289/05 of 9 November 2006, paragraph 36, published in the *Official Gazette of Bosnia and Herzegovina*, 11/07**

The appellant's right to freedom of expression has been violated in the present case, since the ordinary courts did not sufficiently carry out objective analysis the content of the appellant's text. Also, imposing a fine on the appellant without giving him an opportunity to be heard meant the deprivation of the appellant not only of an opportunity to present the facts and evidence in his favor, but also a disproportionate interference with the protected freedom of expression guaranteed to the appellant by the Constitution of Bosnia and Herzegovina and European Convention for the Protection of Human Rights and Fundamental Freedoms.

- **Decision on Admissibility and Merits No. AP 198/03 of 20 October 2006, paragraph 45, published in the *Official Gazette of Bosnia and Herzegovina*, 11/07; fine imposed for the contempt of court**

The general interest allowing the issue on possible unlawful conduct by the public officers to be raised cannot be defended by presenting undisputedly untrue facts, which constitute an attack on their reputation and which, therefore, cannot be regarded as criticism, which they must tolerate given the office that they exercise.

- **Decision on Admissibility and Merits No. AP 1881/05 of 20 October 2006, paragraph 39, published in the *Official Gazette of Bosnia and Herzegovina*, 9/07;**

- **Decision on Admissibility and Merits No. AP 1423/05 of 8 July 2006, paragraph 39, published in the *Official Gazette of Bosnia and Herzegovina*, 7/07; civil proceedings; the presentation of undisputedly untrue facts; there is no violation of Article 10 of the European Convention and Article II(3)(h) of the Constitution of Bosnia and Herzegovina**

There is no proportionality between the aim and means, in the instant case the protection of the right to „truth” of the plaintiff and the means of interference, in the instant case the court’s order according to which the appellants are to pay compensation for damage caused to the plaintiff’s reputation, in a case in which the ordinary courts did not exceed the margin of appreciation in assessing whether the appellants stated untrue facts, but they did not establish the relevant facts for adopting a decision on the award of non-pecuniary damage compensation, circumstances of the case and intensity of mental sufferings and their duration as a legal basis, but they arbitrarily concluded that there is a damage and the appellants’ responsibility for the damage.

- **Decision on Admissibility and Merits No. AP 1289/05 of 9 November 2006, paragraphs 41 and 42, published in the *Official Gazette of Bosnia and Herzegovina*, 11/07; civil proceedings, there is no fair balance in respect of the damage compensation for defamation; the violation of Article 10 of the European Convention and Article II(3)(h) of the Constitution of Bosnia and Herzegovina established**

There is a violation of the appellant’s right to freedom of expression under Article II(3)(h) of the Constitution of Bosnia and Herzegovina and Article 10 of the European Convention when the decision taken in the civil proceedings ordered the appellant to pay compensation for non-pecuniary damage caused to the plaintiff’s reputation by presenting and disseminating untrue facts, where the imposition of such measure does not strike a „proportionality” between the right to freedom of expression and the right to reputation, nor the reasons given in the judgment can be regarded as relevant and sufficient within the meaning of Article 10 of the European Convention, which is the reason why it can be established that the „interference” was a „necessary measure in a democratic society”.

- **Decision on Admissibility and Merits No. AP 1067/06 of 13 September 2007, paragraphs 33 to 38, published in the *Official Gazette of Bosnia and Herzegovina*, 6/08; there is no proportionality between the right to freedom of expression and the right to reputation in determining the damage compensation for defamation; the violation of Article 10 of the European Convention and Article II(3)(h) of the Constitution of Bosnia and Herzegovina established**

By imposing a fine the ordinary courts violated the appellant’s right to freedom of expression, since they qualified the appellant’s expression of doubt about the court’s impartiality as a contempt of court and a violation of its authority.

- **Decision on Admissibility No. AP 840/06 of 25 January 2008, paragraph 29, published in the *Official Gazette of Bosnia and Herzegovina*, 23/08; the lack of impartiality and objectivity of the courts while qualifying and assessing the appellant’s letter; the violation of Article 10 of the European Convention and Article II(3)(h) of the Constitution of Bosnia and Herzegovina established;**

- **Decision on Admissibility and Merits No. AP 1095/06 of 14 October 2008, paragraph 24 published in the *Official Gazette of Bosnia and Herzegovina*, 99/08**

The Constitutional Court concludes that there was no violation in the present case under Article II(3)(h) of the Constitution of Bosnia and Herzegovina and Article 10 of the European Convention when the appellant, due to inappropriate behavior at a hearing was fined, which was proportionate to the justified aim sought to be achieved with a view to preserving the dignity and authority of the court.

- **Decision on Admissibility and Merits No. AP 2486/11 of 17 July 2014, paragraph 37, published in the *Official Gazette of Bosnia and Herzegovina*, 71/14; contempt of the court, the refusal of the judge to put on a robe at a hearing; there is no violation of Article 10 of the European Convention and Article II(3)(h) of the Constitution of BiH**

Restriction on the rights under Article 10

Article 6 of the European Convention does not protect the State bodies and public institutions. Moreover, the European Convention provides that in exercising their duties, all levels of State bodies are obliged to respect the rights and obligations provided for in it. In the said context, the public radio and television broadcasters of the Entities do not enjoy the protection under Article 10 of the European Convention. Moreover, the instant case does not contain the elements for which the European Convention has to be interpreted in a different manner. However, the previous paragraph does not relate to the right of the employees at the public radio and television broadcasters to freedom of expression and information under Article 10 of the European Convention. In this respect, the Constitutional Court refers to the view taken by the European Court of Human Rights, such as e.g. in the Judgment of 26 September 1995, in the case of *Vogt and Others v. Germany*, according to which the principles under Article 10 of the European Convention are applicable also to the civil servants, since although it is justified for a State to impose on civil servants, on account of their status, a duty of discretion, civil servants are individuals and, as such, are subject to the protection of Article 10 of the European Convention.

- **Decision on Admissibility and Merits No. U 42/03 of 17 December 2004, paragraph 24, published in the *Official Gazette of Bosnia and Herzegovina*, 36/05; proceedings of review of compatibility of Articles 6, 7, 9, 43, 71 and 72 of the Law on the Basis of the Public Broadcasting System of Bosnia and Herzegovina and the Law on the Public Broadcasting Service of Bosnia and Herzegovina with the Constitution of BiH**

There is a violation of the right to freedom of expression in the event when ordinary courts exceed the margin of appreciation when they conclude that the disputable text constitutes the presentation of the facts, although it fully expresses value judgments of the appellant, which amounts to the violation of the principle of proportionality relating to the balance between the restriction of the freedom of media and the reputation of a public personality.

- **Decision on the Merits No. AP 787/04 of 20 December 2005, paragraph 50, published in the *Official Gazette of Bosnia and Herzegovina*, 41/06; the restriction of the exercise of the right to freedom of expression of the appellants; the violation of Article 10 of the European Convention and Article II(3)(h) of the Constitution of BiH established**

There is no violation of the right to the freedom of expression under Article II(3)(h) of the Constitution of Bosnia and Herzegovina and Article 10 of the European Convention when the court has rendered a judgment in civil proceedings, ordering the appellant to pay compensation for damage caused to the plaintiff's reputation by alleging and communicating untrue facts since the „interference” was in accordance with the law, with the aim to „protect the rights of others” and it was „a necessary measure in a democratic society”.

- **Decision on Admissibility and Merits No. AP 913/04 of 20 December 2005, paragraph 40 published in the *Official Gazette of Bosnia and Herzegovina*, 41/06;**
- **Decision on the Merits No. AP 1005/04 of 2 December 2005, paragraph 51, published in the *Official Gazette of Bosnia and Herzegovina*, 45/06;**
- **Decision on the Merits No. AP 1145/04 of 2 December 2005, paragraph 52, published in the *Official Gazette of Bosnia and Herzegovina*, 45/06;**
- **Decision on the Merits No. AP 96/05 of 2 February 2006, paragraph 49, published in the *Official Gazette of Bosnia and Herzegovina*, 37/06**

ARTICLE 11 OF THE ECHR – FREEDOM OF ASSEMBLY AND ASSOCIATION – IN GENERAL

The Constitutional Court concludes that there is no violation of the right to freedom of peaceful assembly and association under Article II(3)(i) of the Constitution of Bosnia and Herzegovina and Article 11 of the European Convention where an element inherent in the right protected by the cited provisions is neither violated nor called into question by the impugned judgment of the ordinary court.

- **Decision on Admissibility and Merits No. AP 2581/08 of 29 June 2011, paragraph 53, published in the *Official Gazette of Bosnia and Herzegovina*, 104/11; strike; there is no violation of Article 11 of the European Convention**

The Constitutional Court concludes that there is a violation of the right to freedom of assembly under Article II(3)(i) of the Constitution of Bosnia and Herzegovina and Article 11 of the European Convention when the public authorities failed to fulfil its positive obligation, under this Article, to take necessary measures in order to secure peaceful assembly organised in accordance with the law, which amounted to violence between the confronting sides, when they failed to provide for a clear legal framework to punish the behaviour which amounted to violence for the purpose of preventing it and deterring from the perpetration of the same or similar acts.

- **Decision on Admissibility and Merits No. AP 1020/11 of 25 September 2014, paragraph 129, published in the *Official Gazette of Bosnia and Herzegovina*, 101/14; freedom of assembly; violation of Article 11 of the European Convention**

Right to a strike

The appellants used their right to association, since the appellants as representatives of the syndicate signed a collective agreement, concluded an Agreement on the determination of affairs which cannot be interrupted during a strike and an arbitration procedure was conducted, which proves that the Ministry did not put any restriction on them in their freedom of organizing and acting.

- **Decision on Admissibility and Merits No. AP 279/04 of 12 April 2005, paragraph 26, published in the *Official Gazette of Bosnia and Herzegovina*, 38/05**

ARTICLE 13 OF THE ECHR – RIGHT TO AN EFFECTIVE LEGAL REMEDY

Effective legal remedy

An individual must not be overburdened in determining the most efficient way of exercising his rights.

- **Decision No. U 18/00 of 10 May 2002, paragraph 40, published in the *Official Gazette of Bosnia and Herzegovina*, 30/02**

There is no violation of Article 13 in case when the appellant had legal means at his disposal and when he used all legal remedies before the aforementioned courts and when the courts rendered appropriate judgments upon them.

- **Decision on the Merits No. U 70/03 of 30 January 2004, paragraph 26, published in the *Official Gazette of Bosnia and Herzegovina*, 11/04;**
- **Decision on Admissibility and Merits No. U 94/03 of 17 May 2004, paragraph 31, published in the *Official Gazette of Bosnia and Herzegovina*, 34/04**

The fact that the outcome of legal remedies is not a positive consequence for the appellant does not constitute in itself a violation of the right to an effective legal remedy.

- **Decision on the Merits No. AP 1100/05 of 17 November 2005, paragraph 37, published in the *Official Gazette of Bosnia and Herzegovina*, 22/06; *the eviction of the appellant for the return of apartment to a pre-war occupancy right holder***

Article 13 of the European Convention does not oblige the state to provide the possibility of appealing to a higher court in order to establish whether a right to the European Convention has been violated.

- **Decision on the Merits No. AP 68/05 of 20 December 2005, paragraph 41, published in the *Official Gazette of Bosnia and Herzegovina*, 37/06**

The effectiveness of the legal remedy is not reflected only in the fact that it is prescribed legally and formally, but also in the fact that it is efficient in practice.

- **Decision on Admissibility and Merits No. AP 953/05 of 8 July 2006, paragraph 55, published in the *Official Gazette of Bosnia and Herzegovina*, 20/07; *the removal from office by the High Representative;***

- **Decision on Admissibility and Merits No. AP 2582/05 of 16 January 2007, paragraph 42, published in the *Official Gazette of Bosnia and Herzegovina*, 38/07; the deprivation of liberty by SFOR**

Legal remedies provided for the protection of rights must be physically available, they must not be hindered by the acts, omissions, delays or negligence on the part of the authorities, and they must be capable of protecting the rights in question.

- **Decision on the Merits No. U 36/02 of 12 September 2006, paragraph 25, published in the *Official Gazette of Bosnia and Herzegovina*, 9/04;**
- **Decision on Admissibility and Merits No. AP 1431/05 of 30 January 2004, paragraph 51, published in the *Official Gazette of Bosnia and Herzegovina*, 9/07;**
- **Decision on Admissibility and Merits No. AP 2582/05 of 16 January 2007, paragraph 42, published in the *Official Gazette of Bosnia and Herzegovina*, 38/07; the deprivation of liberty by SFOR**

National authority

The failure of the state to adopt laws that are of great importance for its functioning and for the provision of judicial protection for individuals constitutes a violation of the right to an effective legal remedy guaranteed under Article 13 of the European Convention.

- **Decision No. U 18/00 of 10 and 11 May 2002, published in the *Official Gazette of Bosnia and Herzegovina*, 30/02**

There is a violation of the right to an effective legal remedy under Article 13 of the European Convention due to the lack of an effective legal remedy within the existing legal system of Bosnia and Herzegovina, which could be pursued against the decisions of the High Representative in respect of the rights of individuals, and due to the fact that Bosnia and Herzegovina failed to undertake any activities within the scope of its positive obligation to secure an effective legal remedy against the said decisions of the High Representative.

- **Decision on Admissibility and Merits No. 953/05 of 8 July 2006, paragraph 78, published in the *Official Gazette of Bosnia and Herzegovina*, 20/07; the removal of an official from office by the High Representative**

Relationship to other articles

There is no violation of the right to an effective legal remedy under Article 13 of the European Convention in conjunction with Article 6 of the European Convention, when the appellants are not restricted in any way in using legal remedies prescribed by law, as well as that the legal regulation lacks in that respect a necessary legal quality in relation to the compliance with the requirements set forth in the mentioned articles, only because the law does not prescribe a mandatory trial before the second-instance court, or a larger number of extraordinary legal remedies.

- **Decision on the Merits No. AP 215/05 of 12 April 2006, paragraph 100, published in the *Official Gazette of Bosnia and Herzegovina*, 68/06**

There is no violation of the right to an effective legal remedy under Article 13 of the European Convention in conjunction 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, as the Law on the Conflict of Interest of BiH prescribes the right to an appeal, as a legal remedy making it possible for the competent court to carry out judicial control of decisions of the Central Election Commission of BiH in connection with the correct application of the Law on the Conflict of Interest, and thereby to adopt decisions removing possible violations of the election law and determine sanctions for failures to enforce decisions. The mentioned authorizations of the Court of BiH are, according to the assessment by the Constitutional Court, sufficient to satisfy the requirements of Article 13 of the European Convention.

- **Decision on Admissibility and Merits No. AP 3453/09 of 28 April 2010, paragraph 65, published in the *Official Gazette of Bosnia and Herzegovina*, 74/10**

ARTICLE 14 OF THE ECHR – NON-DISCRIMINATION

The amount of alimony defined on the basis of personal income realized abroad does not constitute discrimination under the European Convention for the Protection of Human Rights and Fundamental Freedoms.

- **Decision No. U 11/00 of 18 and 19 August 2000, published in the *Official Gazette of Bosnia and Herzegovina*, 6/01**

Article 14 of the European Convention protects the persons (including the legal persons) in „corresponding situations” from discriminating differences in treatment; for the purpose of Article 14 of the European Convention, the treatment is discriminatory if „it has no objective and reasonable justification”, that is, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved.

- **Decision on Admissibility and Merits No. AP 98/03 of 27 October 2004, paragraph 34, published in the *Official Gazette of Bosnia and Herzegovina*, 15/05; the ordinary courts took a different decision in the same factual and legal situation with regards to the appellant and other defendant’s employees on the defendant’s right to be sued**

In the instant case, the criminal proceedings against the appellants were instituted and completed in accordance with the legal competencies of the public prosecutor and the court, and the fact that the proceedings were not initiated against another person regarded by the appellants as a responsible person, is not a basis for making a conclusion on their discrimination.

- **Decision on Admissibility and Merits No. AP 612/04 of 30 November 2004, paragraph 37, published in the *Official Gazette of Bosnia and Herzegovina*, 19/05; criminal proceedings, taking bribes; there is no violation of Article 14 of the European Convention and Article II(4) of the Constitution of BiH**

Any different treatment is regarded as discrimination if there is no reasonable and objective justification, i.e. if it does not pursue the legitimate aim or if there is no

reasonable relationship of proportionality between the means employed and the aim sought to be achieved.

- **Decision on Admissibility and Merits No. AP 420/04 of 18 January 2005, paragraph 23, published in the *Official Gazette of Bosnia and Herzegovina*, 40/05; labor status; there is no violation of Article 14 of the European Convention and Article II(4) of the Constitution of BiH;**
- **Decision on Admissibility and Merits No. U 43/03 of 17 May 2004, paragraph 40, published in the *Official Gazette of Bosnia and Herzegovina*, 34/04; civil proceedings with the aim of constituting the housing right**

Discrimination implies a different treatment in enjoyment of rights and freedoms between individuals or groups, and not with regards to the individual himself/herself in several different situations.

- **Decision on the Merits No. AP 825/04 of 13 September 2005, paragraph 33, published in the *Official Gazette of Bosnia and Herzegovina*, 3/06; proceedings of determination of the obligations to pay default interest on the pecuniary claims, different application of legal provisions relating to the determination of default interest; there is no violation of Article 14 of the European Convention and Article II(4) of the Constitution of BiH**

The Constitutional Court concludes that the allegations made by the appellant as to the discrimination in the respective proceedings under Article II(4) of the Constitution of Bosnia and Herzegovina and Article 14 of the European Convention in connection with the right to social insurance under Article 9 of the International Covenant on Economic, Social and Cultural Rights, as the Agreement, which was applied in the present case, was the result of constitutional and legal regulation of the pension system in Bosnia and Herzegovina, which application necessarily made a difference in individual monthly amounts of pensions.

- **Decision on Admissibility and Merits No. AP 759/08 of 9 February 2011, paragraph 67, published in the *Official Gazette of Bosnia and Herzegovina*, 41/11; the request for the transfer from the RS Fund to the FBiH Fund – leading decision, there is no violation of Article 14 of the European Convention and Article II(4) of the Constitution of BiH;**
- **Decision on Admissibility and Merits No. AP 1071/09 of 22 February 2011, paragraph 27, published in the *Official Gazette of Bosnia and Herzegovina*, 47/11**

The Constitutional Court holds that the challenged decisions did not violate the appellant's right to non-discrimination in connection with the right to equality of spouses under Article 5 of Protocol No. 7 to the European Convention, since differential treatment of a parent whom with the child lives and the one who is entitled to a personal and direct contact with the child arises from the ordinary linguistic interpretation of the relevant provisions of the Family Law, which the challenged decisions were based on, which distinction was primarily made for the sake of the interest of the child that actually prevail over the interests of any parent for that matter.

- **Decision on Admissibility and Merits No. AP 3557/08 of 9 November 2011, paragraph 56;**
- **Decision on Admissibility and Merits No. AP 4468/11 of 27 June 2012, paragraph 54;** *divorce, child custody; there is no violation of Article 14 of the European Convention and Article II(4) of the Constitution of BiH*

There has been no violation of the appellant's right to non-discrimination under Article II(4) of the Constitution of Bosnia and Herzegovina and Article 14 of the European Convention in connection with the right to family life under Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention, since there exists an objective and reasonable justification for the differential treatment of the defendant whom with the children live when compared to the appellant's rights whom the children do not live with.

- **Decision on Admissibility and Merits No. AP 4468/11 of 27 June 2012, paragraph 53;** *divorce, child custody; there is no violation of Article 14 of the European Convention and Article II(4) of the Constitution of BiH*

The Constitutional Court concludes that there is a violation of the prohibition of discrimination under Article II(4) of the Constitution of Bosnia and Herzegovina and Article 14 of the European Convention in connection with the right of access to court as a segment of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention, because the appellant's lawsuit was rejected as inadmissible within the meaning of the provision of Article 43 of the Family Law of FBiH, which is discriminatory as it leads to a differential treatment of the appellant on the basis of sex, without a reasonable and objective justification for such a differential treatment.

- **Decision on Admissibility and Merits No. AP 369/10 of 24 May 2013, paragraph 38, published in the *Official Gazette of Bosnia and Herzegovina*, 51/13;** *the admissibility of a lawsuit seeking divorce; a violation of Article 14 of the European Convention and Article II(4) of the Constitution of BiH in connection with Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention*

Comparable situations

In order for the Constitutional Court to examine the allegations of the appellant in accordance with Article II(4) of the Constitution of Bosnia and Herzegovina, the appellant should prove that the competent authorities discriminated against him on the basis of a labor relationship. However, the Constitutional Court did not have evidence indicative of a possible discrimination, so that it decided to dismiss as ill-founded this part of the appeal.

- **Decision No. U 23/03 of 24 October 2003, paragraph 33, published in the *Official Gazette of Bosnia and Herzegovina*, 8/04;**
- **Decision No. U 89/03 of 20 December 2003, paragraph 33, published in the *Official Gazette of Bosnia and Herzegovina*, 6/04;**

- **Decision No. U 90/03 of 20 December 2003, paragraph 32, published in the *Official Gazette of Bosnia and Herzegovina*, 6/04; non-discrimination relating to the right to labor under Article 6 of the International Covenant on Economic, Social and Cultural Rights;**
- **Decision on the Merits No. AP 218/05 of 23 February 2006, paragraph 29, published in the *Official Gazette of Bosnia and Herzegovina*, 32/06**

The Court took and gave reasons for a Decision on legal qualification, culpability and punishment with regards to every appellant, and a different qualification of the act and punishment with regards to a person on whom a more lenient punishment was imposed due to a plea bargain made with the Prosecutor's Office does not constitute in itself a different treatment of the appellant within the meaning of Article 14 of the European Convention, but the result of the overall judicial assessment of evidence, as well as the conduct and personal circumstances of the appellant, which the courts provide detailed reasons for.

- **Decision on the Merits No. AP 215/05 of 12 April 2006, paragraph 81, published in the *Official Gazette of Bosnia and Herzegovina*, 68/06**

Objective and justified discrimination

There is no violation of the right to non-discrimination under Article II(4) of the Constitution of Bosnia and Herzegovina and Article 14 of the European Convention in case when the ordinary courts, in a different manner and based on their discretion, applied the relevant provisions, but that difference was in accordance with the principle of a legal state under Article I(4) of the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility and Merits No. AP 25/05 of 20 December 2005, paragraph 48, published in the *Official Gazette of Bosnia and Herzegovina*, 37/06**

ARTICLE 1 OF PROTOCOL NO. 1 TO THE ECHR – PROTECTION OF PROPERTY

The court decisions taken in the enforcement proceedings have not violated the appellant's right to property under the Constitution of Bosnia and Herzegovina or the European Convention insofar as the financial loss, which could have been the subject of assessment in other proceedings is concerned.

- **Decision No. U 30/01 of 11 May 2002, paragraph 22, published in the *Official Gazette of Bosnia and Herzegovina*, 24/02; compensation for health care, denomination; there is no violation of Article 1 of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of BiH**

There is no violation of the right to property when the appellant has not acquired the right to the apartment in question, nor did she have, at the time of death of the occupancy right holder, the status as a member of her family household, which could possibly represent a part of the right to use an apartment.

- **Decision on Admissibility and Merits No. AP 499/04 of 23 March 2005, paragraph 38, published in the *Official Gazette of Bosnia and Herzegovina*, 32/05; the transfer of occupancy right to a child; there is no violation of Article 1 of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of BiH**

There is no violation of the right to property, since the appellant did not refer to any of the principles contained in Article 1 of Protocol No. 1 to the European Convention, but he claimed that his right to property was violated as a result of incompletely and erroneously established facts of the case and of erroneous application of the substantive law.

- **Decision on the Merits No. AP 1143/04 of 26 April 2005, paragraph 25, published in the *Official Gazette of Bosnia and Herzegovina*, 48/05**

There is no violation of the right to property where the ordinary courts have dismissed the appellant's claim due to the lack of standing to be sued.

- **Decision on Admissibility and Merits No. AP 538/04 of 28 June 2005, paragraph 32, published in the *Official Gazette of Bosnia and Herzegovina*, 27/06; civil proceedings of payment of the debt arising from the „war debt”, lack of standing to be sued with regards to the District of Brčko, since the obligation was incurred before its proclamation, while the District concluded no Agreement with the Entities on Assuming these obligations; there was no violation of Article 1 of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of BiH**

There is a violation of the right to property when, in the procedure for expropriation, the facts of the case indicate that legal requirements for expropriation have been met, with the exception of expropriated real properties, and the remaining real properties of the appellant, although the competent administrative authority dismissed his request.

- **Decision on the Merits No. AP 528/04 of 13 October 2005, paragraphs 27 to 32, published in the *Official Gazette of Bosnia and Herzegovina*, 17/06; administrative procedure, request for full expropriation in the event when the expropriation of only a part of the property amounts to the impossibility of normal use of the remaining part of the property; there is a violation of Article 1 of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of BiH**

There is no violation of the right to property in the event when the ordinary courts dismiss the claim for the restoration to previous state of possession due to the changed legal circumstances, namely because of the appellant's subsequent loss of the temporary right to use a construction land not-built-upon, due to taking over that land from his possession.

- **Decision on the Merits No. AP 851/04 of 17 November 2005, paragraph 33, published in the *Official Gazette of Bosnia and Herzegovina*, 22/06; dispute relating to the disturbance of possession of a construction land not-built-upon, over which the appellant has temporary occupancy right; there is no violation of Article of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of BiH**

Article 1 of Protocol No. 1 to the European Convention comprises three distinct rules. The first rule, set out in the first paragraph, is of a general nature and enunciates the principle

of peaceful enjoyment of property. The second rule contained in the second sentence of the same paragraph, covers deprivation of possession and makes it subject to certain conditions. The third rule, stated in the second paragraph of this article, recognizes that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest. The three rules are not „distinct” in the sense of being unconnected: the second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and ought to be construed within the scope of the general principle enunciated in the first rule (see ECHR, the *Sporrong and Lönnorth v. Sweden* judgment of 23 September 1982, Series A no. 52, paragraph 61).

- **Decision on Admissibility and Merits No. AP 1812/05 of 8 July 2006, paragraph 24, published in the *Official Gazette of Bosnia and Herzegovina*, 87/06; apartments with the occupancy rights;**
- **Decision No. AP 2144/05 of 20 October 2006, paragraph 18, published in the *Official Gazette of Bosnia and Herzegovina*, 12/07**

Moreover, the Constitutional Court invokes its own position presented with regards to the same factual and legal issues in the Decision of the Commission for Human Rights within the Constitutional Court in the Case no. CH/01/8379 of 7 April 2007, which consistently supports the case-law of the Human Rights Chamber and the European Commission for Human Rights, that the deprivation of ownership, or of some other property right, constitutes an instantaneous action and does not result in a continued interference with the applicants’ property rights (see, e.g. Application no. 7379/76, decision of 10 December 1976, Decisions and Reports 8, p. 211). Accordingly, the Constitutional Court concluded that in the mentioned decision of the Commission for Human Rights within the Constitutional Court, regarding the applicants’ complaints which are also related to the redistribution of land in Kotorsko, that upon the very adoption of decisions on redistribution of land in the period from 1962 to 1965 the said real properties were transferred to the state-owned property, and that there was no continued interference with the property rights of former owners of the respective real properties. The Constitutional Court considers that the referred position is applicable in this specific case as well, and it also concludes that upon the adoption of decisions on the redistribution of land the real property in question was transferred to the state-owned property.

- **Decision on Admissibility and Merits No. AP 804/06 of 29 March 2008, paragraph 71, published in the *Official Gazette of Bosnia and Herzegovina*, 46/08; administrative proceedings, distribution of land; there is no violation of Article 1 of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of BiH**

The Constitutional Court holds that there is a continued violation of 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 where the court’s decision prevents the appellant from exercising his rights arising from the contract of sale in the manner in which the Human Rights Chamber found it to be in violation of the aforementioned right, given the decision of the Human Rights Chamber, which is final and binding in accordance with Annex VI of the Agreement.

- **Decision on Admissibility and Merits No. AP 441/08 of 17 April 2008, paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina*, 46/08; violation of Article 1 of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of BiH established**

There is no violation of the right to property under Article II(3)(k) of the Constitution of Bosnia and Herzegovina and Article 1 of the Protocol No. 1 to the European Convention in a case where the enforcement procedure is resumed against a new owner of the real property in his/her capacity as an enforcement debtor, who is not a *bona fide* owner and who, by the legally binding ruling, has been granted the transfer of ownership over the respective real property after the legally binding ruling allowed the enforcement against the former enforcement debtor who passed away during the enforcement procedure, in order to enforce the legally binding court judgment in which the amount of the obligation of the former enforcement debtor to the enforcement seeker was determined, since the interference with the property is prescribed by law and pursues a legitimate aim.

- **Decision on Admissibility and Merits No. AP 2235/08 of 26 March 2010, paragraph 51, published in the *Official Gazette of Bosnia and Herzegovina*, 50/10; enforcement proceedings; there is no violation of Article 1 of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of BiH**

There has been a violation of the appellant's 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, in a situation when the Cantonal Court and administrative bodies, by applying the Law on Sale of Apartments to the situation regulated exclusively by the Law on Housing Relations, unlawfully interfered with the appellant's right to peaceful enjoyment of property, thereby making it impossible for the appellant to realize his right under Article 56 of the Law on Housing Relations after meeting the prescribed conditions.

- **Decision on Admissibility and Merits No. AP 619/08 of 25 September 2010, paragraph 44, published in the *Official Gazette of Bosnia and Herzegovina*, 37/11; the privatization of socially-owned apartments; a violation of Article 1 of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of BiH**

The Constitutional Court notes that it is apparent, in the circumstances of the present case and under the relevant provisions of the Law on Obligations and the provisions of the Law on the Privatization of State-Owned Capital, that there was no possibility to request in the event of the cancellation of the respective contract (i) the payment of the statutory default interest on the funds/assets not paid in money (old foreign currency savings vouchers). Therefore, the Constitutional Court concluded that the appellants' request for the payment of the statutory default interests on the basis of the funds they paid and that were refunded to them in the old foreign currency savings vouchers did not constitute „legitimate expectation” based on law, thus the appellants' 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 was not violated.

- **Decision on Admissibility and Merits No. AP 2881/09 of 25 September 2010, paragraph 33, published in the *Official Gazette of Bosnia and Herzegovina*, 52/12;**

payment of debt, interests; there is no violation of Article 1 of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of BiH

The Constitutional Court concludes that 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 was violated as the interference with the appellant's right was not in accordance with the law, i.e. as the Supreme Court, in deciding on the appellant's property claim wherein the appellant requested delivery of possession and payment of the rent, arbitrarily applied substantive law and dismissed the appellant's claim by giving the reasons that the second defendant's right of possession of the business premises in question prevailed over the appellant's right within the meaning of Article 41 of the Law on Property Relationships

- **Decision on Admissibility and Merits No. AP 1772/09 of 13 November 2012, paragraph 39, published in the *Official Gazette of Bosnia and Herzegovina*, 101/12; *delivery of possession of business premises; a violation of 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 established***

What is considered as property

An accessory claim, such as the interest, constitutes property within the meaning of Article 1 of Protocol No. 1 to the European Convention.

- **Decision No. U 4/99 of 13 August 1999, published in the *Official Gazette of Bosnia and Herzegovina*, 16/99; *the appellant – the Federation of BiH Ministry of Defense;***
- **Decision on Admissibility and Merits No. AP 147/02 of 26 August 2004, paragraph 20, published in the *Official Gazette of Bosnia and Herzegovina*, 48/04; *the application of Article 3 of the Law on the Establishment and Realization of Claims incurred during the state war and immediate war danger***

A legally justified expectation for the reimbursement of earned salaries constitutes property within the meaning of Article 1 of Protocol No. 1 to the European Convention.

- **Decision on Admissibility and Merits No. AP 384/03 of 21 January 2004, published in the *Official Gazette of Bosnia and Herzegovina*, 13/04; *Bihać Health Care Center – salaries***

The notions „property/possessions” enunciated in Article of Protocol No.1 to the European Court are not to be interpreted in a restrictive manner, rather they should be understood as including the acquired rights of an individual, such as the monetary claims and other economic values.

- **Decision on Admissibility and Merits No. U 19/03 of 17 March 2004, paragraph 23, published in the *Official Gazette of Bosnia and Herzegovina*, 15/04**

A monetary claim in respect of the compensation for damage is not regarded property if there is no legal basis for such claim.

- **Decision on Admissibility and Merits No. U 46/02 of 26 March 2004, paragraph 26, published in the *Official Gazette of Bosnia and Herzegovina*, 34/04; damage compensation, there is no violation of Article 1 of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of BiH**

The claim for the compensation for maternity leave constitutes „justified expectation”, i.e. the protected possessions if based on a valid legal basis within the meaning of Article 1 of Protocol No. 1 to the European Convention.

- **Decision on Admissibility and Merits No. AP 36/03 of 19 April 2004, paragraph 24, published in the *Official Gazette of Bosnia and Herzegovina*, 34/04; a violation of Article 1 of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of Bosnia and Herzegovina established**

The business premises in respect of which the appellant concluded the construction contract with the contractor is considered her property, particularly so when taking into account the undisputed fact that the appellant paid the contracted value of works for its construction.

- **Decision on Admissibility and Merits No. AP 160/03 of 28 April 2004, paragraph 22, published in the *Official Gazette of Bosnia and Herzegovina*, 34/04; civil proceedings for the repossession of the business premises which the contractor sold to third persons in the meantime, and for which the appellant had paid purchase price**

The possessions and acquired right of the temporary user on a part of the construction plot, over which the decision of the first instance administrative body established the permanent priority right of use in favor of another person, constitutes the legal right with economic value, which may be considered the appellant’s property. Thus, it follows that the proceeding concerns the right to peaceful enjoyment of property.

- **Decision on Admissibility and Merits, No. AP 127/02 of 17 May 2004, paragraph 34, published in the *Official Gazette of Bosnia and Herzegovina*, 34/04; administrative proceeding for establishing the priority right of use of city construction land**

Given the status of the case-file and the facts established by the ordinary courts relating to the appellant’s investment of funds and the work in the construction of the facility in question, the right which the appellant claims to be deprived of, constitutes „possessions”, i.e. the property.

- **Decision on Admissibility and Merits No. U 32/03 of 15 June 2004, paragraph 20, published in the *Official Gazette of Bosnia and Herzegovina*, 40/04; civil proceedings to determine the ownership right over an individual housing facility**

According to the consistent jurisprudence of the Constitutional Court, the appellant’s claim relating to the compensation for damage constitutes property within the meaning of Article 1 of Protocol No. 1 to the European Convention.

- **Decision on Admissibility and Merits No. U 36/03 of 15 June 2004, paragraph 31, published in the *Official Gazette of Bosnia and Herzegovina*, 38/04; civil proceedings for the compensation for damage over an accident at work**

The right to property is not restricted to a physical property, but it also includes economic interest (see ECHR, *Bramelid and Malmström v. Sweden*, Decision of 12 October 1982, Decisions and Reports, No. 29).

- **Decision on Admissibility and Merits No. U 145/03 of 29 October 2004, paragraph 22, published in the *Official Gazette of Bosnia and Herzegovina*, 28/05**

The right of the appellant to request compensation for pecuniary and non-pecuniary damage falls within the scope of protection under Article 1 of Protocol No. 1 to the European Convention, since the appellant had legally justified expectations that he would be compensated for the damage.

- **Decision on Admissibility and Merits No. AP 239/03 of 30 November 2004, paragraph 20, published in the *Official Gazette of Bosnia and Herzegovina*, 15/05; civil proceedings for the compensation for pecuniary and non-pecuniary damage over the dismissal from work**

The procedure for division of matrimonial property concerns the property within the meaning of Article 1 of Protocol No. 1 to the European Convention.

- **Decision on Admissibility and Merits No. AP 222/04 of 9 December 2004, published in the *Official Gazette of Bosnia and Herzegovina*, 15/05**

In the instant case, the subject-matter of the appeal is the right to use an allocated town construction site for construction, which constitutes the right with an economic value and can be considered the appellant's „property” within the meaning of Article 1 of Protocol No. 1 to the European Convention, so that the Constitutional Court holds that Article 1 of Protocol No. 1 to the European Convention is applicable to this case.

- **Decision on Admissibility and Merits No. 113/04 of 18 March 2005, paragraph 22, published in the *Official Gazette of Bosnia and Herzegovina*, 32/05**

The right to severance pay due to the end of employment constitutes „property” within the meaning of Article 1 of Protocol No. 1 to the European Convention.

- **Decision on Admissibility and Merits No. AP 335/04 of 18 March 2005, paragraph 18, published in the *Official Gazette of Bosnia and Herzegovina*, 32/05**

The amount awarded to the appellant in the legally binding court judgment constitutes her „property” within the meaning of Article 1 of Protocol No. 1 to the European Convention.

- **Decision on Admissibility and Merits No. AP 115/04 of 23 March 2005, paragraph 25, published in the *Official Gazette of Bosnia and Herzegovina*, 30/05**

The imposed fines constitute possessions.

- **Decision on Admissibility and Merits No. AP 498/04 of 23 March 2005, paragraph 22, published in the *Official Gazette of Bosnia and Herzegovina*, 32/05; the payment of a fine imposed in the minor offence proceedings; there is no violation of Article 1 of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of BiH**

The notion „property” enunciated in Article 1 of Protocol No.1 to the European Convention is not to be interpreted in a restrictive manner, rather it should be understood as including the acquired rights of individuals, such as monetary claims and other economic values... The right to severance pay constitutes monetary claim, which has been acquired, which is of a temporary character and arises from employment relations. This is to say, this right constitutes the right to property.

- **Decision on Admissibility and Merits No. AP 741/04 of 12 April 2005, paragraphs 32 and 33, published in the *Official Gazette of Bosnia and Herzegovina*, 44/05; administrative procedure, determination of the right to severance pay; there is no violation of Article 1 of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of BiH**

The shares of the company constitute property enjoying the protection under Article II(3)(k) of the Constitution of Bosnia and Herzegovina and Article 1 of Protocol No. 1 to the European Convention.

- **Decision on Admissibility and Merits No. AP 100/04 of 22 April 2005, paragraph 31, published in the *Official Gazette of Bosnia and Herzegovina*, 36/05**

The term „property” includes a wide range of ownership interests constituting an economic value.

- **Decision on Admissibility and Merits No. AP 380/04 of 26 April 2005, paragraph 26, published in the *Official Gazette of Bosnia and Herzegovina*, 40/05; the transfer of occupancy right to a child; there is no violation of Article 1 of Protocol No. 1 to the European Convention**

The occupancy right constitutes *sui generis* property interests constituting an economic value.

- **Decision on Admissibility and Merits No. AP 380/04 of 26 April 2005, paragraph 27, published in the *Official Gazette of Bosnia and Herzegovina*, 40/05; the transfer of occupancy right to a child; there is no violation of Article 1 of Protocol No. 1 to the European Convention**

The damage compensation for the failure to return a tractor and trailer to the appellant, which were owned by him, in respect of which the appellant has legitimate expectations, constitutes „property”.

- **Decision on Admissibility and Merits No. AP 487/04 of 18 May 2005, paragraph 20, published in the *Official Gazette of Bosnia and Herzegovina*, 67/05; civil proceedings, pecuniary damage compensation; there is no violation of Article 1 of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of BiH**

In the instant case, the right to payment of earned but unpaid salaries represents the property which the appellant justifiably expects to have and which enjoys the protection under Article II(3)(k) of the Constitution of Bosnia and Herzegovina and Article 1 of Protocol No. 1 to the European Convention.

- **Decision on Admissibility and Merits No. AP 1/05 of 18 May 2005, paragraph 27, published in the *Official Gazette of Bosnia and Herzegovina*, 58/05**

The economic interest to dispose of, i.e. to „manipulate” the funds on the gyro account of the person who performs activities in financial business is of such character that it constitutes „property” enjoying the protection under Article 1 of Protocol No. 1 to the European Convention.

- **Decision on Admissibility and Merits No. AP 531/04 of 27 May 2005, paragraph 27, published in the *Official Gazette of Bosnia and Herzegovina*, 67/05; the payment of the amount in respect of foreign currency savings; there is no violation of Article 1 of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of BiH**

The right to collect a monetary claim arising from a contract on business cooperation, which the appellant concluded with the defendant, which the appellant claims to have been deprived of, constitutes a law-based claim and justifiably expected economic value, i.e. the appellant’s property within the meaning of Article 1 of Protocol No. 1 to the European Convention.

- **Decision on the Merits No. AP 951/04 of 13 September 2005, paragraph 11, published in the *Official Gazette of Bosnia and Herzegovina*, 3/06**

The right to the pension for a specified period of time constitutes property within the meaning of Article 1 of Protocol No.1 to the European Convention.

- **Decision on the Merits No. AP 639/04 of 23 September 2005, paragraph 20, published in the *Official Gazette of Bosnia and Herzegovina*, 83/05; administrative procedure, the right to pension for a specified period of time; the violation of Article 1 of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of BiH established**

The real property being subject to expropriation and the real property which, according to the appellant, should be expropriated, constitute an economic value, i.e. possessions within the meaning of Article 1 of Protocol No.1 to the European Convention.

- **Decision on the Merits No. AP 528/04 of 13 October 2005, paragraph 21, published in the *Official Gazette of Bosnia and Herzegovina*, 17/06; administrative procedure, the request for full expropriation when the expropriation of a part of the property makes it impossible to use regularly the remaining part of the property; the violation of Article 1 of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of BiH established**

The rights *in personam* in the field of social policy fall within the scope of the notion „possessions” within the meaning of the constitutional protection, if the person who requests their protection acquired such right and if they have a monetary value. Furthermore, the legitimate expectation that certain requirements would apply falls within the scope of the notion of „possessions”.

- **Decision on Admissibility No. AP 1061/04 of 13 October 2005, paragraph 9; the request for the acquisition of the status of a disabled war veteran, the appeal *ratione materiae* incompatible with the Constitution**

The temporary right to use undeveloped urban construction land is an enforceable right with an economic value, which constitutes „possessions” within the meaning of Article 1 of Protocol No. 1 to the European Convention (see Human Rights Chamber, No. CH/02/8655, *Sačak and Salihagić v. the Republika Srpska*, Decision on Admissibility and Merits of 4 July 2003, paragraph 116).

- **Decision on the Merits No. AP 851/04 of 17 November 2005, paragraph 23, published in the *Official Gazette of Bosnia and Herzegovina*, 22/06; the dispute relating to the disturbance of possession of an undeveloped urban construction land of the appellant as a temporary occupant; there is no violation of Article 1 of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of BiH**

The pecuniary claims of the appellants for the compensation for damage, recognized in the legally binding court judgments, which constitute „war damage”, constitute „possessions” within the meaning of Article 1 of Protocol No. 1 to the European Convention.

- **Decision on the Merits No. AP 774/04 of 20 December 2005, paragraph 365, published in the *Official Gazette of Bosnia and Herzegovina*, 39/06; the failure to enforce legally binding court decisions whereby the appellants were awarded pecuniary and non-pecuniary compensation for „war damage”; the violation of Article 1 of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of BiH established**

Default interests awarded in the legally binding court judgments constitute „possessions” of the applicants within the meaning of Article 1 of Protocol No.1 to the European Convention.

- **Decision on the Merits No. AP 774/04 of 20 December 2005, paragraph 371, published in the *Official Gazette of Bosnia and Herzegovina*, 39/06; the failure to enforce legally binding court decisions whereby the appellants were awarded pecuniary and non-pecuniary compensation for „war damage”; the violation of Article 1 of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of BiH established**

The costs of the proceedings constitute the appellants’ „possessions” within the meaning of Article 1 of Protocol No. 1 to the European Convention.

- **Decision on the Merits No. AP 774/04 of 20 December 2005, paragraph 373, published in the *Official Gazette of Bosnia and Herzegovina*, 39/06; the failure to enforce legally binding court decisions whereby the appellants were awarded pecuniary and non-pecuniary compensation for „war damage”; the violation of Article 1 of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of BiH established**

A difference in the amount of severance pay awarded in the legally binding judgment and that awarded in the challenged judgment upon a revision-appeal can be considered the appellant’s property within the meaning of Article 1 of Protocol No. 1 to the European Convention.

- **Decision on the Merits No. AP 218/05 of 23 February 2006, paragraph 17, published in the *Official Gazette of Bosnia and Herzegovina*, 32/06**

According to the case-law of the European Court of Human Rights, the salaries fall within the scope of protection of Article 1 of Protocol No. 1 to the European Convention (see ECHR, *Smokovits and Others v. Greece*, judgment of 11 April 2002, Application no. 46356/99, paragraph 32). The fact that the appellant did not receive the salaries does not affect this, since he has legitimate expectations that they would be paid.

- **Decision on the Merits No. AP 1105/05 of 12 April 2006, paragraph 23, published in the *Official Gazette of Bosnia and Herzegovina*, 59/06; *civil proceedings, the payment of the salaries***

The vehicle, seized as a result of the imposed protective measure of seizing a vehicle in the minor offence proceedings, for which the purchase price was paid to the buyer, constitutes possessions.

- **Decision on the Merits No. AP 2078/05 of 12 April 2006, paragraph 39, published in the *Official Gazette of Bosnia and Herzegovina*, 7/07**

A part of the land, which was seized from the appellant, and which he has possessed for about 20 years and used for orchard plantation, constitutes property. The challenged decisions interfered with the property and the appellant was deprived of the right to peacefully enjoy and use property.

- **Decision on the Merits, No. AP 706/05 of 12 April 2006, paragraph 32, published in the *Official Gazette of Bosnia and Herzegovina*, 57/06**

The servitude right to cross a land constitutes „possessions” within the meaning of Article 1 of Protocol No. 1 to the European Convention.

- **Decision on Admissibility and Merits No. AP 1292/05 of 27 June 2006, paragraph 20, published in the *Official Gazette of Bosnia and Herzegovina*, 87/06**

The occupancy right constitutes *sui generis* property interests which are an economic value (see the Constitutional Court, Decision no. *U 8/99* of 5 November 1999, published in the *Official Gazette of Bosnia and Herzegovina*, no. 24/99). The occupancy right includes the right of the household family members to acquire occupancy right after the death of the occupancy right holder (see the Constitutional Court, Decision no. *U 6/98* of 24 September 1999, published in the *Official Gazette of Bosnia and Herzegovina*, no. 20/99) and the right to purchase an apartment in accordance with the relevant regulations.

- **Decision on Admissibility and Merits No. AP 1812/05 of 8 July 2006, paragraph 38, published in the *Official Gazette of Bosnia and Herzegovina*, 87/06; *the apartments occupied on the basis of the occupancy right***

The right to dispose of the real property is a property right within the meaning of Article 1 of Protocol No. 1 to the European Convention.

- **Decision on Admissibility and Merits No. AP 1402/05 of 29 September 2006, paragraph 19, published in the *Official Gazette of Bosnia and Herzegovina*, 9/07**

Transfer of the occupancy right

As the appellant did not have the status of an occupancy right holder, nor did she have, at the time of death of her grand-father - the occupancy right holder, the legal status of a member of the family household of the occupancy right holder, which could, possibly, constitute a part of the right to occupy the real property (apartment) – she does not enjoy the protection under Article 1 of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of Bosnia and Herzegovina in respect of her expectation to acquire the property.

- **Decision on Admissibility and Merits No. U 49/03 of 26 August 2004, paragraph 29, published in the *Official Gazette of Bosnia and Herzegovina*, 48/04;**
- **Decision on Admissibility and Merits No. AP 1031/04 of 26 April 2005, paragraph 35, published in the *Official Gazette of Bosnia and Herzegovina*, 48/05;**
- **Decision on the Merits No. AP 707/05 of 13 September 2005, paragraph 37, published in the *Official Gazette of Bosnia and Herzegovina*, 86/05**

The occupancy right includes the right of members of the family household to acquire the occupancy right after the death of the occupancy right holder and the right to purchase the apartment in accordance with the relevant regulations.

- **Decision on Admissibility and Merits No. AP 499/04 of 23 March 2005, paragraph 37, published in the *Official Gazette of Bosnia and Herzegovina*, 32/05; the transfer of the occupancy right to a child; there is no violation of Article 1 of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of BiH;**
- **Decision on Admissibility and Merits No. AP 380/04 of 26 April 2005, paragraph 27, published in the *Official Gazette of Bosnia and Herzegovina*, 40/05; the transfer of the occupancy right to a child; there is no violation of Article 1 of Protocol No. 1 to the European Convention**

There is no violation of the right to property when the competent authorities dismiss the appellant's request for the transfer of occupancy right based on the concluded contract on life-long support with the occupancy right holder, since they did not establish a shared household. Therefore, taking into account the fact that the appellant has never had the occupancy right over the apartment in question, neither could he expect to acquire that right under the law, he has no „possessions” protected under Article II(3)(k) of the Constitution of Bosnia and Herzegovina or Article 1 of Protocol No. 1 to the European Convention.

- **Decision on Admissibility and Merits No. AP 7/05 of 15 June 2005, paragraph 23, published in the *Official Gazette of Bosnia and Herzegovina*, 58/05**

What is not regarded as property

In the present case, the premises which the appellant uses as a hold-over tenant (based on a tenancy at sufferance) shall not be regarded as property.

- **Decision No. U 11/02 of 26 June 2003, paragraph 25, *Official Gazette of Bosnia and Herzegovina*, 39/03; the civil proceedings related to the issue of ownership over jointly possessed premises of a building; there is no violation of Article 1 of Protocol No. 1 to the European Convention**

There is no „possessions” within the meaning of Article 1 of Protocol No. 1 to the European Convention because the appellant did not acquire the property by inheritance as it was established by the ordinary court in a civil procedure, therefore she could not be deprived of her property.

- **Decision No. U 65/02 of 26 September 2003, paragraph 45, published in the *Official Gazette of Bosnia and Herzegovina*, 43/03;**
- **Decision on Admissibility and Merits No. U 12/03 of 26 March 2004, paragraph 26, published in the *Official Gazette of Bosnia and Herzegovina*, 18/04**

The first-appellant, by concluding a contract on giving his consent to the use of an apartment on a one-time basis, acquired the right to select an employee to whom the other contracting party as the owner of the apartment would issue a ruling on allocating the apartment for use suitable for concluding a contract on the use of the apartment and thereby the acquisition of the occupancy right. Therefore, the essence of the right acquired by the first-appellant does not constitute an economic value within the meaning of Article 1 of Protocol No. 1 to the European Convention but only a possibility of resolving a social problem by selecting an employee whose social problem would be resolved by subsequent allocation of the apartment by the owner.

- **Decision on Admissibility No. U 69/03 of 19 April 2004, paragraph 18**

The appellant did not acquire „possessions” within the meaning of Article 1 of Protocol No. 1 to the European Convention since the right to property does not exist until the moment the person’s right to a property has been legally established.

- **Decision on Admissibility and Merits No. U 43/03 of 17 May 2004, paragraph 33, published in the *Official Gazette of Bosnia and Herzegovina*, 34/04; civil proceedings to establish the occupancy right**

The occupancy right cannot be acquired by inheritance so as to provide the protection under this Article to the appellant as if she acquired that right, as if the amount in question paid for the purchase of that apartment constituted her property.

- **Decision on Admissibility and Merits No. U 52/03 of 17 May 2004, paragraph 18, published in the *Official Gazette of Bosnia and Herzegovina*, 40/04**

The apartment over which the appellant has not acquired the occupancy right shall not be considered the appellant’s property.

- **Decision on Admissibility and Merits No. AP 120/03 of 17 May 2004, paragraph 32, published in the *Official Gazette of Bosnia and Herzegovina*, 38/04**

Article 1 of Protocol No. 1 to the European Convention protects only the existing property and possessions, but does not include rights or expectations to acquire property in the future. (Decision no. U 37/00 published in the *Official Gazette of Bosnia and*

Herzegovina, 24/02 of 29 August 2002 and Decision no. *U 12/01* published in the *Official Gazette of Bosnia and Herzegovina*, 20/02 of 3 August 2002

- **Decision on Admissibility and Merits No. U 154/03 of 15 June 2004, paragraph 24, published in the *Official Gazette of Bosnia and Herzegovina*, 40/04;**
- **Decision on Admissibility and Merits No. AP 61/02 of 30 June 2004, paragraph 20, published in the *Official Gazette of Bosnia and Herzegovina*, 40/04; the probate proceedings;**
- **Decision on Admissibility and Merits No. AP 203/02 of 30 June 2004, published in the *Official Gazette of Bosnia and Herzegovina*, 41/04; compensation for damage arising from employment – future property**

The appellant failed to prove in the administrative and judicial proceedings that he met the requirements for the acquisition of occupancy right so that the appellant did not appear as the holder of the occupancy right in this case. Therefore, the appellant is not the occupancy right holder and, therefore, there is no property protected by Article 1 of Protocol No. 1 to the European Convention.

- **Decision on Admissibility and Merits No. AP 45/02 of 30 June 2004, paragraph 84, published in the *Official Gazette of Bosnia and Herzegovina*, 41/04; transfer of the occupancy right from a grandfather to a grandson; there is no violation of Article 1 of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of Bosnia and Herzegovina**

Based on the evidence enclosed with the case-file, the Constitutional Court concluded that the appellant did not acquire the property within the meaning of Article 1 of Protocol No. 1 to the European Convention, since the right to property does not exist until the moment the person's right to property is established. Therefore, rendering a judgment within the meaning of Article 25 of the Law on Legal Ownership Relations, according to the claim to establish the ownership right on an apartment, cannot constitute a violation of the appellant's 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.

- **Decision on Admissibility and Merits No. AP 91/02 of 23 July 2004; paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina*, 43/04; the acquisition of the ownership right on a constructed object**

The appellant does not have the right to restore the funds he had invested in an abandoned apartment, which he received for temporary use, since he undertook to restore the apartment in question „at his own expense” so that he **did not acquire the property** which could be protected by Article 1 of Protocol No. 1 to the European Convention, thus the mentioned Article is not applicable to the case in question.

- **Decision on Admissibility and Merits No. U 72/03 of 21 July 2004, paragraph 29, published in the *Official Gazette of Bosnia and Herzegovina*, 41/04**

The appellant did not acquire the property protected by Article 1 of Protocol No. 1 to the European Convention, i.e. the right to collect the rent set forth in the contract on lease, since the contract on lease was null and void.

- **Decision on Admissibility and Merits No. U 14/03 of 22 September 2004, paragraph 32, published in the *Official Gazette of Bosnia and Herzegovina*, 60/04**

The expectations of a family household member that he would become the occupancy right holder after the death of the occupancy right holder cannot be regarded as property, therefore it is not protected by Article 1 of Protocol No. 1 to the European Convention.

- **Decision on Admissibility and Merits No. AP 21/03 of 22 September 2004, paragraph 47, published in the *Official Gazette of Bosnia and Herzegovina*, 54/04;**
- **Decision No. U 12/01 of 25 February 2002, published in the *Official Gazette of Bosnia and Herzegovina*, 20/02; a grandson - status as a member of the family household in the *Republika Srpska*;**
- **Decision on Admissibility and Merits No. AP 380/04 of 26 April 2005, paragraph 31, published in the *Official Gazette of Bosnia and Herzegovina*, 40/05; the transfer of the occupancy right to a child; there is no violation of Article 1 of Protocol No. 1 to the European Convention**

Article 1 of Protocol No. 1 to the European Convention protects only the existing property and possessions, but it does not include rights or expectations to acquire property in the future, for example by inheritance.

- **Decision on Admissibility and Merits No. AP 380/04 of 26 April 2005, paragraph 29, published in the *Official Gazette of Bosnia and Herzegovina*, 40/05; the transfer of the occupancy right to a child; there is no violation of Article of Protocol No. 1 to the European Convention;**
- **Decision on Admissibility and Merits No. AP 418/04 of 22 April 2005, paragraph 33, published in the *Official Gazette of Bosnia and Herzegovina*, 40/05; repossession on an apartment based on a Contract on Lease, the JNA apartment; there is no violation of Article 1 of Protocol No. 1 to the European Convention**

The confiscated goods as the subject of a criminal offence do not constitute possessions within the meaning of Article 1 of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility and Merits No. AP 393/04 of 12 April 2005, paragraphs 17 and 18, published in the *Official Gazette of Bosnia and Herzegovina*, 40/05**

There is no violation of 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, since the appellant claimed the payment of compensation for the confiscated property, while the court did not find in a court proceeding that it was the appellant's property.

- **Decision on Admissibility and Merits No. AP 1050/04 of 26 April 2005, paragraph 26, published in the *Official Gazette of Bosnia and Herzegovina*, 48/05**

In the instant case, the ordinary courts found that the appellant had never been registered in the land books as a user of the property in question and it was not proved that he was the legal successor of the previous owner. Therefore, the appellant has no a property based on which the relevant property right would be established and thus the property in

question is not the appellant's property within the meaning of Article 1 of Protocol No. 1 to the European Convention.

- **Decision on Admissibility and Merits No. AP 983/04 of 27 May 2005, paragraph 31, published in the *Official Gazette of Bosnia and Herzegovina*, 78/05**

In the event where the challenged decision established that a contract on the apartment use is null and void, whereby the appellant had never moved in the apartment in question, such an apartment does not constitute possessions within the meaning of Article II(3)(k) of the Constitution of Bosnia and Herzegovina and Article 1 of Protocol No. 1 to the European Convention.

- **Decision on the Merits No. AP 281/05 of 28 June 2005, paragraphs 33 and 34, published in the *Official Gazette of Bosnia and Herzegovina*, 60/05**

The apartment acquired on the basis of an invalid contract cannot be regarded as property.

- **Decision on Admissibility and Merits No. AP 497/04 of 28 June 2005, paragraph 37, published in the *Official Gazette of Bosnia and Herzegovina*, 27/06; civil proceedings, the annulment of the contract on purchase; there is no violation of Article 1 of Protocol No. 1 to the European Convention**

In the instant case, the appellant has never moved into the apartment in question so that he has never acquired the occupancy right in accordance with Article 11 of the Law on Housing Relations. Therefore, the appellant has no occupancy right established on the disputed apartment and thus has no protection under Article 1 of Protocol No. 1 to the European Convention.

- **Decision on Admissibility and Merits No. AP 995/04 of 22 July 2005, paragraph 32, published in the *Official Gazette of Bosnia and Herzegovina*, 4/06**

There is no violation of the right to property where the appellant, although she used the apartment in accordance with the contract for lifelong sustenance, did not have the occupancy right established on the apartment in question, nor could she expect to acquire that right according to the law, consequently she has no „possessions” protected under Article II(3)(k) of the Constitution of Bosnia and Herzegovina or Article 1 of Protocol No. 1 to the European Convention.

- **Decision on the Merits No. AP 959/04 of 13 September 2005, paragraph 29, published in the *Official Gazette of Bosnia and Herzegovina*, 3/06**

There are no possessions protected by Article 1 of Protocol No. 1 to the European Convention where the appellant has failed to prove in the judicial proceedings that she had the constituted ownership right.

- **Decision on Admissibility and Merits No. AP 1488/05 of 20 September 2006, paragraph 29, published in the *Official Gazette of Bosnia and Herzegovina*, 9/07; the servitude right**

In the case where the appellant lost the possession of the apartment and the occupancy right, and the apartment has been allocated for use to another person, the appellant has no legally recognized status of an occupancy right holder of the apartment in question,

so that the apartment in question cannot be regarded as her property within the meaning of Article 1 of Protocol No. 1 to the European Convention.

- **Decision on the Merits No. AP 1038/04 of 23 September 2005, paragraph 29, published in the *Official Gazette of Bosnia and Herzegovina*, 4/06**

There is no violation of the appellant's 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, since the defendant performed the construction work in question on his own plot of land, on which the appellant has no relevant property right within the meaning of Article 1 of Protocol No. 1 to the European Convention.

- **Decision on the Merits No. AP 1092/04 of 13 October 2005, paragraph 29, published in the *Official Gazette of Bosnia and Herzegovina*, 14/06**

In the case at hand, considering that the appellant failed to prove in the judicial proceedings that the claim existed, there was no property enjoying the protection under Article 1 of Protocol No. 1 to the European Convention.

- **Decision on the Merits No. AP 1072/04 of 13 October 2005, paragraph 25, published in the *Official Gazette of Bosnia and Herzegovina*, 22/06**

The right to disability family pension, which the appellant expected to have in the circumstances of this case (the claim for the recognition of the family disability pension due to the death of the daughter was dismissed), cannot constitute his possessions, since the appellant did not meet the requirements prescribed by the law to acquire that right.

- **Decision on Admissibility and Merits No. AP 1045/04 of 17 November 2005, paragraph 51, published in the *Official Gazette of Bosnia and Herzegovina*, 20/06**

There is no violation of the right to property, as the present case concerned the apartment, which was nationalized in accordance with the Law on Nationalization of Lease Buildings and Construction Land, therefore the apartment in question cannot be regarded as possessions of the appellant within the meaning of Article 1 of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of Bosnia and Herzegovina.

- **Decision on the Merits No. AP 68/05 of 20 December 2005, paragraph 43, published in the *Official Gazette of Bosnia and Herzegovina*, 37/06**

There is no violation of the right to property, since the appellant did not have „justified expectations” according to the law that he would receive compensation for the lost income in respect of the determined period of time during which he was mobilized, so that the requested amount of compensation for the loss of income he requested in the claim does not constitute property protected within the aforementioned constitutional right.

- **Decision on the Merits No. AP 147/05 of 2 April 2006, paragraph 30, published in the *Official Gazette of Bosnia and Herzegovina*, 49/06**

The appellant failed to prove in the court proceedings, which resulted in the challenged decisions, that she met the requirements for the acquisition of the occupancy right,

although she was in possession of the disputed apartment for over three years. Therefore, the appellant does not appear in this case as the holder of occupancy right, and there are no possessions protected by Article 1 of Protocol No. 1 to the European Convention.

- **Decision on the Merits No. AP 587/05 of 12 April 2006, paragraph 44, published in the *Official Gazette of Bosnia and Herzegovina*, 77/06**

A claim arising from the contract, which was *ex lege* null and void at the time of its conclusion, cannot constitute a „legitimate expectation” and, accordingly, „the possessions” protected by Article 1 of Protocol No. 1 to the European Convention.

- **Decision on Admissibility and Merits No. AP 1236/06 of 13 September 2007, paragraph 26, published in the *Official Gazette of Bosnia and Herzegovina*, 86/07; a claim arising from a lease contract; there is no violation of Article 1 of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of Bosnia and Herzegovina;**
- **Decision on Admissibility and Merits No. AP 1846/06 of 12 June 2008, paragraph 30, published in the *Official Gazette of Bosnia and Herzegovina*, 72/08;**
- **Decision on Admissibility and Merits No. AP 920/07 of 10 June 2009, paragraph 29, published in the *Official Gazette of Bosnia and Herzegovina*, 82/09**

There is no violation of the right to property when the appellant could not have, according to the provisions of the Family Law, a „legitimate expectation” that she would succeed in part of her claim relating to the separate property of her ex-husband, therefore she has no „possessions” within the meaning of the aforementioned Article.

- **Decision on Admissibility and Merits No. AP 2349/06 of 27 February 2008, paragraph 48, published in the *Official Gazette of Bosnia and Herzegovina*, 4/06; there is no violation of Article 1 of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of Bosnia and Herzegovina**

In the present case the appellant was not a party to the respective criminal proceedings. In the respective criminal proceedings, as it follows from the facts of the case, the appellant’s husband appeared as defense witness claiming that the disputed amount of money belonged to him, the appellant and their daughter (the appellant’s wife) offering as evidence for his allegations the certificates of the taken loans in the name of the appellant and their daughter, as well as that it was a portion of the turnover from their catering facility, but that he failed to offer any evidence whatsoever in that regard. The Constitutional Court observes that, in that respect, the second-instance court concluded that those were not convincing evidence on the origin of the confiscated money, particularly for the reason that from the day of taking the loans (the first was taken in July 2008) to the day of finding the money in the appellant’s car (13 March 2009) a long period of time elapsed, and that, on the other hand, within the meaning of Article 110(a) of the Criminal Code of BiH, the allegations of the Prosecutor’s Office were more probable in that they read that it was the money acquired through the perpetration of a criminal offense. Considering the aforementioned, and as no evidence or argument considered during the said proceedings do not give rise to a conclusion that the disputed amount of money belonged to the appellant, the Constitutional Court concluded that the appellant

failed to prove that the disputed money constituted her „possessions” within the meaning of Article 1 of Protocol No. 1 to the European Convention (op. cit. Decision *Gratzinger*, paragraph 74), which is the reason why the appellant’s allegations on the violation of the right to property do not fall within the scope of the mentioned article, rather they are *ratione materiae* incompatible with the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility and Merits No. AP 3433/11 of 17 July 2014, paragraph 41, published in the *Official Gazette of Bosnia and Herzegovina*, 71/14; the confiscation of illegally acquired gain – money; criminal proceedings**

Foreign currency savings

Bosnia and Herzegovina failed to protect the appellants’ right to property in an effective manner by failing to pass a framework law regulating the payment of the old foreign currency savings, which amounted to a violation of Article 1 of Protocol No. 1 to the European Convention.

- **Decision on the Merits No. AP 494/05 of 9 February 2006, paragraph 62, published in the *Official Gazette of Bosnia and Herzegovina*, 35/06;**
- **Decision on the Merits No. AP 498/05 of 27 June 2006, paragraph 7 et seq., published in the *Official Gazette of Bosnia and Herzegovina*, 77/06**

The Constitutional Court concludes that the respective appeals filed against Bosnia and Herzegovina relating to the appellants’ complaints about the violation of 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 are ill-founded, since the adoption of the Law on the Settlement of Obligations Arising From Old Foreign Currency Savings did not amount to an unjustified interference with the appellants’ right to property. Furthermore, the Constitutional Court concludes that the Federation of Bosnia and Herzegovina did not interfere with the appellants’ right to property, since the competence to resolve the issue of payment of claims arising from the old foreign currency savings was transferred to the State.

- **Decision on the Merits No. AP 1391/06 of 4 September 2008, paragraph 47, published in the *Official Gazette of Bosnia and Herzegovina*, 91/08**

Positive obligations

The ruling alone ordering the user to leave a part of the respective real property and the adoption of the conclusion allowing the enforcement of the aforementioned ruling is not enough to conclude that the state fulfilled its positive obligation through its authorities and protected the appellant’s right to the peaceful enjoyment of property, since the failure of the authority to conclude the administrative enforcement procedure constitutes a violation of the positive obligations of the State under Article 1 of Protocol No. 1 to the European Convention (see ECtHR, *Scollo v. Italy*, judgment of 28 September 1995, Series A, no. 315-C, p. 54, paragraph 40, and the Decision of the Constitutional Court no. AP 3255/06 of 5 April 2007).

- **Decision on Admissibility and Merits No. AP 2498/07 of 13 December 2007, paragraph 31, published in the *Official Gazette of Bosnia and Herzegovina*, 12/08; administrative procedure, the repossession of property; the violation of Article 1 of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of Bosnia and Herzegovina established**

Taking into account the appellants' allegations on the circumstances under which their house had been torn down as well as evidence that the appellants proposed in relation to the aforementioned (it should be added that the event had taken place during the war and that the appellants were the members of the minority people in that area), the Constitutional Court deemed that the investigation related to this event was necessary in order to protect the appellants' property. Since the investigation had not been carried out (the police station in the vicinity of which the event had taken place did not even have it registered in its records), the Constitutional Court deemed that the Republika Srpska failed to fulfill its positive obligation which amounted to the violation of the appellants' 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.

- **Decision on Admissibility and Merits No. AP 2763/09 of 22 March 2013, paragraph 35, published in the *Official Gazette of Bosnia and Herzegovina*, 21/14; the compensation for damage for the property destroyed during the war; the violation of Article 1 of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of Bosnia and Herzegovina established**

Peaceful enjoyment of property

The loss of the priority right to annex a part of the premises in common use cannot be considered as a violation of the right to property for reasons provided for by the law.

- **Decision No. U 3/01 of 31 August 2001, published in the *Official Gazette of Bosnia and Herzegovina*, 5/02**

There was no arbitrary application of the law in the proceedings of determination of validity of the contract on the purchase of the apartment after the death of the occupancy right holder and before the public attorney's office certified the contract and the claim was dismissed, therefore a conclusion was made that there was no violation of the right to property.

- **Decision on Admissibility and Merits No. AP 83/02 of 23 July 2004, paragraph 22, published in the *Official Gazette of Bosnia and Herzegovina*, 43/04; the validity of a contract of purchase of an apartment over which there is occupancy right after the death of the occupancy right holder before the Attorney's Office certified the contract**

There was no interference with the appellant's right to enjoyment of property since the challenged rulings did not provide a solution different from that offered in the judgment on enforcement concerning the appellant's right for the debtor to pay her a certain amount of money.

- **Decision on Admissibility and Merits, No. AP 115/04 of 23 March 2005, paragraph 31, published in the *Official Gazette of Bosnia and Herzegovina*, 30/05**

In the present case, the Constitutional Court concluded that selective confiscation of the real property (in respect of which the appellant's property right was made subject to certain restrictions) constituted the interference with the right to the peaceful enjoyment of the appellant's real property, which were not expropriated.

- **Decision on the Merits No. AP 528/04 of 13 October 2005, paragraph 24, published in the *Official Gazette of Bosnia and Herzegovina*, 17/06; *Administrative proceedings, request for full expropriation in the case where the partial expropriation amounts to the impossibility of normal use of the remaining part of the property; the violation of Article 1 of Protocol No. 1 and Article II(3)(k) of the Constitution of Bosnia and Herzegovina established***

The courts ascertained that the appellant had been the last possessor and that the defendant had performed an act of interference with the possession, yet they dismissed the appellant's request for the repossession. Such a conduct constitutes an arbitrary and erroneous application of the law and a violation of the appellant's right to property protected by the principle of legality under Article II(3)(k) of the Constitution of Bosnia and Herzegovina and Article 1 of Protocol No. 1 to the European Convention, which stipulates clearly that „no one shall be deprived of their possessions except in the public interest and subject to the conditions provided for by law”.

Decision on Admissibility and Merits No. AP 148/05 of 29 September 2006, paragraph 44, published in the *Official Gazette of Bosnia and Herzegovina*, 9/07

In the appellants' case, the competent municipal body and the CRPC, as part of their positive obligation to implement effective measures aiming at protecting the right to the peaceful enjoyment of property, conducted the proceedings and established that the plot in question, within the meaning of Article II(3)(k) of the Constitution of Bosnia and Herzegovina and Article 1 of Protocol No. 1 to the European Convention, constitutes the appellants' property which, in accordance with the applicable property laws, must be reposessed to them. However, the Constitutional Court concludes that the declarative adoption of the aforementioned decisions without their enforcement and the repossession of property constitutes the interference with the appellant's right to the peaceful enjoyment of property. It is obvious that the Municipality of Sanski Most did not take measures in a timely fashion in order to enforce decisions to restore the possession of the property to the appellants, and thus to discontinue the violations of the appellants' right to the peaceful enjoyment of property.

- **Decision on Admissibility and Merits No. AP 1471/06 of 13 May 2008, paragraph 65, published in the *Official Gazette of Bosnia and Herzegovina*, 70/08**

Deprivation of property

The Constitutional Court finds that depriving the appellant of a part of pecuniary claim for damage compensation arising from the car liability insurance for the amount of the interests on the pecuniary damage compensation until the termination of the immediate war danger, meets the requirements of Article 1 of Protocol No. 1 to the European Convention.

- **Decision No. U 44/02 of 23 July 2003, paragraph 38, published in the *Official Gazette of Bosnia and Herzegovina*, 38/03; damage compensation based on the automobile liability insurance for damage inflicted upon the third persons; there is no violation of Article 1 of Protocol No. 1 to the European Convention and Article II(3) (k) of the Constitution of BiH**

The Constitutional Court concludes that the Supreme Court, by misapplying *res iudicata* principle in its ruling no. Rev-165/99 of 6 April 2000, deprived the appellant of the possibility of having a decision on the merits of his claim. This deprived the appellant of the essence of his interests protected by Article 1 of Protocol No. 1 to the European Convention.

- **Decision No. U 2/01 of 24 October 2003, published in the *Official Gazette of Bosnia and Herzegovina*, 8/04**

Depriving the appellant of the possibility to enjoy her property through the adoption of the challenged judgments is not provided for by the law in the manner it resulted in the challenged judgments, given the violation of Article 36 paragraph 1 of the Law on Ownership and Legal Relations.

- **Decision on Admissibility and Merits No. AP 160/03 of 28 April 2004, paragraph 26, published in the *Official Gazette of Bosnia and Herzegovina*, 34/04; civil proceedings to repossess business premises which the contractor sold meanwhile to third persons and for which the appellant paid the purchase price**

In the present case, the deprivation of property without compensation does not strike a fair balance between the means used and aim sought to be achieved so that the interference with the appellant's property rights was disproportionate, which amounted to the violation of his right to property.

- **Decision No. U 11/03 of 28 May 2004, paragraph 38, published in the *Official Gazette of Bosnia and Herzegovina*, 40/04**

The appellant was deprived of his property where the ordinary courts, through arbitrary application of the substantive law, dismissed the appellant's claim for compensation for damage due to an accident he sustained at work.

- **Decision on Admissibility and Merits No. U 36/03 of 15 June 2004, paragraph 35, published in the *Official Gazette of Bosnia and Herzegovina*, 38/04; civil proceedings for compensation for damage related to an accident at work**

The imposition of fines can be defined as „deprivation” of property within the meaning of the second sentence of paragraph 1 of Article 1 of Protocol No. 1 to the European Convention and thus must meet the requirements provided for in the aforementioned Article.

- **Decision No. U 65/03 of 22 September 2004, paragraph 18, published in the *Official Gazette of Bosnia and Herzegovina*, 60/04; minor offence proceedings over the perpetration of a customs offence;**
- **Decision on Admissibility and Merits No. AP 498/04 of 23 March 2005, paragraph 22, published in the *Official Gazette of Bosnia and Herzegovina*, 32/05; payment**

of the fine imposed in the offence proceedings; there is no violation of Article I of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of BiH

There is no deprivation of property in the present proceedings where the appellant requested the repossession of the real property, since the appellant's right to property was not being decided at all in those proceedings.

- **Decision on Admissibility and Merits No. AP 267/03 of 30 November 2004, paragraph 22, published in the *Official Gazette of Bosnia and Herzegovina*, 15/05; civil proceedings for the handover of the possession of a real property, which were suspended pending the resolution of the preliminary issue**

There is a deprivation of possessions in the event where the challenged judgments of the ordinary courts deprive the appellant of his right to collect the debt in the requested amount.

- **Decision on Admissibility and Merits No. AP 538/04 of 28 June 2005, paragraph 25, published in the *Official Gazette of Bosnia and Herzegovina*, 27/06; civil proceedings for the collection the debt arising from the „war tax”, and the lack of standing to be sued with regards to the Brcko District, since the obligation had arisen prior its proclamation, while the District did not conclude an agreement with the Entities assuming these obligations; there is no violation of Article I of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of Bosnia and Herzegovina**

The long-term impossibility for the owners of the confiscated property to exercise their right to property, i.e. to collect pecuniary and non-pecuniary damage compensation awarded to them, although they have legally binding court judgments, agreements on compensation concluded with the competent administrative bodies, contracts and other legal acts issued on the basis of the provisions of the relevant laws, including the related default interests, on the one hand, and the postponement of the definition of „new rights” on the other hand, constitutes *de facto* deprivation of property.

- **Decision on the Merits No. AP 774/04 of 20 December 2005, paragraph 382, published in the *Official Gazette of Bosnia and Herzegovina*, 39/06; the failure to enforce legally binding court decisions whereby the appellants were awarded pecuniary and non-pecuniary damage compensation for „war-related damage”; the violation of Article I of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of Constitution of Bosnia and Herzegovina established**

Lawfully established lack of possibility to collect default interests, which were awarded by a legally binding decision, on the amounts of the established pecuniary and non-pecuniary damage, in any manner and at any time, raises the issue of „deprivation” of (the applicants’) of the right to property.

- **Decision on the Merits, No. AP 774/04 of 20 December 2005, paragraph 385, published in the *Official Gazette of Bosnia and Herzegovina*, 39/06; failure to enforce legally binding court decisions whereby the appellants were awarded pecuniary and non-pecuniary damage compensation for „war-related damage”; the**

violation of Article 1 of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of Bosnia and Herzegovina established

Therefore, the fact that it was not possible to revalidate the concluded contract on the use of the apartment was in accordance with the relevant law and the subsequent order by which the appellant requested to vacate the apartment in question did not amount to the appellant's deprivation of existing property.

- **Decision on Admissibility and Merits No. AP 1812/05 of 8 July 2006, paragraph 40, published in the *Official Gazette of Bosnia and Herzegovina*, 87/06; the apartments occupied on the basis of the occupancy right**

In the circumstances of the particular case, given the indisputable fact that the appellant was the occupancy right holder over the apartment in question on 30 April 1991 and that he filed a request for repossession thereof in a timely fashion, it follows that the administrative bodies and the Cantonal Court, by application of Article 3(1) and (2) of the Law on Cessation of Application of the Law on Abandoned Apartments, have reached an arbitrary conclusion that the appellant is not entitled to the repossession of the relevant apartment for the reasons which could have been the basis for the cancellation of the contract on use of apartment pursuant to the Law on Housing Relations and on which it could have only be decided upon the action lodged by the holder of the allocation right before the competent court. Given that, in accordance with the Law on Cessation of Application of the Law on Abandoned Apartments, the decision by which the request for repossession of apartment was dismissed as ill-founded has as the consequence the loss of the occupancy right, which represents the possession in terms of Article 1 of Protocol No. 1 to the European Convention, it follows that the challenged decisions in the appellant's case result in the deprivation of property which does not comply with standards of the lawful interference.

- **Decision on Admissibility and Merits No. AP 2052/12 of 27 November 2015, paragraph 37, published in the *Official Gazette of Bosnia and Herzegovina*, 100/15; repossession of apartment; the violation of Article 1 of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of Bosnia and Herzegovina established**

Interference with the property

There can be no basis in Article 1 of Protocol No. 1 to the European Convention for a claim based on monetary changes (inflation and currency changes) which occurred after the judgment of the Court.

- **Decision No. U 11/01 of 25 February 2001, published in the *Official Gazette of Bosnia and Herzegovina*, 20/02**

In case of lawful erection of a temporary business premises on the city construction plot of land dispossessed from the appellant's husband as the former user, there was no interference with the appellant's right to the peaceful enjoyment of property so that the right to the peaceful enjoyment of property under Article II(3)(k) of the Constitution of

Bosnia and Herzegovina and Article 1 of Protocol no. 1 to the European Convention has not been violated.

- **Decision on the Merits No. AP 1066/04 of 13 September 2005, paragraphs 29 and 30, published in the *Official Gazette of Bosnia and Herzegovina*, 22/06**

The Constitutional Court concludes that Bosnia and Herzegovina failed to effectively protect the appellant's right to property by failing to pass a framework law whereby the issue of payment of old foreign currency savings would be regulated, which amounted to the violation of the rights laid down in Article 1 of Protocol no.1 to the European Convention.

- **Decision on Admissibility and Merits No. AP 130/04 of 2 December 2005, published in the *Official Gazette of Bosnia and Herzegovina*, 9/06; *foreign currency savings***

A justified interference cannot be imposed only by the legislative provision that meets the criterion of „lawfulness” and serves the legitimate aim in the public interest but it must also maintain a reasonable relation of „proportionality” between the means used and the aim sought to be achieved. The interference with the right to property must not exceed the necessary limits in achieving the legitimate aim, and the occupancy right holders must not be subject to an arbitrary treatment nor required to bear an excessive burden in order to achieve a legitimate aim.

- **Decision on the Merits No. AP 774/04 of 20 December 2005, paragraph 376, published in the *Official Gazette of Bosnia and Herzegovina*, 39/06; *failure to enforce legally binding court decisions whereby the appellants were awarded pecuniary and non-pecuniary „war-related” damages compensation; the violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of Bosnia and Herzegovina established***

There is no interference with the appellant's property safeguarded by Article II(3)(k) of the Constitution of Bosnia and Herzegovina and Article 1 of Protocol No.1 to the European Convention, since it has been established that the appellant did not provide evidence proving that the defendant had a civil *locus standi* based on which an obligation would be imposed on the defendant, and the appellant would have the authorization to require the fulfilment of such an obligation.

- **Decision on the Merits No. AP 1231/05 of 12 April 2006, paragraph 26, published in the *Official Gazette of Bosnia and Herzegovina*, 61/06; *civil proceedings, standing to be sued***

The rulings whereby the Supreme Court and customs authorities imposed a measure of the confiscation of a vehicle, for which the appellant paid purchase price to the seller and which represents the appellant's ownership, constitute interference with the appellant's right to the peaceful enjoyment of property and deprivation of the appellant's property.

- **Decision on the Merits No. AP 2078/05 of 12 April 2006, paragraph 42, published in the *Official Gazette of Bosnia and Herzegovina*, 7/07; *confiscation of a vehicle for customs offence***

The challenged court decision rejecting, because of absolute lack of jurisdiction, the appellant's lawsuit trespass for does not constitute an interference with the appellant's property so that there is no violation of the appellant's right under Article II(3)(k) of the Constitution of Bosnia and Herzegovina and Article 1 of Protocol No.1 to the European Convention.

- **Decision on the Merits No. AP 570/05 of 9 May 2006, paragraph 26, published in the *Official Gazette of Bosnia and Herzegovina*, 87/06**

The challenged court rulings whereby the appellant was ordered to refrain from trespassing and to allow the plaintiff to exercise the servitude right to cross the land which is the appellant's property, indisputably constitute an interference with his right to a peaceful enjoyment of property.

- **Decision on Admissibility and Merits No. AP 1292/05 of 27 June 2006, paragraph 22, published in the *Official Gazette of Bosnia and Herzegovina*, 87/06; the servitude right**

The Supreme Court's judgment denying the appellants' right to the collection of a debt due to the monetary and law changes which took place after the conclusion of the contract, i.e. at the time when term deposit in dinars was to be returned in accordance with the concluded contract, constitutes an interference with the property and deprivation of the appellants' rights to the peaceful enjoyment of property.

- **Decision on Admissibility and Merits No. AP 2158/05 of 21 December 2006, paragraph 39, published in the *Official Gazette of Bosnia and Herzegovina*, 34/07; non-payment of a debt due to the monetary and law changes which took place after the conclusion of contract; there is no violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH**

[...] The Constitutional Court notes that the failure to make a decision upon the appellant's action aimed at entering into possession of the real property in question constitutes the interference with the appellant's right to the peaceful enjoyment of his property. Furthermore, it is indisputable that the appellant, due to the excessive length of the proceedings, has been prevented from peacefully enjoying his property during a period of twenty years and four months, out of which thirteen years and four months fall under the scope of examination of the Constitutional Court. The Constitutional Court holds that the court's delay in making a final decision on the appellant's claim places an „excessive burden” on the appellant and that there is no legitimate aim justifying such interference.

- **Decision on Admissibility and Merits No. AP 393/07 of 13 May 2009, paragraph 40, published in the *Official Gazette of Bosnia and Herzegovina*, 64/09; reasonable time; the violation of Article 1 of Protocol No. 1 to the European Convention and Article II(k) of the Constitution of BiH established**

Starting from the restriction of the right to property that the appellant Boras purchased from the appellant Smoljan (in particular, a share in the company representing the joined property of the plaintiff and the appellant Smoljan), the ordinary courts, *inter alia*,

pointed out that such contract was null and void in terms of Article 103 of the Law on Obligations and that it did not generate a legal effect as being contrary to the relevant provisions of the Family Law, which, in the particular case, is *lex specialis*, contrary to the appellant's assertions. Thus, in view of the circumstances of the case at hand, the content of relevant provisions of the Family Law, the Law on Obligations, the Law on Enterprises and the Law on Registration of Business Entities, which have been applied in the case, the Constitutional Court holds that in addition to the fact that the constitutional rights of the appellant Boras have not been abused, an „excessive burden” has not been placed on the appellant Boras and the legal modalities of the aforementioned restrictions have been proportionate to the aims sought to be achieved.

- **Decision on Admissibility and Merits No. AP 1730/11 of 8 May 2014, paragraph 40, published in the *Official Gazette of Bosnia and Herzegovina*, 50/14; sale of business shares without consent of former spouse; the marital property; the nullity; there is no violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH**

The Constitutional Court concludes that the challenged judgments violated the appellants' 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 in the situation where the Supreme Court and the County Court did not recognize the application with CRPC and with the competent Ministry as relevant procedural actions, in terms of Article 388 of the Law on Obligations, that led to the interruption of the limitation period, which resulted in an unlawful interference with the appellants' right to property.

- **Decision on Admissibility and Merits No. AP 5070/10 of 29 May 2014, paragraph 61, published in the *Official Gazette of Bosnia and Herzegovina*, 50/14; the interruption of the statute of limitations; civil proceedings for compensation of damage caused by a total destruction of the relevant real property; the violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH established;**
- **Decision on Admissibility and Merits No. AP 303/10 of 4 July 2014, paragraph 41, published in the *Official Gazette of Bosnia and Herzegovina*, 64/14;**
- **Decision on Admissibility and Merits No. AP 4383/11 of 26 March 2015, paragraph 46, published in the *Official Gazette of Bosnia and Herzegovina*, 33/15**

The Constitutional Court notes that it found as correct in the reasoning of contested judgement of the Supreme Court the conclusion of the first instance court that the guarantee contract was not null and void in terms of Article 103 of the Law on Obligations since it had been concluded pursuant to Article 251(c) of the Law on Enforcement Procedure. In favor of that position, the Supreme Court pointed out that it was indisputable in the course of proceedings that the second defendant had been registered in Public register as the owner of the apartment in question and the relevant apartment had been in his possession at the time of entry into guarantee contract. Furthermore, the reasoning of the challenged judgement of the Supreme Court indicates that in accordance with such establishment of undisputed facts, the first defendant did not know or could have known that the second defendant has not been the owner of the real property in question, i.e. that

there was nothing in the particular case to point to the conclusion on the existence of an unregistered owner. Therefore it was concluded that the first defendant was conscientious at the time of entry into contract. Finally, from the reasoning of the challenged judgement of the Supreme Court follows that in the situation in which the issue of application of the principle under which no one can transfer to another more rights than he/she possesses or the principle of trust in public registers is raised, the principle of trust in public registers should be applied. In favour of the aforesaid, the Supreme Court pointed out that in the circumstances of the particular case, when at the time the apartment was placed under mortgage, the appellant was not in the possession thereof and the second defendant had been registered both as the owner and possessor and when a long time had passed from the date the appellant acquired the basis for registration in the Land Registry Books, and the appellant treated the apartment in question carelessly (which could not have been justified with the war circumstances) the principle of trust in public registers is to be applied. Consequently, the Supreme Court took a position that it is in the interest of legal transactions that the one who conscientiously, by orderly registration in the Land Registry Books as Public records, acquires the right of lien on real property registered in Land Registry Books, will acquire that registered right although the situation outside the Land Registry Books does not correspond to the situation in the Land Registry Books. The Constitutional Court holds that in the circumstances of the particular case there is nothing which would point to the conclusion that the challenged judgement of the Supreme Court results in the interference with the appellant's right to property which is not in accordance with the law given that it is indisputably established that the guarantee contract was concluded in accordance with Article 251(c) of the Law on Enforcement Procedure.

- **Decision No. AP 3738/12 of 8 December 2015, paragraphs 41 and 42;** *the procedure of establishing the guarantee contract nullity, the principle of trust in Public registers; there is no violation of Article 1 of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of Bosnia and Herzegovina*

Public interest

Depriving the appellant of a part of financial claim relating to compensation for damage referred to in the car insurance policy, i.e. of the interest rate on the compensation for pecuniary damage, to the moment of termination of the immediate threat of war, meets the requirement of Article 1 of Protocol No.1 to the European Convention, since the deprivation of property, which derives from the retroactive legislation and under the circumstances of the instant case, may be considered as a proportional measure in the public interest.

- **Decision No. U 44/02 of 23 July 2003, paragraph 38, published in the *Official Gazette of Bosnia and Herzegovina*, 38/03;** *damage compensation based on the automobile liability insurance; there is no violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of Bosnia and Herzegovina*

There is a public interest in the efficient functioning of the legal system and legal certainty by prescribing certain time limits.

- **Decision on Admissibility and Merits No. AP 239/03 of 30 November 2004, paragraph 26, published in the *Official Gazette of Bosnia and Herzegovina*, 15/05; civil proceedings for pecuniary and non-pecuniary damage compensation due to the dismissal from the work**

The challenged decisions have not interfered with the public interest which imposes that for the purpose of the legal certainty and exercise of the principle of equality of all individuals before the law and in accordance with the rules expressed in the fundamental legal acts regulating the manner of acquisition, transfer, maintenance and judicial and other protection of property rights, every disputable issue is resolved and right established in the lawful manner.

- **Decision on Admissibility and Merits No. AP 99/04 of 17 February 2005, paragraph 20, published in the *Official Gazette of Bosnia and Herzegovina*, 36/05; civil proceedings to establish the ownership rights**

The public interest in the instant case is the allocation of the construction land to the citizens to complete the construction work, more precisely a construction of a residential building. If the person to which that right has been allocated does not acquire the public interest within the reasonable time, the public interest requires that the person be deprived of the allocated right in order to continue using the land in the public interest.

- **Decision on Admissibility and Merits No. AP 113/04 of 18 March 2005, paragraph 27, published in the *Official Gazette of Bosnia and Herzegovina*, 32/05**

A legal regulation of a public transportation is indisputably in the public interest. The state has a certain margin of appreciation in creating a framework and organization of a public transportation – such as the right to impose fines – in order to provide the compliance with the legal requirements and the manner of performing the public transportation. In that case, the Constitutional Court accepts that the prevention of violation of the requirements prescribed by the law and the manner of public transportation of persons and objects in the public transportation represents a legitimate aim in the public interest.

- **Decision on Admissibility and Merits No. AP 498/04 of 23 March 2005, paragraph 25, published in the *Official Gazette of Bosnia and Herzegovina*, 32/05; payment of a fine imposed in the offence proceedings; there is no violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH**

The time limit of three years is sufficient to acquire the rights to reimbursement of the salaries of the employees of the public institutions.

- **Decision on the Merits No. AP 1105/05 of 12 April 2006; paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina*, 59/06; civil proceedings to reimburse salaries**

Deprivation of property is in the public interest in a situation when it is done based on the provisions of Article 21(1) of the Law on Customs Minor Offences stipulating the obligatory imposition of a safety measure of confiscation of goods, which is the subject

of the customs offence, from the person who committed the offence referred to in Article 19 of the Law on the Customs Minor Offences by carrying the goods which were owned by him while being aware of them not being declared to the customs authorities. The purpose of this provision is to prevent the persons from carrying goods into the national customs area without paying the customs tax and to further circulate the goods entered in the manner so as to be put on the market, sold, bought, received as a gift or kept.

- **Decision on the Merits No. AP 2078/05 of 12 April 2006, paragraph 46, published in the *Official Gazette of Bosnia and Herzegovina*, 7/07; confiscation of a vehicle due to the customs misdemeanor**

There is a public interest in restricting the right by imposing certain time limits reflected in effective sanctioning of legal system and legal certainty so that the appellant's failure to comply with the time limits prescribed by the law prevented the ordinary courts from taking a decision on the merits on the appellant's claim.

- **Decision on the Merits No. AP 1105/05 of 12 April 2006, paragraph 30, published in the *Official Gazette of Bosnia and Herzegovina*, 59/06; civil proceedings, payment of salaries**

The ordinary courts' decisions have been taken in the public interest whereby they found that the appellant interfered with the servitude right of the plaintiff engaged in farming, who needs that passage and who has enjoyed it without disturbance for more than twenty years to perform his everyday activities.

- **Decision on Admissibility and Merits No. AP 1292/05 of 27 June 2006, paragraph 27, published in the *Official Gazette of Bosnia and Herzegovina*, 87/06; servitude right**

The appellant's 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 has not been violated as the interference with the appellant's property, i.e. with the obligation of returning the appellant's funds deposited in dinars, was made in accordance with the law for the purpose of achieving the legitimate social and economic aims in the public interest and in compliance with the principle of proportionality between the appellant's right to property and the public interest.

- **Decision on Admissibility and Merits No. AP 1109/05 of 8 July 2006, paragraph 48, published in the *Official Gazette of Bosnia and Herzegovina*, 87/06; civil proceedings, the monetary nominalism**

Stipulation of Article 17 of the Agreement on Mutual Rights and Obligations in Applying Pension and Disability Insurance had not a legitimate aim in the public interest whereas the failure to comply with the time limit of six months to file a request for acquisition of the pension amounts to the loss of that right and therefore the interference with the appellant's 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 was not justified and amounted to the violation of the appellant's right. Taking into account that the application of Article 17 of the Agreement amounted to the interference with

the appellant's right to property, the administrative authorities and the ordinary courts, taking into account the priority of the European Convention provided for by Article II(2) of the Constitution of Bosnia and Herzegovina, and the right to property, should have applied the provisions according to which the right to pension cannot be barred by the statute of limitations.

- **Decision on Admissibility and Merits No. AP 2213/06 of 10 January 2008, paragraph 26, published in the *Official Gazette of Bosnia and Herzegovina*, 27/08; administrative proceedings, the acquisition of the right to the proportional part of pension; the violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH established**

As provided for by the law

There is no violation of the appellant's right to property under Article 1 of Protocol No. 1, if the imposition of a tax had a basis in law which regulates issues concerning the public law and if its application did not place an excessive or disproportionate burden on the individual or legal person concerned.

- **Decision No. U 27/01 of 28 September 2001, paragraph 29, published in the *Official Gazette of Bosnia and Herzegovina*, 8/02; administrative dispute, the collection of public revenues; there is no violation of Article 1 of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of BiH**

Deprivation of property is not lawful in the situation when the competent court applies the law which, at the time of adoption of the judgment, could not be applied, i.e. was rendered ineffective.

- **Decision on Admissibility and Merits No. AP 36/03 of 19 April 2004, paragraphs 28 and 29, published in the *Official Gazette of Bosnia and Herzegovina*, 34/04; violation of the right to property in conjunction with the right to maternity allowance**

The interference with the property is not provided for by the law in case when the ordinary courts rejected the appellant's action, since the same claim was allegedly decided although there is no objective identity of claims from the previous actions and the action which resulted in the challenged decisions.

- **Decision on Admissibility and Merits No. U 32/03 of 15 June 2004, paragraph 25 et seq., published in the *Official Gazette of Bosnia and Herzegovina*, 40/04; civil proceedings to establish the right of ownership to the individual residential building**

In the event when regular courts dismiss a claim for payment of outstanding salaries as the ownership of the defendant was transferred to the Brčko District of BiH through Order of the Supervisor, there is a violation of the appellant's right to property as the interference with the appellant's property is inconsistent with the law and such interference was caused by the arbitrary interpretation of the Final Award of the Arbitration Tribunal and the order of the Supervisor for Brčko District.

- **Decision on Admissibility and Merits No. AP 1/05 of 18 May 2005, paragraph 35, published in the *Official Gazette of Bosnia and Herzegovina*, 58/08**

The ordinary courts correctly found that Article 3 of the Law on the Determination and Settlement of Claims of Citizens adopted in 1997 could not be applied in the proceedings concerning the payment of the old foreign currency savings, where the appellant was obliged to pay out „old foreign currency savings to the defendants” as ordered in the court judgment in 1993.

- **Decision on Admissibility and Merits No. AP 531/04 of 27 May 2005, paragraph 30, published in the *Official Gazette of Bosnia and Herzegovina*, 67/05; payment of the old foreign currency savings; there is no violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of Bosnia and Herzegovina**

There is a violation of the appellant’s right to property, as a result of the erroneous application of law, since the matter falling within the scope of enforcement proceedings was decided in the contentious proceedings.

- **Decision on the Merits No. AP 740/04 of 13 September 2005, paragraph 30, published in the *Official Gazette of Bosnia and Herzegovina*, 3/06; reimbursement of outstanding pensions, the erroneous application of law, the violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH established**

There is a violation of the right to property if the ordinary court failed to apply the relevant international bilateral agreement which should have been applied in the instant case.

- **Decision on the Merits No. AP 625/04 of 23 September 2005, paragraphs 38 and 39, published in the *Official Gazette of Bosnia and Herzegovina*, 83/05; damage compensation (medical treatment costs) if there is a foreign element, application of international bilateral agreement; the violation of Article 1 of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of BiH established**

Interference with the right to the appellant’s property has not been in compliance with the principle of lawfulness in case where the expropriation procedure was not conducted, and the defendant came into possession of the appellant’s plot of land.

- **Decision on the Merits No. AP 1048/04 of 13 October 2005, paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina*, 4/06**

Application of Article 69(10) of the Law on Enforcement Procedure which provides for the possibility of enforcement relating to a common ownership property, in the present case, an apartment registered as the appellant’s full ownership in the Deposited Contracts Ledger, due to the obligation which does not represent an obligation jointly and severally responsible for by the spouses, constitutes interference with the appellant’s property whereby a fair balance has not been struck between the general interest demands and requirements relating to the protection of the appellant’s constitutional right to property, thus not being in accordance with the principle of legal certainty, which has amounted to the violation of the appellant’s right to property.

- **Decision on Admissibility and Merits No. AP 1086/04 of 2 December 2005, paragraph 47, published in the *Official Gazette of Bosnia and Herzegovina*, 20/06**

Interference with the appellant's property is in accordance with the law if it is based on the legally binding court judgment, which is, in its essence, based on the company's internal rules which have the force of a law in respect of the appellant and which meet the standards of the European Convention (transparency and clarity).

- **Decision on Admissibility and Merits. No. AP 559/04 of 2 December 2005, paragraph 35, published in the *Official Gazette of Bosnia and Herzegovina*, 41/06; payment of the salary earned abroad, *Drittwirkung effect*; there is no violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of Bosnia and Herzegovina**

The principle of legal certainty is secured by the adoption of the principle of statute of limitations with regards to claims. The state has an interest in maintaining the legal relations which lasted a certain period of time and in prescribing the time limits within which it would be possible to request court protection in case of violation of property rights and other rights.

- **Decision on the Merits No. AP 1380/05 of 12 April 2006, paragraph 27, published in the *Official Gazette of Bosnia and Herzegovina*, 68/06; statute of limitations with regards to claims**

Limitation placed on the appellant's right to property as the consequence of the servitude right to pass across the land in favor of the plaintiff is in accordance with the law and, is in the public interest and proportionate to the aim of efficient use of land during agricultural activities so that it does not constitute an excessive burden placed on the appellant in the particular case.

- **Decision on Admissibility and Merits No. AP 1292/05 of 27 June 2006, published in the *Official Gazette of Bosnia and Herzegovina*, 87/06, the servitude right**

Depriving the appellants of their property, which was reflected in a failure to pay out the debt due to monetary and legal changes that set in after the conclusion of the contract, was in accordance with the law. Thereby, the appellants were not put in a position different from that of other parties to obligatory relationships whose dinar funds were exposed to unfavorable effects of hyperinflation and denomination in the relevant period. Thus, no personal or excessive burden was put on them in the present case.

- **Decision on Admissibility and Merits, No. AP 2158/05 of 21 December 2006, paragraphs 42 and 43, published in the *Official Gazette of Bosnia and Herzegovina*, 34/07; failure to pay monetary debt due to monetary and legal changes that set in after the conclusion of the contract, no violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of Bosnia and Herzegovina established**

Position of the courts which is based on relevant regulations on denomination and conversion to be applied to all claims in YU dinars, as well as to the present case, cannot be considered as arbitrary, since the Law on Central Bank of Bosnia and Herzegovina provides that convertible mark shall be a lawful means of payment in Bosnia and Herzegovina. Since lawsuits had been filed in 1990, in order to establish the amount

of the appellants' claims, it is necessary to consider all conversions of the currency and denominations thereof.

- **Decision on Admissibility No. AP 271/07 of 26 June 2007, paragraph 12;** *appeal manifestly ill-founded*

The Cantonal Court's conclusions are inconsistent with the law whereas it concluded the article in question cannot be considered as copyrighted work, since it does not contain „originality and individuality” and since it was completed upon an order by a client and since the appellant applied already recognized methods of research to his own research. First of all, the „originality and individuality” are not the „basic elements” of a copyrighted work, as erroneously concluded by the Cantonal Court, since the law does not provide for these criteria as a condition to consider a work a copyrighted work, nor does it authorize the court to assess on its own the „originality and individuality” of professional work the court has no knowledge of, such as the forestry in the instant case. As to the fact that the research which resulted in the disputable article published in a professional magazine and its shortened version was not the appellant's idea but it was completed by a team upon the client's order, the Cantonal Court completely disregarded the provisions of Article 28 of the Law regulating such situation, i.e. it decided inconsistent with that provision.

- **Decision on Admissibility and Merits No. AP 1223/06 of 13 September 2007, paragraph 31, published in the *Official Gazette of Bosnia and Herzegovina*, 86/07;** *copyright; the violation of Article I of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH established*

There is a violation of the right to property if it was established that the appellant's claim was fully devaluated by the excessive length of the civil proceedings. Therefore, the principle of legal certainty, which includes a court decision within a reasonable time in order to avoid violating the substance of a right, has been jeopardized, and the interference with the appellant's right to property did not meet the lawfulness requirements.

- **Decision on Admissibility and Merits No. AP 2310/06 of 27 February 2008, paragraph 39, published in the *Official Gazette of Bosnia and Herzegovina*, 32/08;** *the violation of Article I of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH established*

Unlike the Supreme Court, the Constitutional Court holds that the appellant's claim for compensation cannot be considered a claim for compensation for damages caused by pulling down a building but a claim for payment of equivalent value of the action composed of the defendant's obligation to provide the appellant with the minimum housing conditions within the meaning of the Law on Housing Relations and Law on Physical Planning. The Constitutional Court therefore concludes that the challenged decisions deprived the appellant of her property that she had a legitimate expectation to acquire on the basis of relevant legal provisions, and that the challenged judgements prevented her from receiving such a compensation. Taking all this into account, the Constitutional Court reminds of the European Court's view according to which deprivation of property without compensation is not in accordance with the European Convention (see European

Court of Human Rights, *James v. the United Kingdom*, judgment of 21 February 1986, Series A, no. 98, paragraph 54).

- **Decision on Admissibility and Merits No. AP 1000/06, of 11 March 2008, paragraph 32, published in the *Official Gazette of Bosnia and Herzegovina*, 32/08; the violation of Article 1 of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of BiH established**

The appellant's right to property has been violated by the adoption of the judgments denying him the right to purchase the apartment, since the court decision whereby that right was denied was taken by the arbitrary application of the substantive law, as the administrative authorities allocating the apartment for use have never taken a formal decision to declare the apartment for official use in accordance with Article 4(3) of the Law on Housing Relations.

- **Decision on Admissibility and Merits No. AP 1255/06 of 3 April 2008, paragraph 30, published in the *Official Gazette of Bosnia and Herzegovina*, 44/08; occupancy right, the violation of Article 1 of Protocol No. 1 to the European Convention and Article II(3)(k) established**

The Constitutional Court concludes that the principle of „lawfulness” of the challenged decision has been violated in the present case, since the ordinary court arbitrarily applied the law when it considered that the lack of accompanied regulations led to the loss of a right based on the law, which amounted to the violation of the appellant's right to property under Article II(3)(k) and Article 1 of Protocol No.1 to the European Convention.

- **Decision on Admissibility and Merits No. AP 2609/06 of 17 April 2008, paragraph 34, published in the *Official Gazette of Bosnia and Herzegovina*, 49/08; holiday allowance for judges; the violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH established**

The registration of lien over the real property is allowed if the claim of creditor is determinable (individualization), although the claim at the time of registration is not certain. The manner in which the courts interpreted the provisions of Article 227 of the Law on Enforcement Procedure (*Official Gazette of the FBiH* no. 32/03) in conjunction with Article 251(b) of the Law on Enforcement Procedure (*Official Gazette of RBiH* nos. 2/92, 16/92 and 13/94), in terms that the claim must be actual and existing has been arbitrary and have led to the violation of the appellant's 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.

- **Decision on Admissibility and Merits No. AP 1274/06 of 15 January 2009, paragraph 40, published in the *Official Gazette of Bosnia and Herzegovina*, 28/09**

The Constitutional Court concludes that the write-off of the appellant's legal default interest rate in respect of the war period, based on Article 2(2) of the Law on the Default Interest Rate Applicable to the Unsettled Debts, was unconstitutional and, therefore, „unlawful” as the Law has modified the conditions for payment of legally binding adjudicated default interest retroactively. For these reasons, the Constitutional Court

holds that Article II(3)(k) of the Constitution of Bosnia and Herzegovina and Article 1 of Protocol No.1 to the European Convention have been violated.

- **Decision on Admissibility and Merits No. AP 1311/06 of 15 January 2009, paragraph 40, published in the *Official Gazette of Bosnia and Herzegovina*, 20/09;**
- **Decision on Admissibility and Merits No. AP 2332/06 of 26 February 2009, paragraph 24, published in the *Official Gazette of Bosnia and Herzegovina*, 33/09**

[...] Registration in the Land Registry Books by which the actual rights over the real property are acquired and which creates fiction of absolute accuracy implies an evidence of ownership and legal singificance of the land registry book registration is not limited nor eliminated by the Framework Law on Privatisation or entity laws (Law on Initial Balance of Companies and Banks and Law on Initial Balance in the Process of Privatisation of the State Capital in Companies). The Constitutional Court also suggests that the registration of the right of ownership in favour of the appellants, which has a constituent character, means that the registered rights get the relevance of absolute effect (*erga omnes*) and not relative (*inter partes*) which would exist only between the contracting parties, disregarded by the decision of the Supreme Court, as well as other effects of the registration in the land registry books, such as the fiction of absolute accuracy and reliability and other principles of land law. Therefore, by disregarding clear and explicit provisions of the Law on Basic Property Relations and the Law on Land Registry Books, the Supreme Court subjected the appellants to arbitrary treatment, who upon the registration in the land registry books became the owners of the disputed real property and holders of absolute right in which the highest legal power was concentrated. Therefore, the interference with their right to property was not in accordance with the law as required by Article 1 of Protocol No. 1 to the European Convention.

- **Decision on Admissibility and Merits No. AP 2157/08 of 30 May 2009, paragraph 49, published in the *Official Gazette of Bosnia and Herzegovina*, 82/09; arbitrary application of law, the Framework Law on Privatization; the violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH established**

The Constitutional Court concludes that there is a violation of 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 in case when the interference with the appellant's property right is not in accordance with the law. In fact, there is a violation when the court has applied the substantive law in an arbitrary manner, concluding that only the land registry books certificate is a public document that proves the ownership right, in the situation when no prerequisites for the registration of ownership of the separate parts of the building pursuant to the Law on Land Registry have occurred, due to which, pursuant to the same law, the obligation of establishment and maintaining of the ledger of deposited contracts shall remain in effect.

- **Decision on Admissibility and Merits No. AP 1274/08 of 30 May 2009; paragraph 48, published in the *Official Gazette of Bosnia and Herzegovina*, 73/09; the violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH established**

The Constitutional Court concludes that the first instance court awarded the appellants the penalty interest, which it did not expressly discuss, i.e. it failed to state the grounds or the reasons for its decision in the part relating to the penalty interest. The Cantonal Court took position that the appellants have the right to the default interest as of the date the suit was lodged as this concerns the periodical payments in terms of Article 279(3) of the Law on Obligations, and that it concerns a new legal position of the Supreme Court of the Federation of Bosnia and Herzegovina published in the legal bulletin. Thus it applied this legal position in its decision. The Constitutional Court holds that the reasoning of the Cantonal Court's decision is not precise and clear enough, especially having regard to the provisions of Articles 277 and 279 of the Law on Obligations demonstrating that the default interest is awarded after the debtor's delay. The Constitutional Court notes that salaries and other receivables based on employment status cannot be defined as periodical payments under Article 372(1) in conjunction with Article 279(3) of the Law on Obligations. The salary and some other claims arising from employment status such as, for example, the travel costs reimbursement are paid monthly, in successive calculation and continually, and some receiving such as holiday bonus, for example, are paid annually. The Constitutional Court notes that these claims arising from employment status cannot be treated as periodical payments within the scope of legal provisions regulating the issue of the „default interest on the amount of default interest” in Article 279(3) of the Law on Obligations. The salary, as well as other financial claims based on employment status are due on an exact date, and as of that date the employer is due to pay the statutory default interest as being late with fulfilling capital commitments, which is stipulated in Article 277 of the Law on Obligations.

- **Decision on Admissibility and Merits No. AP 658/07 of 10 June 2009, paragraph 32, published in the *Official Gazette of Bosnia and Herzegovina*, 82/09; the start of default interest running to the awarded amounts based on employment status; the violation of Article I of Protocol No.1 to the European Convention and Article II(3) (k) of the Constitution of BiH established**

Given that it has been established in the civil proceedings that the purchase contract on the basis of which the registration was carried out in favour of the defendant does not concern the relevant real property, the Constitutional Court holds that there were no obstacles for the registration of the relevant real property in favour of the appellant with the type of right he had had before the registration of the relevant real property in favour of the defendant. For the above reasons, the Constitutional Court holds that the ordinary courts could have not dismissed the appellant's request for registration by application of Article 28 of the Law on Land Registry (which has a general character in terms of specifying the kind of rights that may be entered into the land registers) in conjunction with Article 40 i.e. 43 of the Law. In view of the given reasons, the Constitutional Court holds that the ordinary courts have interfered with the appellant's right to peaceful enjoyment of property by issuance of the challenged decisions through the restrictive interpretation of provisions of the Law on Land Registry and that, therefore, the violation of Article II(3) (k) of the Constitution of Bosnia and Herzegovina and Article 1 of Protocol No. 1 to the European Convention has occurred.

- **Decision on Admissibility and Merits No. AP 1402/07 of 8 September 2009, paragraphs 30 and 31, published in the *Official Gazette of Bosnia and Herzegovina*, 85/09; the violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH established**

The decision to deprive the appellant of the apartment which was acquired by the perpetration of the criminal offence does not represent a violation of 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, since the interference with the appellant's property was done in the public interest and in compliance with the principle of proportionality.

- **Decision on Admissibility and Merits No. AP 3388/06 of 17 March 2009, paragraph 48, published in the *Official Gazette of Bosnia and Herzegovina*, 50/09; forfeiture of property gain obtained by the perpetration of criminal offence; there is no violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of Bosnia and Herzegovina**

Due to the County Court's decision to dismiss the appellant's lawsuit claim by application of Article 226 of the Law on Associated Labor, which is why in the particular case, which concerns the *relation between the natural persons on one side and legal entity on the other side*, the provisions of the given Law should be applied as they regulate the position of *the legal entities in the transactions with socially owned resources* and given the content and goal of the relevant Law, there was a violation of the appellant's 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 as the interference with his property has not been conducted on the basis of law.

- **Decision on Admissibility and Merits No. AP 1769/08 of 13 October 2010, paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina*, 24/11; the violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH established**

The Constitutional Court concludes that there is a violation of the right under Article II(3)(k) of the Constitution of Bosnia and Herzegovina and Article 1 of Protocol No. 1 to the 17 European Convention as the interference with that right has not been in compliance with the principle of „lawfulness”, since the regulation, which was applied, has never been publicly disclosed and equally available to all, but it was disclosed in the Official Gazette designated as „state secret”.

- **Decision on Admissibility and Merits No. AP 3679/08 of 12 May 2011, paragraph 36, published in the *Official Gazette of Bosnia and Herzegovina*, 64/11; nullity; real property purchase; the violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH established**

The Constitutional Court concludes that there is a violation of 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, as the ordinary court violated the principle of „lawfulness” by applying the substantive law in an arbitrary manner and by interpreting

that the appellants, due to the lack of a provision in the collective agreement and Rule Book regulating the possibility to make a reduction but not a loss of the entire salary by the amount proportionate to the time the employees spent on strike within the meaning of Article 9 of the Law on Strike, were not entitled to the salary for the time period spent on strike, although it concerns one of the rights arising from employment, which is explicitly guaranteed in the law, collective agreements and employer's acts.

- **Decision on Admissibility and Merits No. AP 2581/08 of 29 June 2011, paragraph 52, published in the *Official Gazette of Bosnia and Herzegovina*, 104/11; strike; the violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH established**

The Constitutional Court concludes that the challenged decision of the Supreme Court establishing that the appellant does not have the occupancy right over the relevant apartment and that it cannot be subject of purchase as it was established that it has no official status, has violated the appellant's right to property since the judicial decision which denies that right has been adopted by arbitrary application of substantive law given that the bodies of the allocation right holder have never issued a formal decision to declare that the apartment has the official status in terms of Article 4(3) of the Law on Housing Relations.

- **Decision on Admissibility and Merits No. AP 2004/08 of 12 October 2011, paragraph 36, published in the *Official Gazette of Bosnia and Herzegovina*, 99/11; official apartment; the violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH established**

The Constitutional Court concludes that in the particular case there is a violation of 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 because by the decision of the Supreme Court altering the first and second instance court judgements that declared the contract on real property null and void, ordered mutual restitution by reference to Article 104 of the Law on Obligations and dismissed the appellant's request to declare nullity of the contract which was established to be concluded contrary to the compulsory regulations, the public authorities interfered with the appellant's right to peaceful enjoyment of property, in the manner which does not satisfy the standards of lawful interference with the relevant right of the appellant.

- **Decision on Admissibility and Merits No. AP 3766/08 of 12 October 2011, paragraph 63, published in the *Official Gazette of Bosnia and Herzegovina*, 99/11;**
- **Decision on Admissibility and Merits No. AP 219/10 of 28 February 2013, published in the *Official Gazette of Bosnia and Herzegovina*, 23/13; real property exchange; the violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH established**

The Constitutional Court concludes that the interference with the appellant's property was unlawful because of arbitrary application of the Law on Inheritance which represents a violation of Article II(3)(k) of the Constitution of Bosnia and Herzegovina and Article 1 of Protocol No. 1 to the European Convention.

- **Decision on Admissibility and Merits No. AP 69/09 of 23 February 2012, paragraph 39, published in the *Official Gazette of Bosnia and Herzegovina*, 25/12; probate proceedings; the violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH established**

The Constitutional Court holds that there is a violation of Article II(3)(k) of the Constitution of Bosnia and Herzegovina and Article 1 of Protocol No.1 to the European Convention when the interference with that right does not satisfy the principle of „lawfulness” as the court in its decision has arbitrarily applied the provision of Article 28(2) of the Law on Enforcement Procedure thus preventing the appellant from reimbursing, in accordance with that provision, in the enforcement procedure the default interest relating to the costs of proceedings awarded in the enforceable document and as the court by referral to the same provision, prevented the appellant from collecting the default interest reimbursement for awarded enforcement costs although he explicitly set out such claim in the enforcement motion.

- **Decision on Admissibility and Merits No. AP 3744/09 of 6 December 2012, paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina*, 1/13; default interest reimbursement for awarded costs of criminal proceedings and the costs of enforcement proceedings; the violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH established**

The Constitutional Court notes that the ordinary courts clearly concluded that neither the counter-plaintiff nor her husband have ever been registered as owners or co-owners of the appellants’ residential facility; that the appellants’ residential facility which the counter-plaintiff inherited and in which she allegedly invested funds together with her husband, does not constitute a probate estate at all of her late husband. Nevertheless, the ordinary courts concluded that the counter-plaintiff had a standing to sue in the respective legal matter and even awarded her the compensation in the amount of 70% of the invested funds with a statutory default interest as of the date of adjudication to the date of settlement, *as if it does not concern the real property* the owner of which is only the one registered as such in the land registry books on the basis of valid legal title. In the particular case, that was not the defendant – counter-plaintiff nor his late son or the counter-plaintiff. Both the counter-plaintiff and her husband knew, or must have known, that the defendant – counter-plaintiff is not the owner of the business facility in Tuzla which he gave in exchange to the appellants by the null and void contract. On the basis of this it follows that they are the unconscientious builders as well. Thus, the reasons the first instance court presented, and the appellate and revision courts upheld, in relation to their conviction that, in the particular case, the counter-plaintiff has a standing to sue; that the defendants – counter-plaintiffs were conscientious, i.e. conscientious builders; and the counter-claim should be decided by the application of *unlawful enrichment* mechanism and not the mechanism of *false management without an order*, indicate the arbitrary application of the substantive law. In view of the aforesaid, the Constitutional Court holds arbitrary the position of ordinary courts that, in the particular case, the application of Articles 227 and 228 of the Law on Obligations was not appropriate but rather Article 210 of the Law on Obligations (unlawful enrichment) should have been applied, which

further indicates that the interference of ordinary courts with the appellants' property has been unlawful.

- **Decision on Admissibility and Merits No. AP 4370/10 of 20 December 2012, paragraph 86, published in the *Official Gazette of Bosnia and Herzegovina*, 9/13; nullity; real property exchange; management without an order; the violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH established**

The Constitutional Court concludes that the challenged decision of the Supreme Court establishing that the appellant has no right to damages compensation on the account of his unsubstantiated deprivation of liberty, has violated the appellant's right to property as the decision was adopted through arbitrary application of substantive law concluding that the appellant had not met the requirements for damages compensation stipulated by Article 527(1)(2) of the Civil Procedure Code of the Federation of Bosnia and Herzegovina.

- **Decision on Admissibility and Merits No. AP 941/10 of 16 May 2013, paragraph 38, published in the *Official Gazette of Bosnia and Herzegovina*, 47/13; compensation of damage for the groundless deprivation of liberty; the violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH established**

The Constitutional Court concludes that the challenged rulings have violated the appellant's 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 in the situation where, because of (in practice) established parallelism of competencies resulting from the beginning of application of the Law on Notaries and its inconsistency with the Law on Inheritance of 1980, the principle of legal certainty has been infringed, which resulted in the unlawful interference with the appellant's property.

- **Decision on Admissibility and Merits No. AP 2423/10 of 9 October 2013, paragraph 37, published in the *Official Gazette of Bosnia and Herzegovina*, 92/13; request on registration of the ownership right over an apartment on the basis of notary processed contract on lifelong support; the violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH established**

The Constitutional Court concludes that there is the violation of 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 when the interference with the property does not satisfy the requirement of „lawfulness” for the purpose of the European Convention because the applicable law excludes the possibility of the judicial review of the Government's decision, which creates the possibility for *de facto* expropriation under the exceptional legally prescribed conditions.

- **Decision on Admissibility and Merits No. AP 3051/14 of 23 January 2015, paragraph 40, published in the *Official Gazette of Bosnia and Herzegovina*, 17/15; *de facto* expropriation; the violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH established**

[...] On the other hand, an issue arises as to the state's responsibility both for the very act of issuance of driver's licence and vehicle registration and the time limit in which the state has to and should act in such situations, i.e. what are the rights of any individual (that passes the whole procedure in the legally prescribed manner) in relation to the state which, through its competent body or issuance of a public document, has guaranteed for the accuracy of data entered in a public document and which should be taken as accurate in legal transactions. Furthermore, in the particular case, the key issues are how it was established now after so many years and what actions were taken by the competent body that led it to establish that the vehicle had been stolen upon the appellant's submission of a request for the registration of vehicle while the same documentation has been used as done in the previous years?! Hence, why did the competent body need 14 years to establish that the stolen vehicle is at issue? The Constitutional Court notes that the Cantonal Court has not considered the appellant's claim in this respect at all, but established that the respondent confiscated the vehicle legally from the appellant in order to return it to its lawful owner and the appellant was instructed to request the damages compensation from the vehicle seller. Therefore, the position of the Cantonal Court, in the circumstances of the particular case, that the appellant's request for damage compensation from the respondent (because of its inactivity and failure to act, i.e. the competent body did not act in accordance with the law) is not justified and, thus, referring to Article 172 of the Law on Obligations, in the opinion of the Constitutional Court is arbitrary both regarding the deciding on the appellant's statement of claims and regarding the interpretation/application of this provision, as the application of Article 172 of the Law on Obligations is not permitted under the standards of the human rights and fundamental freedoms protection established by the European Convention and endorsed by the Constitutional Court. In the opinion of the Constitutional Court, therefore, the interpretation and application of this provision by the Cantonal Court appears arbitrary, thus indicating that the interference with the appellant's property has not been made in accordance with law, thus failing to serve a legitimate aim in public interest, i.e., does not have a legitimate aim that would reflect in the application of the law.

- **Decision on Admissibility and Merits No. AP 1835/12 of 22 December 2015, paragraphs 39 and 40, published in the *Official Gazette of Bosnia and Herzegovina*, 6/16; reinstatement into possession of a vehicle which was bought by the appellant as bona fide purchaser and which was confiscated from him and returned to the owner; and was established that the respondent (Ministry of Interior Affairs) cannot return the vehicle; the violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH established**

As to the proportionality

The interest of the public authority in resolving the problem of refugees and displaced persons, which was of topical interest and necessary at that time, cannot, 8 years following the end of the war, prevail over the appellant's interest in exercising his right to return to his home, which is the main aim of the General Framework Agreement. Thus, interference with the appellant's property was not proportionate to the justified aim.

- **Decision on Admissibility and Merits No. U 102/03 of 28 April 2004, paragraph 44, published in the *Official Gazette of Bosnia and Herzegovina*, 30/04; administrative procedure and administrative dispute for repossession of the apartment**

An excessive burden is placed on the appellant so that the interference with her right to property did meet the requirements of proportionality, since the relevant real property registers did not exist based on which she should have had registered her ownership right to the business premises in order to enjoy legal protection. The establishment of real property register, maintenance and updating the register is an obligation of the state so that the responsibility in case of lack of register cannot be transferred to the appellant.

- **Decision on Admissibility and Merits No. AP 160/03 of 28 April 2004, paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina*, 34/04; civil proceedings to surrender possession of business premises which the contractor sold to a third person although the appellant paid the purchase price for it**

The established priority right of the owner of a building, which had been removed due to the worn out conditions or had been pulled down due to *force majeure* in accordance with the ruling of a competent administrative authority, to use the land for construction under the town planning conditions, is proportionate to the aim sought to be achieved, which is making it possible for the owner to reconstruct his property. This cannot constitute an excessive burden placed on the other party all the more so since that right was established in the procedure before the administrative authority or the court so that both parties are provided with adequate legal means and procedural guarantees.

- **Decision on Admissibility and Merits No. AP 127/02 of 17 May 2004, paragraph 39, published in the *Official Gazette of Bosnia and Herzegovina*, 34/04; administrative procedure to establish the priority right to use a city construction land**

The Constitutional Court concludes that a fair balance was struck between the protection of property and general interest demands. It follows that the fine was not imposed in an arbitrary manner and that the appellant's 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 has not been violated.

- **Decision No. U 65/03 of 22 September 2004, paragraph 22, published in the *Official Gazette of Bosnia and Herzegovina*, 60/04; minor offence proceedings due to the committed customs offence**

There is no violation of the right to property of the house owner whereby there is an occupancy right over one of the apartments in the event where owners' possibility to use their property is not limited to such an extent so as to give rise to unfair relation between the request to protect such right of theirs and the general interest to protect the lawful occupant of the part of the property, for as long as there is a valid legal basis for such use.

- **Decision on Admissibility and Merits, No. AP 647/04 of 29 September 2004, paragraph 25, published in the *Official Gazette of Bosnia and Herzegovina*, 8/05; civil proceedings concerning the owner's request for eviction from a part of the house of the persons occupying it on the basis of the contract on use; no violation of Article**

1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH established

The interference with the appellant's right to property is not proportionate, taking into account the Supreme Court's decision quashing the lower-instance decisions granting the appellant's claim for recognition of his ownership right over a part of the property based on the fact that he financed the construction.

- **Decision on Admissibility and Merits No. AP 230/03 of 30 November 2004, published in the *Official Gazette of Bosnia and Herzegovina*, 15/05; civil proceedings to establish the ownership right to a part of house in which the appellant invested financial means; the violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH established**

A legal provision, which provides that the ensured persons who have acquired the right to the proportionate part of the pension as provided for by the international agreement, acquire their rights in accordance with those agreements and are not covered by the provisions of the law on determination of minimum income, is proportionate to the aim of complying with those agreements and the scope of rights on the basis thereof. In the instant case it does not constitute an excessive burden placed on the appellant comparing to other pensioners.

- **Decision on Admissibility and Merits No. AP 830/04 of 28 January 2005, paragraph 28, published in the *Official Gazette of Bosnia and Herzegovina*, 48/05; procedure for determination of proportionate part of early old-age pension based on the total number of years of service acquired abroad in accordance with the international agreement; there is no violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH**

The Constitutional Court holds that the purpose of the provision of Article 30 of the Law on Housing Relations, which the courts applied while rendering the challenged judgments, aims at establishing legal certainty in order for the factual state of affairs to be recognized as a legal state. Therefore, the Constitutional Court holds that the burden placed on the appellant by the challenged judgment is not excessive taking into account the fact that the appellant took more than eight years to take an action in order to exercise his right.

- **Decision on Admissibility and Merits No. AP 221/04 of 12 April 2005, published in the *Official Gazette of Bosnia and Herzegovina*, 38/05; appellant did not initiate procedure for eviction of an unlawful occupant within the meaning of Article 30 of the Law on Housing Relations**

There is no violation of the right to property when the ordinary courts, by correctly applying the relevant provisions of the substantive law, dismiss the appellant's claim due to the statute of limitations...[] Such limitations in this and similar situations are necessary for legal certainty and proper functioning of the legal system. These limitations are justified and proportionate to the aim sought to be achieved.

- **Decision on Admissibility and Merits No. AP 487/04 of 18 May 2005, paragraphs 27 to 29, published in the *Official Gazette of Bosnia and Herzegovina*, 67/05; civil**

proceedings, pecuniary damage compensation; there is no violation of Article 1 of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of BiH

The ordinary court's decision ordering the appellant to surrender the land in question to their owners does not constitute an excessive burden placed on the appellant comparing to the public interest sought to be achieved (making it possible *in abstracto* for the owners to have the rights and authorizations relating to objects in accordance with the public interest), and it struck a fair balance between the general interest demands of the community and requirements for the protection of the individual fundamental rights. Therefore, the interference with the appellant's property rights is justified and in accordance with Article 1 of Protocol No.1 to the European Convention.

- **Decision on Admissibility and Merits No. AP 523/04 of 18 May 2005, paragraph 24, published in the *Official Gazette of Bosnia and Herzegovina*, 67/05; repossession of the real property by the owners; there is no violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH**

Dismissal of the appellant's claim for payment of the contracted amount which was subject to certain mutual obligations in the manner that the failure of fulfilling of obligation by one party did not create the obligation of the other party. The provision of Article 99(1) of the Law on Obligations does not place an „excessive and special” burden on the appellant comparing to other party all the more so since the appellant as the lawyer is a professional and has a knowledge of law and since the application of such measure is proportionate to the legitimate aim sought to be achieved by the law and the fair balance between the protection of the appellant's right to property and general interest has been struck.

- **Decision on the Merits No. AP 951/04 of 13 September 2005, paragraph 26, published in the *Official Gazette of Bosnia and Herzegovina*, 3/06; civil proceedings to collect the compensation arising from the agreement on business cooperation**

In case when a possibility of using the road in question in the same manner as the defendant, i.e. by unlocking a movable post, is left to the appellant, and where she has the possibility of using another access, the fair balance has not been infringed between the appellant's interest on one hand and the interest of the defendant and public interest of the Municipality of Tuzla, on the other hand.

- **Decision on the Merits No. AP 1039/04 of 13 September 2005, paragraph 33, published in the *Official Gazette of Bosnia and Herzegovina*, 4/06**

There is no violation of the right to property if the appellant is obliged, due to his failure to withdraw his lawsuit following an out-of-court settlement of damage by the defendant, to pay the defendant the judicial costs occurred following the payment, since the interference with his right to property is regulated by the law, that he has a legitimate aim in the general interest, and that the challenged decision has struck a fair balance between the protection of the appellant's right and the general interest.

- **Decision on the Merits No. AP950/05 16 September 2005, paragraph 29, published in the *Official Gazette of Bosnia and Herzegovina*, 3/06**

The law provision, which provides that the person in favor of whom the changes relating to the user are to be entered into updated cadastral books is obligated to produce a document showing the designation of the land according to the data from the survey and land cadastre, is proportionate to the aim of keeping uniform records according to an uniform cadastral system, and therefore does not constitute an excessive burden placed on the appellant compared to other persons requesting the change of user in updated cadastral books.

- **Decision on the Merits No. AP956/04 of 13 October 2005, paragraph 30, published in the *Official Gazette of Bosnia and Herzegovina*, 20/03; administrative procedure to enter the right over real property into the land books**

There is a violation of the right to property when the enforcement of a legally binding court judgment is postponed on the basis of the Law on the Postponement of Enforcement of Court Decisions at the Expense of the Budget of the Republika Srpska, although the adjournment of the enforcement has a legitimate aim in the public interest but the means used are not proportionate to that aim, i.e., a „fair balance” between the general interest demands and requirements relating to the individual right to property has not been struck.

- **Decision on the Merits No. AP 487/05 of 20 December 2005, paragraph 412, published in the *Official Gazette of Bosnia and Herzegovina*, 39/06;**
- **Decision on the Merits No. AP 557/05 of 12 April 2006, paragraph 192 *et seq.*, published in the *Official Gazette of Bosnia and Herzegovina*, 77/06;**
- **Decision on the Merits No. AP 704/05 of 9 May 2006, paragraph 743, published in the *Official Gazette of Bosnia and Herzegovina*, 47/06**

The issuance of judgment relating to the division of common property by transferring it to the appellant did not amount to an excessive burden placed on the other party to the proceedings. It would be quite unjustified and unfair to expect the appellant to enjoy larger scope of property rights than the other party for the reasons she refers to in the appeal.

- **Decision on the Merits No. AP803/05 of 9 February 2006, paragraph 26, published in the *Official Gazette of Bosnia and Herzegovina*, 41/06**

There is no violation of the right to property when collection of pecuniary claims through court are barred by the statute of limitations, since the appellants failed to comply with the time limits prescribed by the law.

- **Decision on Admissibility and Merits No. AP 951/05 of 9 February 2006, paragraph 32, published in the *Official Gazette of Bosnia and Herzegovina*, 43/06**

There is no violation of the right to property if the ordinary courts, by correctly applying the relevant provisions of the substantive law, established that the appellant interrupted the statute of limitations regarding the claims by recognizing her debt the plaintiff claimed in judicial proceedings, since such deprivation of property was in the public interest relating to the legal certainty and proper functioning of legal system and those limitations on the property rights are justified and proportionate to the aim sought to be achieved.

- **Decision on the Merits No. AP 288/05 of 9 February 2006, paragraph 34, published in the *Official Gazette of Bosnia and Herzegovina*, 37/06;**
- **Decision on the Merits No. AP 325/05 of 14 March 2006, paragraph 44, published in the *Official Gazette of Bosnia and Herzegovina*, 49/06;**
- **Decision on the Merits No. AP 562/05 of 14 March 2006, paragraph 30, published in the *Official Gazette of Bosnia and Herzegovina*, 57/06**

The interference with the appellant's property was proportionate and there was a fair balance struck between the general interests of the community and appellants' interest considering that the appellant has agreed to back up the basic transaction in question with unconditional guarantee referred to in Article 1087 of the Law on Obligations.

- **Decision on Admissibility and Merits No. AP 912/04 of 1 April 2006, paragraph 44, published in the *Official Gazette of Bosnia and Herzegovina*, 57/06**

Decisions ordering the appellant to leave the usurped state-owned land were taken in the public interest and the principle of proportionality was met, since the appellant's conduct caused dispossession of the state-owned land so the conclusion cannot be reached that the state placed an excessive burden on the appellant when the appellant lost the property without receiving any compensation.

- **Decision on the Merits No. AP 706/05 of 12 April 2006, paragraph 36, published in the *Official Gazette of Bosnia and Herzegovina*, 57/05**

Termination of the non-contentious proceedings for determination of compensation for the confiscated property, which were initiated by the appellant, as provided for by a special law of the High Representative for Bosnia and Herzegovina, does not place „an excessive and special burden” on the appellants, and the application of such measure is proportionate to the legitimate aim sought to be achieved by this law. Therefore, a fair balance has been struck between the protection of the appellant's right to property and the general interest, i.e. in the instant case the burden placed on the appellant, in order to achieve a legitimate aim, was not excessive.

- **Decision on the Merits No. AP 805/05 of 9 May 2006, paragraph 41, published in the *Official Gazette of Bosnia and Herzegovina*, 77/06**

There is a violation of the right to property where a court judgment, which was rendered on the basis of application of a law provision relating to the time limit to file a request to acquire a right, placed an excessive burden on the appellant, i.e. the loss of disability pension which she had already acquired and had been receiving for a long period of time based on her status as civilian victim of war and permanent disabled person, which amounted to disproportionate relation between the public interest and protection of the rights of individual to the detriment of the appellant.

- **Decision on Admissibility and Merits No. AP 450/06 of 5 April 2007, paragraph 34, published in the *Official Gazette of Bosnia and Herzegovina*, 70/07; the loss of disability pension due to the application of the law provisions relating to the time limit to file a request for acquisition of rights; the violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH established**

The loss of the appellant's acquired right due to the failure to fulfill the requirements, i.e. the time limit which was prescribed subsequently and which was impossible to comply with, constitutes an excessive and disproportionate burden placed on the appellant comparing to the public interest protected by the subsequently passed law provision, which includes infringement of legal certainty as an element of the constitutional principle of rule of law, which the Minister of the Federation of BiH and the Cantonal Court should have been mindful of when deciding the appellant's claim.

- **Decision on Admissibility and Merits No. AP 133/06 of 13 September 2007, paragraph 34, published in the *Official Gazette of Bosnia and Herzegovina*, 12/08; the right to family disability pension; the violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH established**

In the instant case, there is interference with the appellant's right to property, since the appellant was deprived of his property based on Article 5(2) of the Law on Amendments to the Law on the Enforcement of Decisions of the Commission for Real Property Claims (*Official Gazette of Republika Srpska*, 65/01), which provides that a request for enforcement of a decision of the Commission must be filed within a time limit of eighteen months as of the date when the Commission took a decision. The Constitutional Court holds that the provision in question does not meet the requirement of proportionality between the public interest and the interest of persons who are in the same situation as the appellant, so that there is a violation of 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.

- **Decision on Admissibility and Merits No. AP 1524/06 of 11 November 2007, paragraph 39, published in the *Official Gazette of Bosnia and Herzegovina*, 49/08; enforcement of the decisions of the CRPC, quality of law; the violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH established;**
- **Decision on Admissibility and Merits No. AP 3850/08 of 12 October 2011, paragraph 51, published in the *Official Gazette of Bosnia and Herzegovina*, 49/08**

There is a violation of the right to property under Article II(3)(k) of the Constitution of BiH and Article 1 of Protocol No. 1 to the European Convention where an interference with the appellant's property occurred in a way that by application of the provisions of substantive law on determination of the right to compensation for damage, as well as by application of the Statute of Brčko District and Supervisory Order, a balance between the public interest and the appellant's interest was disturbed by placing an excessive burden on the appellant and depriving him of his right to have „legitimate expectations” in terms of his property.

- **Decision on Admissibility and Merits No. AP 1362/06 of 30 January 2009, paragraph 44, published in the *Official Gazette of Bosnia and Herzegovina*, 63/09; compensation of damage, application of the Supervisory Order; the violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH established**

The exercising of a legitimate aim – the provision of legal certainty – cannot be a justification for the total loss of the already acquired right of an individual in a given period as the measure which has as a consequence a loss of the acquired right, partially or fully, represents an excessive burden for a beneficiary, which is the reason why the principle of proportionality has not been met.

- **Decision on Admissibility and Merits No. AP 2843/07 of 12 January 2010, paragraph 35, published in the *Official Gazette of Bosnia and Herzegovina*, 23/10; quality of the Law on Pension and Disability Insurance of the Republika Srpska, Articles 148/2) and 151; the violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH established**

The Constitutional Court holds that there is a violation of 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 as the ordinary courts, independently from the finding that the relevant premises have been allocated to the appellant „as a new occupancy right holder” by the allocation right holder, and independently of the fact that the appellant, and her predecessor before her, had been using the relevant premises for a number of years exclusively as a residential space, dismissed the appellant’s claim exclusively for the reason that the relevant premises have not been recognized as an „apartment” in terms of Article 3 of the Law on Housing Relations. Such application of the given provision, in the circumstances of particular case, placed an excessive burden on the appellant as the far balance between the legitimate public interest and the appellant’s right to peaceful enjoyment of property has not been struck.

- **Decision on Admissibility and Merits No. AP 3773/08 of 12 October 2011, paragraph 39; the violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH established**

The Constitutional Court concludes that there is a violation of the appellant’s 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 as, in addition to lawful interference with the right to property that pursued legitimate aim, stipulating inadequate compensation in Article 39e of the Law on Sale of Apartments with Occupancy Right that belongs to persons who have legally binding contract of sale of the so-called army apartment instead of registration of ownership right and restitution of apartment, that include appellants, there was no proportionality of interference with the appellants’ property i.e. the excessive burden has been placed on the appellants.

- **Decision on Admissibility and Merits No. AP 1205/08 of 13 July 2012, paragraph 66, published in the *Official Gazette of Bosnia and Herzegovina*, 79/12; *JNA (military) apartments*; the violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH established**

The Constitutional Court concludes there is a violation of Article II(3)(k) of the Constitution of Bosnia and Herzegovina and Article 1 of Protocol No.1 to the European Convention where the interference with the appellant’s property by the decisions of the Basic Court have infringed the balance between the public interest and the interest of

the appellant and where the excessive burden has been placed on the appellant as he has been prevented from using his property freely.

- **Decision on Admissibility and Merits No. AP 1986/09 of 13 July 2012, paragraph 48, published in the *Official Gazette of Bosnia and Herzegovina*, 81/12; request for repossession of temporarily confiscated trailer; the violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH established**

The Constitutional Court concludes that in the particular case there is no violation of the appellant's 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 given that the interference was provided for by the law and served a legitimate aim and given that the appellant, in the meantime, after the leaving his pre-war apartment acquired the equivalent right on the territory of the states formed after dissolution of SFRY, i.e., that the excessive burden has not been placed on the appellant by the decisions of regular courts.

- **Decision on Admissibility and Merits No. AP 1207/08 of 23 November 2012, paragraph 36, published in the *Official Gazette of Bosnia and Herzegovina*, 1/13; JNA (military) apartments, inability of the appellant to be reinstated into possession of apartment which was subject of the purchase contract and for which the courts established that it has been legally binding in terms of Article 39 of the Law on Sale of Apartments and his inability to register as the owner thereof; there is no violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH**

The Constitutional Court concludes that there is no violation of the appellants' 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, given that they have meanwhile been granted equivalent rights in other states created in the territory of former SFRY, i.e. no excessive burden has been imposed on the appellants.

- **Decision on Admissibility and Merits No. AP 3151/09 of 23 November 2012, paragraph 48, published in the *Official Gazette of Bosnia and Herzegovina*, 1/13; JNA (military) apartments; the appellants' inability to reposes the apartments over which they or their spouses had been the occupancy right holders before the war; there is no violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH**

The Constitutional Court concludes that there is a violation of 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 where, by the interference with the appellants' property, which was in accordance with the law and pursued the legitimate aim, and by preventing the appellants from getting back their pre-war apartments over which they or their spouses or legal predecessors had had occupancy rights, i.e. for whom it was established that they had possessed legally valid purchase contracts within the meaning of Article 39 of the Law on Sale of Apartments, the public authorities actually seized the property from the appellants without having established the relevant facts as to whether

the requirements were met so that the appellants' pre-war occupancy rights, i.e. their rights based on the legally valid purchase contracts, were compensated appropriately and, as a result, the appellants have had to bear an excessive burden. Consequently, no fair balance has been struck between the protection of property and the demands of the general interest.

- **Decision on Admissibility and Merits No. AP 1370/08 of 23 November 2012, paragraph 116;** *JNA (military) apartments; reinstatement into possession of the apartments over which, before the war, the appellants or their spouses or legal predecessors had been the occupancy right holders and entered into legally binding contracts in terms of Article 39 of the Law on Sale of Apartments; the violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH established*

The Constitutional Court concludes that there is a violation of 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 where, by the interference with the appellants' property, which was in accordance with the law and pursued the legitimate aim, and by preventing the appellants from getting back their pre-war apartments over which they or their spouses had had occupancy rights, public authorities actually seized the property without having established the relevant facts as to whether the requirements were met so that the appellants' pre-war occupancy rights were compensated appropriately and, as a result, the appellants have had to bear an excessive burden, i.e. no fair balance has been struck between the protection of the appellants' property and the requirements of the general interest.

- **Decision on Admissibility and Merits No. AP 1011/08 of 23 November 2012, paragraph 87, published in the Official Gazette of Bosnia and Herzegovina, 102/12;** *JNA (military) apartments; the appellants' inability to repossess so called JNA (military) apartments over which they had been the occupancy right holders but had not entered into the legally binding contracts on purchase thereof; the violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH established*

The Constitutional Court concludes that there is a violation of 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 where, by the interference with the appellants' property, which was in accordance with the law and pursued the legitimate aim, and by preventing the appellants from getting back their pre-war apartments over which they or their spouses or legal predecessors had had occupancy rights, the public authorities actually seized the property without having established the relevant facts as to whether the requirements were met so that the appellants' pre-war occupancy rights were compensated appropriately and, as a result, the appellants have had to bear an excessive burden, i.e. no fair balance has been struck between the protection of property and the requirements of the general interest.

- **Decision on Admissibility and Merits No. AP 1250/08 of 23 November 2012, paragraph 33, published in the Official Gazette of Bosnia and Herzegovina,**

102/12; JNA (military) apartments, the appellants' inability to repossess so called JNA (military) apartments over which they had been the occupancy right holders and for which the courts established that they had not entered into the legally binding contracts on purchase thereof in terms of Article 39 of the Law on Sale of Apartments as they did not submit to the court the contracts they claim had been concluded but only the payment slips to certain amounts and bank certificates on payments made; the violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH established

The Constitutional Court concludes that there is a violation of 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, where the interference with the right to property, based upon law and in pursuance of a legitimate aim, in the specific circumstances of the present case has undermined the reasonable relationship of proportionality in a such manner in which an individual has to bear an excessive burden because by the actions of public authorities the individual was brought to believe that he had acted in accordance with law, while there no longer exists the possibility to remedy the deficiency perceived by consistent interpretation of the law, on account of which he is prevented from enjoyment and protection of the right he is entitled to.

- **Decision on Admissibility and Merits No. AP 2175/09 of 30 January 2013, paragraph 40, published in the *Official Gazette of Bosnia and Herzegovina*, 18/13; issue raised as to the validity of contract verified in the Embassy; the violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH established**

The Constitutional Court holds that in the specific circumstances of the particular case, when the appellant as the legal successor of his mother, who had started the procedure of purchase of the apartment with existing occupancy right, paid the purchase price due and died in the meantime (on 31 July 2007), and because of the failure by defendant as seller of the respective apartment she did not sign the relevant contract, was brought to a position that he cannot exercise his rights arising from the relevant contract, a consistent interpretation of the law that the contractual parties are obliged to verify their signatures does not satisfy the proportionality relationship between the protection of general interest and the interest of an individual, and that the appellant must bear a particular and an excessive burden.

- **Decision on Admissibility and Merits No. AP 1683/10 of 9 October 2013, paragraph 32, published in the *Official Gazette of Bosnia and Herzegovina*, 88/13; request for determination of the legal validity of purchase contract of apartment entered into by the appellant's legal predecessor (his mother) as purchaser and the defendant as seller; the violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH established**

The Constitutional Court concludes that there is a violation of 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 where the interference with the appellant's

right to property was effected in such a way that the decisions of the Court of BiH violated the balance between the public interest and the appellant's interest, by placing an excessive personal burden that the appellant bore in the form of preventing him from freely disposing his property.

- **Decision on Admissibility and Merits No. AP 3329/10 of 9 October 2013, paragraph 46, published in the *Official Gazette of Bosnia and Herzegovina*, 86/13; procedure of temporary seizure of an object; the violation of Article I of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of BiH established**

In response to the question whether, in the particular case, a fair balance has been struck between the protection of the appellant's interests and a legitimate aim in public interest sought to be achieved, the Constitutional Court points out that in the civil proceedings the appellant's disability of 70%, and the reduction of his general life activity of 80% has been established, and all of it in his thirties, and that the manifestations of disability established in addition to the resulting illness are reflected in the significant changes to his personality – impaired mobility, unstable personality, disorientation in space and time, speech impairment, occasional loss of consciousness, sitting for hours in silence or an exaggerated need for movement which results in the family members having to follow him, aggression and getting upset easily - the appellant has a need for significant nursing and assistance which is given by the appellants who are for that reason suffering, as established by the lower instance courts. The Constitutional Court considers that, in the circumstances of particular case, in which the appellants' deprivation of property had been performed for the purpose of enforcement of the law by which the ordinary court is authorized to evaluate the established facts for the purpose of allocation the pecuniary compensation for especially severe disability and, on the other hand, the fact that the appellants have not been awarded pecuniary compensation for mental pain and suffering because of evident physical and mental disability of their father and spouse, a fair balance of proportionality has not been struck between the protection of a legitimate aim in public interest sought to be achieved and the interest of the appellants to whom the respective pecuniary compensation represented a form of satisfaction in the particular circumstances of life. Therefore, in the opinion of the Constitutional Court, the excessive burden was placed on appellants in relation to the necessity of public interest protection.

- **Decision on Admissibility and Merits No. AP 5134/10 of 27 February 2014, paragraph 39, published in the *Official Gazette of Bosnia and Herzegovina*, 22/14; compensation of non-pecuniary damage; the violation of Article I of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of BiH established**

The Constitutional Court considers that in the instant case such enforcement is an excessive burden placed on the appellant and that there was no proportionality regarding the interference with the appellant's property given that, pursuant to the Ruling on Enforcement of the Municipal Court no. 65 0 I 196028 11 of 10 May 2011, the appellant must bear the excessive burden which disrupts the fair balance between the public interest and the interest of the appellant, which is in contradiction to the norms relating to the protection of the right to property under Article 1 of Protocol No. 1 to the European Convention.

- **Decision on Admissibility and Merits No. AP 3381/14 of 23 January 2015, paragraph 46, published in the *Official Gazette of Bosnia and Herzegovina*, 17/15; enforcement proceedings; half of the pension confiscation on the basis of guarantee; the violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH established**

[...] The Constitutional Court considers that strictly formal application of a legal provision applicable at the time of the entry into the relevant purchase contracts and on the basis of which the disposal with the endowment (*waqf*) apartments was prohibited and which was revoked by later amendments, placed the excessive burden on appellants in the particular case. On the other hand, in essence, the challenged decision of the Supreme Court in the circumstances of particular case would not help the plaintiff as the previous owner of the disputable apartment but would endanger the position of the first appellant who had the occupancy right and purchased the disputable apartment. Given the aforesaid, the Constitutional Court concludes that the proportionality in the protection of the general interest, which is reflected in the strictly formal-legal application of the law on one hand and the need for the protection of the appellants' rights to property in terms of Article 1 of Protocol No. 1 to the European Convention on the other hand, has been violated.

- **Decision on Admissibility and Merits No. AP 1194/12 of 30 June 2015, paragraph 41, published in the *Official Gazette of Bosnia and Herzegovina*, 70/12; nullity; restitution; *waqf* property; similar legal issue considered in the Decision no. AP 3806/11 in which the appellant was the Main Office for Administration of *Waqf* (Endowment) Property; the violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH established**

As to the question whether the interference with the appellant's property is proportionate to the legitimate aim being pursued, the Constitutional Court holds that the challenged decisions, which are the basis for the interference with the appellant's property in the present case, are proportionate to the aim and purpose and, therefore, no excessive burden is imposed on the appellant given that the impugned decisions do not essentially interfere with the scope of use of the property (the property at issue is not confiscated and the appellant is in possession of the property and uses or rents it). However, as it follows from the challenged rulings the measures were necessary on a temporary basis to prevent or to make it impossible for the appellant to alienate the property or to transfer it to third persons. In this regard, the Constitutional Court holds that the provisional measure, which is primarily related to the prohibition of alienation and disposal of the respective property, does not impose an excessive burden on the appellant compared to the public interest objectives pursued (the maintenance of public order and the prevention of organised crime, in accordance with the principle that no one can retain the proceeds of crime), and that it strikes a fair balance between the demands of the community's general interest and the requirements of protecting the rights of the individual. Therefore, it undisputedly follows that the interference with the appellant's property is in accordance with the principle of legal certainty.

- **Decision on Admissibility and Merits No. AP 2753/13 of 30 September 2015, paragraph 57, published in the *Official Gazette of Bosnia and Herzegovina*, 83/15;**

criminal proceedings, temporary prohibition of alienation and disposal with property; there is no violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH

The Constitutional Court concludes that the appellant's 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 has been violated when the ordinary courts dismissed the appellant's claim in the impugned judgments, notably the part in which he claimed the return of the purchase price when the defendant terminated the contract in question unilaterally, which had paid in executing the contract on the sale of the state capital. The adherence to the literal meaning of the used terms, in interpreting the provisions of the contract in question, amounted to the taking of the total amount of the purchase price which the appellant had paid on the basis of the purchase of the state capital (i.e. 82.50% within the time-limit given under the contract and 17.50% following the notice on the termination of the contract in question) without examining the joint intent of the contracting parties and without comprehending the disputable provisions of the contract in question in compliance with the contract law principles determined in the Law on Obligations. This prevailed over the appellant's interest, i.e. its constitutional right to the peaceful enjoyment of property, and the only reasoning given for the aforesaid was that the set of privatization laws was applicable in addition to the Law on Obligations, which the Constitutional Court considers as neither defining the requirements of termination of the contract nor the consequences of termination of the contract, including the contract of sale of the state capital, which amounted to the interference with the appellant's property, which was lawful and had a legitimate aim but placed a disproportional burden on the appellant, i.e. a fair balance between the protection of the appellant's property and requirements of the public interest was struck.

- **Decision on Admissibility and Merits No. AP 3164/12 of 30 September 2015, paragraph 39, published in the *Official Gazette of Bosnia and Herzegovina*, 84/15; state capital; fulfilment of contract /refund of payment of purchase price due; the violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH established**

The Constitutional Court notes that it follows from the reasoning of the challenged judgement of the Supreme Court that the Supreme Court in fact evaluated that the defendant's right to „home” in terms of Article 8 of the European Convention which the defendant (82 years of age at the time) exercised while living in the apartment in question longer than thirty years in the particular case, is more important than the appellants' 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 as they had not used the apartment to live in it, i.e., that they are persons who have already possessed their own home. Consequently, the Constitutional Court holds that in the present case the challenged decision has been issued in accordance with the public interest and that is the protection of rights and freedoms of others, in particular case of the defendant's right to „home” and that a fair balance has been struck between the protection of the appellants' rights to property and a general interest in the particular case as, in the current

situation, the excessive burden was not placed on the appellants to reach a legitimate aim, especially given the fact that the particular case concerned the defendant's right which could not have been transferred to a third party and the defendant as a person of older age who had lived in the apartment in question over thirty years and who died even before the challenged judgement could have been enforced. In view of all stated above, the Constitutional Court concludes that in the present case there is no violation of the appellants' right to property in the present case under Article II(3)(k) of the Constitution of Bosnia and Herzegovina and Article 1 of Protocol No. 1 to the European Convention.

- **Decision on Admissibility and Merits No. AP 1371/12 of 10 November 2015, paragraph 32;** *handing over the apartment into possession; common-law marriage; there is no violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH*

In the circumstances of the particular case, the amount of the costs of proceedings as determined by the Decision on the Costs of the Proceedings places an excessive burden on the appellants which disturbs the balance between the public interest sought to be achieved through the establishment of rules on the compensation of damages and the appellants' rights.

- **Decision on Admissibility and Merits No. AP 579/12 of 27 November 2015, paragraph 121, published in the Official Gazette of Bosnia and Herzegovina, 2/16;** *compensation of non-pecuniary damages; costs of proceedings; the violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH established*

The Constitutional Court points out to the indisputable facts from which arises that the appellant had used the respective apartment in the role of the occupancy right holder as of 1975 until the outbreak of war in Bosnia and Herzegovina on the basis of a ruling of the National Defence Federal Secretariat, that after the end of war he requested and repossessed of the apartment as its occupancy right holder through the Municipality which issued a ruling no. 04/23-1 J 43/2 of 5 April 200, and that on 14 June 2000 he was reinstated into possession of the apartment by the Municipality body. Given the aforesaid, the appellant exercised all rights relating to the repossession of apartment (confirmation that he is the occupancy right holder and that he has the right to repossession and reinstatement into possession of the respective apartment) through the Municipality. As to the crucial question concerning the timeliness of submission of the request for purchase of the apartment and in that connection the relevant competencies and procedures of deciding on the request, the Constitutional Court, first of all, indicates as indisputable the fact for the ordinary courts of all three instances which relates to the time limit in which the appellant could have lodged his request for purchase of apartment, and that is 24 July 2002 (a year upon entry into force of the Law on Purchase of Apartments), which was most favourable for the appellant in the relevant period, after all modifications of Article 8a of the Law on Purchase of Apartments, as concluded by all three courts. It is also indisputable that the appellant lodged two requests for purchase of apartment, the first with the Municipality, on 14 March 2002, and the second with the respondent, on 28 December 2005. In this connection, the Constitutional Court points

out that the provisions of the Law on Purchase of Apartments according to which the expression of occupancy right holder's intention to purchase an apartment is relevant. Thereafter, the procedure of purchase and sale is initiated. True, there is a mandatory time limit for the expression of this intention. In the present case, it is beyond dispute that the appellant expressed his intention to purchase the apartment in a timely fashion but his intention, within this mandatory period, was directed towards an authority that had no competence. In this respect, one cannot neglect both the relevant provisions of the Law on Administrative Proceedings and the fact that the Municipality, as an authority's body which should secure all realistic forms of protection of the citizens' rights and interests, upon receipt of the appellant's request for which it was not competent, did not act within the scope of its legal obligation under Article 65(3) and (4) of the Law on Administrative Proceedings. Namely, in the case of receipt of a request for which it is not competent, the obligation of the municipal body to declare itself not competent, clearly and indisputably follows from this legal provision as well as an obligation to inform a party to forward the request to the competent body. Given that the Municipality, in the particular case, failed to act in any of the above referenced ways, the Constitutional Court holds that an inappropriate (excessive) burden was placed on the appellant in exercising a legitimate aim i.e., that a fair balance between the protection of the appellant's right to property and the public interest requirements has not been struck. Therefore, the Constitutional Court concludes that the challenged judgements have violated the appellant's 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.

- **Decision on Admissibility and Merits No. AP 2376/12 of 8 December 2015, paragraph 42, published in the *Official Gazette of Bosnia and Herzegovina*, 6/16; timely request for purchase of apartment; established violation of Article 1 of Protocol No.1 to the European Convention and Article II(3)(k) of the Constitution of BiH**

As to the control of the use of property

There is no deprivation in a situation where the ordinary courts took decisions ordering the appellant as the defendant to refrain from trespassing on the plaintiff's part of the road but the control of property use within the meaning of Article 1(2) of Protocol No.1 to the European Convention. As the control of property use is provided for by the law, and it is not contrary to the public interest and it is proportionate to the aim sought to be achieved, there is no violation of the right to property.

- **Decision No. U 74/03 of 24 October 2003, paragraphs 35 and 42, published in the *Official Gazette of Bosnia and Herzegovina*, 3/04**

The issue of claims barred by the statute of limitations was considered in relation to the principle of the control of property use of Article 1(2) of Protocol No.1 where the Constitutional Court referred to the case-law of the European Court of Human Rights (Application No. 13674/88 of 14 April 1989, *Cyril Albert Warner v. the United Kingdom*), according to which, the possibility of filing complaints relating to the statute of limitations fall within the limitation put on the exercise of civil rights. It is concluded

that there is no violation of this right, given that the courts correctly calculated the statute of limitations period.

- **Decision on Admissibility and Merits No. AP 1/03 of 15 June 2004, paragraphs 23 to 31, published in the *Official Gazette of Bosnia and Herzegovina*, 34/04; collection of utility services**

The changes relating to the status haven not been accompanied by the adequate legal procedures provided for by the applicable law regulating that matter so that the defendant cannot be exempted from the obligation of paying the appellant the amount relating to the insurance. Such law must be in compliance with the standards of Article 1 of Protocol No.1 to the European Convention and no one can be exempted from the obligation solely because the factual changes were not legally regulated, which was obligatory, *inter alia*, for the reasons of security of interested third persons.

- **Decision on the Merits No. AP 1115/04 of 17 November 2005, paragraphs 32 and 38, published in the *Official Gazette of Bosnia and Herzegovina*, 25/06**

The Constitutional Court concludes that in the instant case there is no violation of the appellant's right to property under Article II(3)(k) of the Constitution of Bosnia and Herzegovina 10 and Article 1 of Protocol No. 1 to the European Convention in case where the amount of money deposited for bail as a substitute for custody that had been previously determined was credited to the budget of the Canton since the appellant, after the bail amount had been deposited, was beyond the reach of the prosecuting authorities.

- **Decision on Admissibility and Merits No. AP 2667/07 of 25 September 2009, paragraph 30, published in the *Official Gazette of Bosnia and Herzegovina*, 99/09**

Provision of payment of taxes, contributions and fines

The amount of sales tax and penalty interest which the appellant must pay constitutes the appellant's property, and the challenged decisions have not violated the appellant's right to property, since the determined sales tax with the penalty interest is prescribed by the law and as such is in the public interest so that the principle between the means used and aim sought to be achieved has not been violated.

- **Decision on Merits No. AP 1131/04 of 13 September 2005, paragraph 31, published in the *Official Gazette of Bosnia and Herzegovina*, 17/06**

ARTICLE 2 OF PROTOCOL NO. 1 TO THE ECHR – RIGHT TO EDUCATION – IN GENERAL

As regards the aforementioned principles in relation to the circumstances of the particular case, the Constitutional Court considers that the ruling of the Cantonal Court (the decision upon lawsuit in the administrative not taken within reasonable time) did not bring into question the appellant's right of access to educational institutions which existed at the relevant time. In the circumstances of the case at hand, deciding on the appellant's statement of claims could have been of influence, in the case of positive

outcome, only with respect to securing yet another opportunity (*retaking of a makeup exam*) to attempt to meet the legally prescribed requirements (*passing marks for all teaching subjects*) for the acquisition of the right to get to the next grade, but was of no influence whatsoever on the continuation of her education in the General Program Secondary School that she attended, given the fact that she could have attended the same grade again. Therefore, the decision in the particular administrative dispute could have affected only that the appellant, during a particular school year, passes all the exams of that year but could not have brought into question the appellant's schooling in the particular educational institution. Consequently, the Constitutional Court holds that the appellant was not deprived of the right of access to the educational institution she had chosen, or the right to acquire, according to the rules in force, the official recognition for the education she completed.

- **Decision on Merits No. AP 1455/08 of 9 March 2011, paragraph 49, published in the *Official Gazette of Bosnia and Herzegovina*, 48/11**

ARTICLE 3 OF PROTOCOL NO. 1 TO THE ECHR – RIGHT TO FREE ELECTIONS – IN GENERAL/THE SCOPE OF PROTECTION

Article 3 of Protocol No. 1 to the European Convention therefore applies not only to the direct elections but also to the indirect elections of the legislature ... it does not exclude indirect elections and that people may freely express their opinion on the final composition of the legislature even in the indirect elections. Moreover, the Constitutional Court holds that the European Court of Human Rights has not expressed in any of its decisions any intention to exclude the system of the indirect elections from Article 3 of Protocol No. 1 to the European Convention.

- **Decision on Admissibility and Merits No. AP 35/03 of 28 January 2005, paragraph 46, published in the *Official Gazette of Bosnia and Herzegovina*, 30/05**

The fine imposed on the appellant for breach of the rules of the election process did not affect the appellant's right to stand as a candidate for election to the legislature.

- **Decision on Merits No. AP 952/05 of 8 July 2006, paragraph 30, published in the *Official Gazette of Bosnia and Herzegovina*, 87/06; *minor offence proceedings against a political party due to the breach of election process rules***

Restrictions of rights

There is no violation of Article 3 of Protocol No.1 to the European Convention if the appellant complains about an election system because of which his candidates have not been elected to the legislative authority.

- **Decision on Admissibility and Merits No. AP 35/03 of 28 January 2005, paragraphs 47 to 51, published in the *Official Gazette of Bosnia and Herzegovina*, 30/05**

There is no violation of the right to „free elections” under Article 3 of Protocol No. 1 to the European Convention when restrictions are stipulated by the Law on Conflict of

Interests, serve legitimate aim, and prevent the abuse of public office for the acquisition of personal gain by the elected official. The restriction has reasonable justification and it does not restrict the appellant's right to be elected to the extent of endangering the very essence of this right, given that it is proportionate to the aim of the wider community in terms of the transparency of election process, and the objectivity, legality, independency and impartiality of the appellants as elected officials performing the public functions.

- **Decision on Admissibility and Merits No. AP 3453/09 of 28 April 2010, paragraph 63, published in the *Official Gazette of Bosnia and Herzegovina*, 74/10**

ARTICLE 1 OF PROTOCOL NO. 4 TO THE ECHR – PROHIBITION OF IMPRISONMENT FOR DEBT

There is no violation of the right under Article 1 of Protocol No. 4 to the European Convention if the appellant is sentenced to an imprisonment because he committed a criminal offence in relation to some contractual obligation and not because he failed to fulfill the obligation as such.

- **Decision on Admissibility and Merits No. AP 954/06 of 5 April 2007, paragraph 42, published in the *Official Gazette of Bosnia and Herzegovina*, 70/07; there is no violation of Article 1 of Protocol No. 4 to the European Convention**

ARTICLE 2 OF PROTOCOL NO. 4 TO THE ECHR – FREEDOM OF MOVEMENT

Freedom of Movement

There is no violation of the appellant's right to freedom of movement and residence under Article II(3)(m) of the Constitution of Bosnia and Herzegovina and Article 2 of Protocol No. 4 to the European Convention when this right has been restricted in the lawful proceedings, on the basis of relevant provisions of the Criminal Procedure Code of Bosnia and Herzegovina by issuance of the measures necessary in the democratic society for the prevention of crime and by which the principle of proportionality has not been infringed to the appellant's detriment.

- **Decision on Admissibility and Merits No. AP 5314/14 of 14 May 2015, paragraph 34; prohibition measure – prohibition to leave the place of residence and travel; there is no violation of Article 2 of Protocol No. 4 to the European Convention**

ARTICLE 1 OF PROTOCOL NO. 7 TO THE ECHR – PROCEDURAL SAFEGUARDS RELATING TO EXPULSION OF ALIENS

As to the appellant's allegations relating to the violation of Article 1 of Protocol No. 7, the Constitutional Court observes that based on the documentation in the case-file it follows, primarily, that the process of deportation of appellant was not instituted, rather

the procedure of enforcing the ruling of the Department for Foreigners on putting the appellant under surveillance was instituted and enforced. The very fact that the appellant was put under surveillance does not mean in itself that the procedure would end in his deportation, nor does it in any way prejudge the final decision in the procedures during which it is being decided on his right to stay in Bosnia and Herzegovina. No evidence whatsoever have been presented to the Constitutional Court indicating that the appellant was deprived of procedural rights for foreigners threatened with expulsion referred to in Article 1 of Protocol No. 7 to the European Convention. It follows that in the present case the appellant is not a victim of a violation of the mentioned right.

- **Decision on Admissibility No. AP 3307/08 of 28 March 2009, paragraph 30; the appeal relating to Article 1 of Protocol No. 1 to the European Convention is manifestly (*prima facie*) ill-founded**

ARTICLE 2 OF PROTOCOL NO. 7 TO THE ECHR – RIGHT OF APPEAL IN CRIMINAL MATTERS

In view of the organization of judicial system of Bosnia and Herzegovina, the Court of BiH does not represent the „highest tribunal” in terms of judicial organization and hierarchy of courts in Bosnia and Herzegovina. However, given the manner its jurisdiction is determined, there is no higher judicial instance which would decide in the appellate proceedings against the decisions of the Appellate Division Panel of that Court in the regular procedure. It follows, therefore, that the decision in the particular proceedings has been rendered by „the highest tribunal”.

- **Decision on Admissibility and Merits No. AP 3229/10 of 9 December 2014, paragraph 120, published in the *Official Gazette of Bosnia and Herzegovina*, 4/15**

Conviction after a judgment of acquittal at first instance

Article 2 paragraph 2 of Protocol No. 7 to the European Convention provides for exceptions to the rule referred to in paragraph 1 of the same Article which stipulates that everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal as the exception if provided for in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal. Taking into account the fact that the instant case concerns a convicting verdict whereby a verdict on acquittal was revoked upon an appeal lodged by the BiH Prosecutor’s Office, and that the verdict was rendered by the Court of BiH as the Supreme Court of Bosnia and Herzegovina, the Constitutional Court concludes that the fact that the second appellant was not given an opportunity to pursue further legal remedies is not in violation of the principle of the European Convention given the exception referred to in Article 2 paragraph 2 of Protocol No. 7 to the European Convention.

- **Decision on Admissibility and Merits No. AP 2281/05 of 6 July 2007, paragraph 42, published in the *Official Gazette of Bosnia and Herzegovina*, 79/07**

The Constitutional Court concludes that the impossibility of filing an appeal against the verdict of the Court of BiH, Appellate Division Panel of Section I for War Crimes, by which the appellant was found guilty and in terms of allegations in the indictment of which he had been acquitted by the first instance verdict, does not give rise to a violation of the appellant's right to have his conviction or sentence reviewed by a higher tribunal. Moreover, it follows from Article 2 of Protocol No. 7 to the European Convention that the European Convention itself prescribes such restriction, i.e. exception. In this regard, the Constitutional Court holds that the fact that the Criminal Procedure Code of BiH did not provide for the possibility that the criminal verdict be reviewed in the third instance at the time when the Court of BiH, Appellate Division Panel of Section I for War Crimes, passed the challenged verdict, does not give rise to a violation of the appellant's right guaranteed under Article 2 of Protocol No. 7 to the European Convention

- **Decision on Admissibility and Merits No. AP 519/07 of 30 January 2010, paragraph 79, published in the *Official Gazette of Bosnia and Herzegovina*, 20/10;**
- **Decision on Admissibility and Merits No. AP 3620/07 of 14 April 2010, paragraph 62, published in the *Official Gazette of Bosnia and Herzegovina*, 50/10; war crimes**

ARTICLE 3 OF PROTOCOL NO. 7 TO THE ECHR – COMPENSATION FOR WRONGFUL CONVICTION

There is no violation of the right to compensation for wrongful conviction under Article 3 of Protocol No.7 to the European Convention in case when the appellant after the adoption of a judgment of acquittal in criminal proceedings, in a special ruling, by the application of the principle of margin of appreciation, was awarded a compensation for the costs of the criminal proceedings.

- **Decision on the Merits No. AP 807/04 of 13 September 2005, paragraph 31, published in the *Official Gazette of Bosnia and Herzegovina*, 3/06; compensation for defense costs; compensation for wrongful conviction, there is no violation of Article 3 of Protocol No.7 to the European Convention**

ARTICLE 4 OF PROTOCOL NO. 7 TO THE ECHR – RIGHT NOT TO BE TRIED OR PUNISHED TWICE

The principle *ne bis in idem* has not been violated in the instant case, since the previous judgments rendered in the proceedings in which the subsidiary prosecutors participated as suspects and the convicting judgments against the appellant do not relate to the same person.

- **Decision on Admissibility and Merits No. AP 1828/06 of 4 October 2008, paragraph 33, published in the *Official Gazette of Bosnia and Herzegovina*, 99/08; criminal proceedings, arbitrariness, *ne bis in idem*, there is no violation of Article 4 of Protocol No.7 to the European Convention**

There is a violation of the right under Article 4(1) of Protocol No. 7 to the European Convention in the case where the nature of the offence falls within the ambit of the

„criminal procedure” within the meaning of the aforementioned Article, and where such an offence is a subject-matter of both the minor offence proceedings and criminal proceedings conducted against the same person and arising from the identical facts or facts which are substantially the same, so that the decision establishing the liability and imposing the sanction, that had been adopted in one of the proceedings and had already obtained the capacity of *res judicata*, was not an obstacle for adopting the decision against the same person in other proceedings, which were pending.

- **Decision on Admissibility and Merits No. AP 133/09 of 30 May 2012, paragraph 48, published in the *Official Gazette of Bosnia and Herzegovina*, 38/12; civil proceedings, follows the case-law of the ECHR in the case *Maresti v. Croatia*; violation of Article 4 of Protocol No. 7 to the European Convention**

ADMISSIBILITY

As to the exceptional admissibility

The term „judgment”, within the meaning of the appellate jurisdiction of the Constitutional Court under Article VI(3)(b) of the Constitution of Bosnia and Herzegovina, is to be interpreted extensively. The term includes not only all kinds of decisions and rulings but also a failure to take a decision where such failure is claimed to be unconstitutional.

- **Decision No. U 23/00 of 2 February 2001, published in the *Official Gazette of Bosnia and Herzegovina*, 10/01**
- **Decision on the Merits No. AP 1404/05 of 9 May 2006, paragraph 19, published in the *Official Gazette of Bosnia and Herzegovina*, 68/06; administrative procedure, repossession of the apartment**

Immunity is an important preliminary issue which is considered separately from the whole criminal proceedings, since it follows from the provisions of the Law on Immunity that when immunity is claimed the competent courts have to issue a decision on that matter. Once the issue of immunity is decided it cannot be raised again in specific criminal proceedings. The Constitutional Court therefore holds that the standards of the right to fair proceedings also refer to the proceedings in which the right to immunity is decided, since, if the claim of immunity is rejected and the criminal proceedings continued, the issue of immunity cannot be raised again. In view of the aforesaid, the Constitutional Court considers that the appeals in the present case are admissible although no final decision has been yet issued with regard to the appellants’ guilt of the criminal offence they are charged with... Taking into account the aforesaid, particularly a newly arisen situation, the Constitutional Court concludes that the appeal at issue cannot be resolved in accordance with the Constitutional Court’s case-law in cases No. *U 59/01*, *U 60/01* and *U 61/01*.

- **Decision on Admissibility and Merits No. AP 58/03 of 29 October 2004, paragraph 26, published in the *Official Gazette of Bosnia and Herzegovina*, 11/05; the admissibility issue relating to the decisions on immunity, modification of legal standpoint relating to the admissibility**

The Constitutional Court may exceptionally consider the appeal even if there is no decision of the competent court, if the appeals points to the serious violation of the human rights and fundamental freedoms as protected by the Constitution of Bosnia and Herzegovina or international documents applicable in Bosnia and Herzegovina.

- **Decision on the Merits No. AP 542/04 of 13 October 2005, paragraph 33, published in the *Official Gazette of Bosnia and Herzegovina*, 17/06; the length of the proceedings to annul a gift agreement; the violation of Article 6 of the European Convention and Article II(3)(e) of the Constitution of BiH established**

The Constitutional Court is not competent to review the individual decisions of the High Representative, rather it must be limited exclusively to its jurisdiction arising out of Article VI(3)(b) of the Constitution of Bosnia and Herzegovina and examine whether the appellants have had an effective legal remedy available under law by which they could challenge the said decisions within the meaning of Article 13 of the European Convention.

- **Decision on Admissibility and Merits No. AP 953/05 of 8 July 2006, paragraph 40, published in the *Official Gazette of Bosnia and Herzegovina*, 20/07; removal from office by the High Representative**

As to the *prima facie* (manifestly) ill-founded

The right to amnesty is not included in the list of rights under Article II(3) of the Constitution of Bosnia and Herzegovina, which are secured to all persons in Bosnia and Herzegovina, nor is a decision provided for by the provisions of Article II(3)(e) of the Constitution of Bosnia and Herzegovina relating to the „right to a fair trial”. The right to amnesty as such is not provided for by the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols.

- **Ruling No. U 44/03 of 23 September 2003, paragraph 14, published in the *Official Gazette of Bosnia and Herzegovina*, 39/93**

In the present case, the appellant did not present any evidence proving the violation of the constitutional rights allegedly committed by the lower-instance courts, but he indicated them in an arbitrary manner. The Constitutional Court does not examine *ex officio* the violations of the constitutional rights.

- **Decision on Admissibility No. AP 589/03 of 11 February 2004**

The appeal is manifestly ill-founded if it does not contain any of the *prima facie* grounds relating to the violation of a rights or freedoms provided for by the Constitution of Bosnia and Herzegovina. This is the case if, for example, the appellant did not present evidence which he alleges as grounds for filing an appeal or if it clearly follows from the facts that there is no violation.

- **Decision on Admissibility No. U 9/03 of 23 April 2004, paragraph 13, published in the *Official Gazette of Bosnia and Herzegovina*, 38/04**

The appeal is manifestly (*prima facie*) ill-founded if the allegations on discrimination do not relate to the appellant but other persons.

- **Decision on Admissibility and Merits No. AP 531/04 of 27 May 2005, paragraph 21, published in the *Official Gazette of Bosnia and Herzegovina*, 67/05; foreign currency savings**

The appeal is manifestly ill-founded if it lacks evidence proving with sufficient clarity that the alleged violation of human rights and fundamental freedoms is possible and if the appeal has no prospect of success.

- **Decision on Admissibility No. AP 700/04 of 15 June 2005, paragraph 13; the appellant complains about the violation of Article 3 of the European Convention in respect of the High Judicial and Prosecutorial Council's decision relating to the termination of the office of a judge**

The Court has concluded that the appeal was *prima facie* ill-founded in proceedings where the substance of a constitutional dispute was the answer to the question whether the Law on High Judicial and Prosecutorial Council of the Federation of Bosnia and Herzegovina could be applied to the issue of revocation of the appellant's immunity.

- **Decision on Admissibility No. AP 68/03 of 22 July 2005**

In the instant case, the appellant challenges the ruling extending detention and he refers to the right under Article 13 of the European Convention in conjunction with Article 5 of the European Convention outlining that the challenged ruling deprived him of the right to a legal remedy. However, the appellant failed to file an appeal against the first-instance ruling, which means that the law has provided for a legal remedy to examine the lawfulness of the detention but the appellant failed to pursue it although he was informed of the possibility of pursuing it. The Constitutional Court therefore rejected as manifestly (*prima facie*) ill-founded the appellant's allegations on the violation of the right to an effective legal remedy under Article 13 of the European Convention.

- **Decision on Admissibility No. AP 1346/05 of 13 July 2005, paragraph 5**

The appeal is manifestly ill-founded if it lacks *prima facie* evidence that shows with enough clarity that the alleged violation of human rights and fundamental freedoms is possible (see ECHR, *Vanek vs. Slovakia*, judgment of 31 May 2005, Application No. 53363/99 and the Constitutional Court, Decision No. AP 156/05 of 18 May 2005), if the facts in respect of which the appeal is filed do not constitute the violation of the rights alleged by the appellant, i.e. if the appellant has no „arguable claim” (see ECHR, *Mezőtúr-Tiszazugi Vizgazdálkodási Társulat vs. Hungary*, judgment of 26 July 2005, Application No. 5503/02) and where it established that the appellant is not a „victim” of violation of the rights guaranteed by the Constitution.

- **Decision on Admissibility No. AP 808/04 of 17 November 2005, paragraph 10; the appellant complains about the violation of the right under Article 6, paragraph 1 of the European Convention with regards to the procedure to assume the investigation; the appeal is manifestly ill-founded**

The appellant has no „arguable claim” in respect of Article 6(1) of the European Convention where he alleges the violation of the procedure which does not relate to the determination of the criminal charge against him.

- **Decision on Admissibility No. AP 808/04 of 17 November 2005, paragraph 12;** *the appellant complains about the violation of the right under Article 6, paragraph 1 of the European Convention with regards to the procedure to assume the investigation; the appeal is manifestly ill-founded*

In the instant case, the decision challenged by the appellant does not have the character of administrative act against which administrative dispute proceedings may be initiated and in which a state authority would take a decision on an administrative individual right or obligation. Therefore, the challenged decision is not in violation of the right alleged by the appellant, i.e. the appellant does not have an „arguable claim”.

- **Decision on Admissibility No. AP 2099/05 of 17 November 2005, paragraph 8**

In the case where the appellant does not present any argument or evidence proving the violation of the right to non-discrimination and the submitted documents do not disclose anything which would indicate that the appellant has an „arguable claim” in respect of the alleged violation of the appellant’s right, the appellant’s allegations on the violation of the right under Article II(4) of the Constitution of Bosnia and Herzegovina are manifestly (*prima facie*) ill-founded.

- **Decision on the Merits No. AP 257/05 of 20 December 2005, paragraph 17, published in the *Official Gazette of Bosnia and Herzegovina*, 37/06**

It is absolutely impossible to restrict freedom of thought within the meaning of Article 9 of the European Convention and therefore commit a violation of this right in the event that these restrictions are exceeded. On the other hand, it is possible to restrict the right to freedom of thoughts in the event when the thoughts have been expressed, which means when they have left the internal universe of a man, in which case the right to freedom of expression is restricted which is protected by Article 10 of the European Convention.

- **Decision on Admissibility and Merits No. AP 913/04 of 20 December 2005, paragraphs 21 and 23, published in the *Official Gazette of Bosnia and Herzegovina*, 41/06**

In the instant case, the appellant challenges the established facts, application of the substantive law and indicates conclusion contrary to those of the Constitutional Court. However, the appellant has not submitted evidence or facts leading to the conclusion that the violations alleged by him. The appeal was therefore declared manifestly ill-founded.

- **Decision on Admissibility No. AP 1114/05 of 9 February 2006, paragraph 13;**
- **Decision on Admissibility No. AP 1079/05 of 13 June 2006, paragraph 8;**
- **Decision on Admissibility No. AP 1138/05 of 27 June 2006, paragraphs 11 and 12;**
- **Decision on Admissibility No. AP 1126/05 of 12 September 2006, paragraphs 10 and 11**

Taking into account the fact that the appellant has never lived in the apartment in question, i.e. that the apartment in question has never been his home, nor has it been his property,

the appellant has no „arguable claim” to allege the violation of the right to return of refugees and displaced persons insofar as the impossibility of moving into apartment and concluding a contract on use is concerned, since the Constitution of Bosnia and Herzegovina guarantees that right only to those refugees and displaced persons who return to their home, i.e. request repossession of their property.

- **Decision on Admissibility No. AP 1035/05 of 12 April 2006, paragraph 14**

In the instant case, the appellant failed to comply with the order of the Basic Court, since he did not complete his lawsuit in accordance with the provisions of Article 53 of the Law on Civil Proceedings, which was a requirement for further conduct of the proceedings. Therefore, the appellant has no „arguable claim” to allege the violation of the right to property, since his failure to comply with the relevant provisions of the Law on Civil Proceedings amounted to the ruling issued by the Basic Court which considered the appellant’s lawsuit as withdrawn.

- **Decision on Admissibility No. AP 1063/05 of 12 April 2006, paragraph 7**

When the appellant does not present the facts and evidence which could justify the claim about the allegations on the violation of the constitutional rights so that there are no elements which indicate *prima facie* that a violation of the rights and freedoms under the European Convention is possible and that an examination on the merits of the case is necessary, the appeal is to be rejected as manifestly ill-founded.

- **Decision on Admissibility No. AP 949/05 of 9 May 2006, paragraph 17;**
- **Decision on Admissibility No. AP 1067/05 of 20 October 2006, paragraph 10;**
- **Decision on Admissibility No. AP 1918/5 of 13 October 2005, paragraph 10**

Complaints in relation to the violations of the constitutional rights must be raised, at least in terms of their form, in early stages of the proceedings, if they are to be used successfully before the Constitutional Court. Taking into account the fact that the first time the appellant lodged the aforementioned complaints in his appeal filed with the Constitutional Court, such complaints are *prima facie* ill-founded so that they will not be considered.

- **Decision on Admissibility No. AP 1244/05 of 9 May 2006, paragraph 8**

As to the alleged violation of the right to property, the appellant does not refer to any of the principles laid down in these Articles, nor does he specify the violation of the right to property. His arbitrary statement that there is a violation of the right to property is not substantiated by the facts and evidence so that the appeal is manifestly ill-founded.

- **Decision on Admissibility No. AP 1048/05 of 9 May 2006, paragraph 12;**
- **Decision on Admissibility No. AP 968/05 of 13 June 2006, paragraph 9;**
- **Decision on Admissibility No. AP 1055/5 of 20 September 2006, paragraph 12;**
- **Decision on Admissibility No. AP 1130/5 of 9 May 2006, paragraphs 7 and 8**

The period of 11 months during which the Basic Court did not take a decision upon the appellant’s lawsuit in a case which is, as per the law, urgent, is not excessively long so

that the appellant has no „arguable claim”, since there is no violation of the constitutional right to a trial within a reasonable time.

- **Decision on Admissibility No. AP 1081/05 of 27 June 2006, paragraph 11;**
- **Decision on Admissibility No. AP 1120/05 of 9 May 2006, paragraph 9;**
- **Decision on Admissibility No. AP 1553/05 of 12 April 2006, paragraph 7;**
- **Decision on Admissibility No. AP 1997/05 of 16 January 2007, paragraph 8**

The representation of the appellant as an injured party in the criminal proceedings by a selected attorney has been at his discretion, and it was not his obligation so that the ordinary courts did not have an obligation to indicate the expenses which were not necessary in the operative part of the ruling. The court dealt with them in the reasoning of the ruling, it stated the reasons for not awarding the fees to the legal representative, which did not diminish the significance of the claims which the court considered and took a decision upon it. There is nothing in the instant case which would indicate that the legal substantive regulations were arbitrarily or unjustifiably applied to the detriment of the appellant. Therefore, they are manifestly (*prima facie*) ill-founded.

- **Decision on Admissibility No. AP 1110/05 of 13 June 2006, paragraphs 9 and 10**

By failing to file a motion for enforcement of a decision in accordance with Article 36 of the Law on Enforcement Procedure (the enforcement document was not attached to the motion for enforcement, the motion was not filed in a sufficient number of copies and the motion did not contain the manner of collecting the debt), the appellant contributed to the situation in which the enforcement has not been completed according to the case-file. Therefore, the appellant has no „arguable claim” insofar she did not make probable in any manner the claim that the Municipal Court has refused to act upon her enforcement motion and that it is not able to enforce the legally binding judgment establishing her citizen rights and that therefore her appeal is manifestly (*prima facie*) ill-founded insofar as the non-enforcement of the judgment if concerned.

- **Decision on Admissibility No. AP 1344/05 of 12 September 2006, paragraphs 11 and 12**

There is nothing in the instant case that indicates that the prison authorities failed to carry out a routine supervision of the prison and the state of prisoners. Nothing indicates that the prison authorities knew that there was a danger present for the prisoner’s life and that he was supposed to be under surveillance more than other prisoners. Furthermore, nothing suggested that he had had mental health problems which could escalate at the extent to take excessive quantity of drugs, which caused the coma of the prisoner and finally his death. Finally, the prison authorities had a prompt response and took him to the health care institution. Finally, all these facts indicate that the relatives of the person in question, as the appellant, did not present evidence capable of challenging the findings by the Constitutional Court.

- **Decision on Admissibility No. AP 2171/05 of 21 December 2006, paragraph 11**

It follows from the appeal and the challenged judgment that the appellant had the status of a plaintiff who claimed the protection from the alleged defamation, which means that

the claim was not directed against the appellant because of his expression. As Article 10 of the European Convention does not protect the freedom of expression, and paragraph 2 of this Article provides for the cases in which that freedom can be restricted, the Constitutional Court holds that the appellant was not a „victim” of violation of Article 10 of the European Convention so that this part of the appeal is manifestly (*prima facie*) ill-founded.

• **Decision on Admissibility No. AP 95/06 of 6 March 2007, paragraph 21**

Considering the appellant’s allegations on the violation of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention, the Constitutional Court established that the appellant contested the decision of the County Court which established that the proceedings are terminated because of the instituting the bankruptcy procedure against the defendant. The Constitutional Court concludes that, in the particular case, the County Court terminated the proceedings by applying its authority arising from Article 378(1)(4) of the Civil Procedure Code stipulating that *the proceedings shall be stayed when: [...] legal consequences of instituting the bankruptcy proceedings arise; [...]*” and Article 55(1) of the Law on Bankruptcy Proceedings of the RS which stipulates that *by instituting the bankruptcy proceedings, the judicial proceedings and the proceedings before the arbitration are terminated if they pertain to the bankruptcy estate [...]*”. In the essence, the Constitutional Court notes that the appellant is dissatisfied with the court’s decision on termination of proceedings. However, the Constitutional Court recalls that the appellant’s discontent with the decision on termination of proceedings does not raise, in itself, the issues relating to the protected constitutional rights or the European Convention rights, and the appellant neither allege any procedural errors nor any such are evident (see the European Court of Human Rights, *Mezőtúr-Tiszazugi Vizgazdálkodási Társulat v. Hungary*, Judgement of 26 July 2005, application no. 5503/02).

• **Decision on Admissibility and Merits No. AP 377/06 of 18 October 2007, paragraph 9, bankruptcy procedure**

In the instant case, the appellant failed to initiate civil proceedings before the competent courts with regards to the cancellation of the securities transaction. The Securities Commission and Supreme Court are not competent to deal with this issue. In other words, the Commission and Supreme Court did not deprive the appellant of the opportunity to reach a decision on the merits by the arbitrary misinterpretation of regulations, which would cancel securities transaction. Therefore, the appellant did not reach a „final” decision on the merits within the meaning of the principle of legal remedy exhaustion.

• **Decision on Admissibility No. AP 989/06 of 27 February 2008, paragraph 18; interpretation of relevant regulations; the appeal was considered in respect of the appellant’s allegations and it has been rejected as manifestly ill-founded, although it appeared that the appeal was inadmissible for non-exhaustion of legal remedies**

The appellant has no „arguable claim” capable of raising an issue under the Constitution of BiH, since he failed to claim his rights to tax refund within the time limit provided for by the Customs Law.

- **Decision on Admissibility No. AP 59/07 of 11 March 2008, paragraphs 11 and 12;** *refund of special tax; appeal is manifestly ill-founded*

The Constitutional Court concludes that the Municipal Court did not abuse nor arbitrarily misapply the substantive law, nor were there any other elements which would show that the proceedings were unfair. Quite the contrary, the Municipal Court acted in compliance with the positive regulations, and the interpretation of those regulations, in view of the Constitutional Court, cannot be considered arbitrary and did not amount to the violation of the appellant's constitutional rights. According to Article 1 paragraph 2 of the Law on Enforcement Procedures, the provisions of that Law do not apply to the enforcement procedure prescribed by the special law. Taking into account that the bankruptcy procedure regulates the requirements for opening a bankruptcy procedure, the bankruptcy procedure itself, its legal effects and reorganization of the debtor incapable of payment upon the bankruptcy plan (Article 1 of the Law), it is indisputable that this law, within the meaning of Article 1, paragraph 2 of the Law on Enforcement Procedure, constitutes a „special law”, i.e. *lex specialis*. Therefore, in a situation in which the court found that a bankruptcy procedure was open, it is indisputable that the provisions of the Law on Bankruptcy Procedure applied to the appellant's claims, in order to settle the debt, since the settlement is a legitimate aim sought to be achieved, closely related to the principle of fairness. Therefore, the appellant's civil right established in a legally binding court decision shall be exercised in accordance with the Law on Bankruptcy Procedure.

- **Decision on Admissibility No. AP 316/06 of 13 May 2008, paragraph 5;** *disruption of the enforcement procedure towards the party subject to enforcement due to instituting the bankruptcy proceedings*

In the particular case, while deciding on the defendant's revision-appeal the Supreme Court found that the lower instance court erroneously applied the substantive law regarding the agreement the appellant concluded with the defendant in the non-contentious settlement. The Supreme Court established that the agreement concluded on the non-contentious settlement represents the discharging of debt in terms of Articles 344(1) and 347 of the Law on Obligations and that by its conclusion any obligation of the defendant towards the plaintiffs ceased when they concluded the relevant agreement with the defendant. The Constitutional Court will not engage into consideration of the appellant's allegations that the relevant agreement is not legally valid, given that the appellant did not present this allegation before the ordinary courts. In addition to his statement in the appeal that some of the plaintiffs emphasized such claim in the course of the first instance proceedings, he does not prove by any means that he in particular in the course of first or second instance proceedings requested the court to determine the legal validity of the relevant agreement for the reasons he pointed out in his appeal. In respect of other allegations of the appellant, the Constitutional Court could not find in the appeal or enclosed documentation any elements to indicate in the present case that the substantive regulations have been applied by the Supreme Court arbitrarily or unfairly, to the appellant's detriment. The Constitutional Court establishes that the Supreme Court gave clear and precise reasoning for its decision which is not considered arbitrary by the Constitutional Court. For all of the above, and given that the appeal, in respect to the appellant's allegations as to the violation of the right to a fair trial under

Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention, does not contain *prima facie* evidence, which would indicate with sufficient clarity that the alleged violation of human rights and freedoms is possible, i.e., that it would be necessary to consider the allegations of the appeal in the merits, the Constitutional Court considers it manifestly ill-founded.

• **Decision on Admissibility No. AP 3389/06 of 15 January 2009, paragraph 13**

The ordinary court of three instances presented clear and detailed reasons for which they dismissed the appellant's claim as ill-founded as they established that all substantive evidence, invoices on which the appellant based his request are the invoices of his company, signed by the appellant as a executive and verified by the company's stamp. Given this fact, the ordinary courts established that this concerns the revenues of the company and not the personal income of the appellant, and in the proceedings the appellant failed to prove that he had realized the separate, personal income which would represent his lost profit in terms of Articles 155 and 189 of the Law on Obligations, and his request was dismissed. This further means that the appellant could have a legitimate expectation to realize the right to compensation of damages for the lost profit (see the Constitutional Court, unpublished decision no. *AP 3126/06* of 28 October 2008, available at the webpage of the Constitutional Court www.ustavnisud.ba).

• **Decision on Admissibility No. AP 35/07 of 15 April 2009, paragraph 9;**
compensation of damages for the lost profit

The Constitutional Court notes that the Law on Enforcement Procedure, by stipulating that the bills and statements from business books may be considered as valid documents only if concerning the utility services of water and heating supply, and garbage disposal, has narrowed down the circle of entities who may lodge the motion for enforcement on the basis of such documents or on the proposal of which the enforcement may be ordered based on specified documents. In this situation, some entities are placed in such a position that they cannot realise the enforced collection of their claims through the enforcement procedure but have to prove them in the civil proceedings prior to that. Although it acknowledges that it may represent the excessive burden for such entities, deciding on the particular case within the scope of its appellate jurisdiction, the Constitutional Court is restricted in its decision-making process in the manner specified in paragraph 9 of the present Decision. When the courts issued their decisions, clearly basing them on the relevant provisions of the Law on Enforcement Procedure which do not provide for the possibility that a valid document in terms of that law represents a document which is determined as a valid document by other law, the Constitutional Court holds that the appellants' arguments that their allegations are well-founded could not have led to a different solution of this legal matter, having regard to Article 25 of the Law on Public Broadcasting System.

• **Decision on Admissibility No. AP 3742/08 of 29 April 2009, paragraph 11;**
bills as valid documents

[...] The fact that the appellant pointed out to his attorney's omissions does not raise an issue of the right to a fair trial as the appellant could have revoked his power of attorney given to that attorney and engaged another one when he noticed the omissions in his

actions. The Constitutional Court, therefore, holds that the appellant's allegations on the violation of rights under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention are manifestly (*prima facie*) ill-founded.

- **Decision on Admissibility No. AP 451/07 of 15 April 2009, paragraph 10**

[...] The Constitutional Court, also, notes that the ordinary courts based the challenged decisions on the fact that the appellant failed to prove that her late husband or she entered into contract on use of the disputed apartment on the basis of the defendant's decision pursuant to Article 11 of the Law on Housing Relations. Furthermore, the courts indisputably established that the disputed apartment was the defendant's business premises which was redecorated as the housing facility and allocated to the appellant's husband as a temporary accommodation, and that it has never become an „apartment” in terms of the Law on Housing Relations. The Constitutional Court notes that the courts issued the challenged decisions through the application of the relevant provisions of the Law on Housing Relations giving sufficient and clear reasons. On the basis of aforementioned, the Constitutional Court holds that there is nothing in the particular case to indicate that the substantive regulations have been arbitrarily or unfairly applied to the appellant's detriment. The appellant does not offer any evidence or arguments indicating the procedural unfairness in terms of Article 6(1) of the European Convention, and her dissatisfaction by the challenged decisions does not invoke, in itself, the issues relating to the right to a fair trial.

- **Decision on Admissibility No. AP 2746/06 of 29 April 2009, paragraph 11**

[...] The Constitutional Court recalls that the Cantonal Court, confirming the correctness of the first instance court's decision on the application of substantive law on the statement of appeal relating to the interruption of statute of limitations, pointed out that an excerpt from the list submitted to the court as evidence that the defendant failed to fulfil its obligation, cannot be considered as an acknowledgement of debt in terms of Article 387 of the Law on Obligations as the excerpt represents a statement that the remuneration was not paid and not the acknowledgement of debt given in the form stipulated in the above Article.

- **Decision on Admissibility No. AP 884/07 of 22 October 2009, paragraph 9 – leading decision; *business books excerpt; acknowledgement of debt;***

- **Decision on Admissibility No. AP 3815/08 of 21 July 2010, paragraph 16**

In relation to the statements of appeal on the violation of the right to work, the Constitutional Court notes that this right is guaranteed by Article 6 of the International Covenant on Economic, Social and Cultural Rights (1996) which is applicable in Bosnia and Herzegovina under Annex I to the Constitution of Bosnia and Herzegovina. The Constitutional Court points out that these provisions provide for the „opportunity to gain his living by work which he freely chooses or accepts”. As to the appellant's allegations in respect of the violation of this right, the Constitutional Court notes that the appellant is a legal entity, and, as such, it cannot refer to the violation of right to work which in its essence and under the provisions of the International Covenant on Economic, Social and Cultural Rights represents an individual right to which only natural persons can refer. Such conclusion follows from Article 2 of the International Covenant on Economic,

Social and Cultural Rights which guarantees that the rights enunciated in the present Covenant *will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*. This follows from Article 3 of the Covenant which stipulates that: „The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.” In view of the aforementioned, the Constitutional Court considers that the appellant cannot claim in the particular case to be a „victim” of the violation of the right to work safeguarded by Article 6 of the International Covenant on Economic, Social and Cultural Rights (1996).

- **Decision on Admissibility No. AP 3356/08 of 21 December 2010, paragraph 10;** *revocation of the violation of the right to work by a legal entity*

[...] The Constitutional Court recalls that it cannot consider the allegations on the violation of right to a trial within reasonable time unless at least some phase of proceedings did not involve a judicial proceedings which have to be initiated by the party. This is not the case here. On the other hand, in such cases the issue may arise as to the right of access to a court as the decisions before Cantonal Commissions for Implementation of Article 143 of the Labour Law are the requirement for institution of the civil proceedings. Thus, the final decision of the Cantonal Commission may be subject of review in the civil proceedings before an ordinary court if a party initiated such proceedings. In the present case, the appellant’s request for reinstatement of her employment status was dismissed because of lack of requirements by the Cantonal Commission’s Decision no. 06-1981/00 of 4 September 2008. By the Decision no. 06-1981/00 of 11 November 2008, her appeal was rejected as untimely. The appellant has not challenged these decisions before the competent Federal Commission, and, consequently, she did not met the requirements for judicial proceedings, thus, depriving herself, by her own actions, of the possibility for the Constitutional Court to consider the issue of possible violation of the right of access to court because of the length of proceedings before the competent commissions. The Constitutional Court, therefore, considers that the appeal is manifestly (*prima facie*) ill-founded.

- **Decision on Admissibility No. AP 1295/08 of 11 January 2011, paragraph 9;**
- **Decision on Admissibility No. AP 382/08 of 11 January 2011, paragraph 10;** *length of proceedings before the Commission for Implementation of Article 143*

As to the non-competence to take a decision

The Constitutional Court is not competent to review the decisions of the Human Rights Chamber for Bosnia and Herzegovina.

- **Decision No. U 13/01 of 31 August 2001**

The Constitutional Court is not competent to review the CRPC’s decisions. Moreover, the Constitutional Court does not see any reason why it would treat this case any differently than in accordance with its case-law. Moreover, the Constitutional Court outlines that that in the instant case, the Ministry of Defense of the Federation filed a claim with the

CRPC to review the decisions in question and that the CRPC has not decided the claim yet and that there is no conclusion on the eviction by the competent housing authority, whereby he was ordered to move out of the apartment.

- **Decision on Admissibility No. AP 223/04 of 17 March 2004**

In the instant case, the Constitutional Court finds it is not competent to decide the appeal lodged against information of the administrative authority, since it cannot be considered a judgment, at least not within the meaning of the words rendered by *any court in Bosnia and Herzegovina*, i.e. it cannot be considered a decision within the meaning of Article 15(3) of the Rules of the Constitutional Court.

- **Decision on Admissibility No. AP 141/04 of 29 September 2004**

The Constitutional Court is not competent to decide the case, since it follows from the case-file that the appellant did not intend to file an appeal with the Constitutional Court but an appeal against the decision on the plea of immunity within the competence determined by the provisions of the Constitution of the Federation of Bosnia and Herzegovina, which was mistakenly sent to the Constitutional Court due to an error in the legal remedy instruction.

- **Decision on Admissibility No. AP 617/04 of 29 September 2004, paragraphs 8 and 9**

The Constitutional Court is not competent to decide the appeal which was filed against a public vacancy announcement, since it cannot be considered a judgment rendered by *any court in Bosnia and Herzegovina*, i.e. it cannot be considered a decision within the meaning of Article 15(3) of the Rules of the Constitutional Court.

- **Decision on Admissibility No. AP 704/04 of 14 October 2004, paragraph 4**

The Constitutional Court is not competent to review the Decision of the CRPC to resolve the legal status relevant to such decision.

- **Decision on Admissibility No. AP 1206/05 of 15 June 2005, paragraph 4;**
- **Decision on Admissibility No. AP 1524/05 of 14 March 2006, paragraph 8;**
- **Decision on Admissibility No. AP 1827/05 of 20 October 2006, paragraph 8**

The Constitutional Court is not competent to take a decision upon the appeals lodged against the acts which have no status of a judgment or at least not to the same extent as those rendered by *any court in Bosnia and Herzegovina*, in other words those acts have no status of decisions within the meaning of Article 15(3) of the Rules of the Constitutional Court.

- **Decision on Admissibility No. AP 624/04 of 28 June 2005, paragraph 5; an administrative dispute concerning the change of purpose of agricultural land; the appeal is inadmissible due to the court's lack of jurisdiction to decide the matter, expiry of time limit, non-exhaustion of legal remedies, *ratione materiae* incompatibility with the Constitution**

The Constitutional Court has no appellate jurisdiction to assess whether a law or general act violates some of the appellants' constitutional rights.

- **Decision on Admissibility No. AP 666/04 of 13 September 2005, paragraph 4;** *the appellants have lodged an appeal against Articles 1 and 3 of the Law on Amendments to the Law on Privatization of state-owned Apartments claiming that the said law violates their right to non-discrimination; the appeal is inadmissible due to the Court's lack of jurisdiction to take a decision;*
- **Decision on Admissibility No. AP 905/08 of 4 September 2008, paragraph 4**

The Constitutional Court has no jurisdiction to review the decisions of the Commission for Real Property Claims of Displaced Persons and Refugees under Annex 7 of the Dayton Peace Agreement for the reason that the Commission is not to be considered a court of Bosnia and Herzegovina because it functions outside the standard judicial structure of Bosnia and Herzegovina.

- **Decision on Admissibility No. AP 736/04 of 17 November 2005, paragraph 6**

In the case at hand, the Constitutional Court is not competent to decide upon the appeal whereby no judgment of any court in Bosnia and Herzegovina is challenged, in other words whereby no decision is challenged within the meaning of Article 16(1) of the Rules of the Constitutional Court but the appeal is related to the request for assistance in rebuilding a family house devastated during the war.

- **Decision on Admissibility No. AP 2077/05 of 17 November 2005, paragraph 4**

Bearing in mind that the appellant has failed to state that he challenges the judgments of ordinary courts or to refer to violations of specific constitutional rights which he deems to have been violated but only expressed his dissatisfaction with the employer's conduct and then requested the payment of his severance package, the Constitutional Court interpreted this appeal as if the appellant had addressed the Constitutional Court directly seeking assistance in settling his claim for severance package to be paid by the former employer. In connection with the aforesaid, it is pointed out that according to Article VI(3)(b) of the BiH Constitution, the Constitutional Court is not authorized to provide such kind of assistance. Namely, the Constitutional Court shall have appellate jurisdiction over issues under this Constitution arising out of a judgment of any other court in Bosnia and Herzegovina.

- **Decision on Admissibility No. AP 1076/05 of 12 April 2006, paragraph 4**

The Constitutional Court has, *inter alia*, the jurisdiction under Article VI(3)(b) of the Constitution of Bosnia and Herzegovina according to which: „the Constitutional Court shall have appellate jurisdiction over issues under this Constitution arising out of a judgment of any other court in Bosnia and Herzegovina”. In this specific case, the Constitutional Court concludes that it is not competent to take a decision upon the appeal which does not challenge a judgment of any court in Bosnia and Herzegovina or a decision within the meaning of Article 16(1) of the Rules of the Constitutional Court.

- **Decision on Admissibility No. AP 1165/05 of 9 May 2006, paragraph 6;** *lodged against the decision of the Municipal Council;*
- **Decision on Admissibility No. AP 1337/05 of 12 September 2006, paragraph 7;** *lodged against a letter of the Mayor of the Municipality Velika Kladuša;*

- **Decision on Admissibility No. AP 1356/05 of 27 June 2006, paragraph 6;** *lodged against an act of the Cantonal Public Prosecutor's Office;*
- **Decision on Admissibility No. AP 1362/05 of 20 September 2006, paragraph 30;** *lodged against the Contract on Construction, Financing, Designing and Management*

The Constitutional Court recalls its jurisdiction under Article VI(3)(b) of the Constitution of Bosnia and Herzegovina according to which: *the Constitutional Court shall have appellate jurisdiction over issues under this Constitution arising out of a judgment of any other court in Bosnia and Herzegovina.* As to this specific case, the Constitutional Court considers that it is not competent to decide upon the appeal against the work of market inspectors since there is no judgment or a decision adopted by *any other court in Bosnia and Herzegovina* that could be challenged by the appeal.

- **Decision on Admissibility No. AP 2243/05 of 20 September, paragraph 3**

Bearing in mind that in the present case the CRPC decision has been challenged and that this decision was adopted after the Agreement of 20 May 2004 as it was the case with the previous decision of the Constitutional Court No. *AP 2633/05* of 12 April 2006, the Constitutional Court, following its earlier practice and the reasoning from the cited decision, concluded that it has no jurisdiction to take a decision.

- **Decision on Admissibility No. AP 1440/05 of 12 September 2006, paragraph 7;**
- **Decision on Admissibility No. AP 1604/05 of 20 September 2006, paragraphs 8 and 9;**
- **Decision on Admissibility No. AP 1882/05 of 13 October 2005, paragraphs 7 and 8;**
- **Decision on Admissibility No. AP 105/08 of 21 July 2010, paragraphs 16 and 17;** *length of proceedings before the CRPC*

Given the fact that the CRPC decisions are final and legally binding and that pursuant to the mentioned Agreement they have the same legal force as the decisions of former CRPC, it follows that the constitutional and legal status of the CRPC remained unchanged after 20 May 2004 and that it is the institution *sui generis* which cannot be considered a court in Bosnia and Herzegovina. Therefore, the Constitutional Court is not competent to review its decisions since the CRPC performs its duty outside the scope of standard judicial structure of Bosnia and Herzegovina.

- **Decision on Admissibility No. AP 2346/07 of 13 September 2007, paragraph 14**

As to the case where the appellant alleges that there was a violation of the provisions of the Constitution of Federation of Bosnia and Herzegovina, the Constitutional Court is not competent to take a decision on the lodged appeal since the said appeal, within the meaning of Article VI(3)(b) of the Constitution of Bosnia and Herzegovina, has not raised an issue „under this Constitution”.

- **Decision on Admissibility No. AP 1006/06 of 13 December 2007, paragraph 10**

The Constitutional Court has consistently underlined in its case-law that it is not competent to review decisions of the Human Rights Chamber and Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina. This legal position may also

be applied to the Constitutional Court's decisions rendered in the cases registered with the former Chamber („CH“-cases). Therefore, although, formally and legally, they are the decisions of the Constitutional Court, these decisions differ from „usual“ cases and decisions of the Constitutional Court in that they are treated under Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina, whereby the Constitutional Court acts under the special Rules of Procedure, and whereby the same case-law of the Constitutional Court applies to them as if they were decisions of the Chamber, i.e. of the Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina.

- **Decision on Admissibility No. AP 2479/07 of 25 January 2008, paragraph 12**

The Constitutional Court reminds of its jurisdiction referred to in Article VI(3)(b) of the Constitution of Bosnia and Herzegovina, according to which „the Constitutional Court shall also have appellate jurisdiction over issues under this Constitution, arising out of a judgement of any other court in Bosnia and Herzegovina“. According to the mentioned provisions, within the scope of its appellate jurisdiction, the Constitutional Court may consider the appeals filed against the judgement, that is, decision by which a certain proceedings was completed. Hence, it follows that in the appellate proceedings the Constitutional Court has no jurisdiction to consider whether certain law, that is, general enactment, in itself, violates some of the constitutional rights of the appellant.

- **Decision on Admissibility No. AP 905/08 of 4 September 2008, paragraph 4**

Unlike the situation when HJPC acts in a disciplinary proceeding that, under certain conditions and in accordance with the jurisprudence of the European Court of Human Rights and the Constitutional Court, has a character of the criminal proceedings, in the case at hand, the HJPC acted within the limits of its public law authority to ensure an independent and impartial judiciary in the procedure of appointing a judicial office holder, that is, annulling the decision on that appointment. Therefore, since its aim is to ensure the independent, impartial and professional judiciary as a whole, the decision in these proceedings according to its legal significance is not the same as the decision rendered in disciplinary proceedings against judges and prosecutors in which the individual disciplinary, i.e. criminal liability of the judicial office holder is to be determined in the proceedings for which the Constitutional Court has already established that it has the character of judicial decision-making. As regards this segment of its jurisdiction, the Constitutional Court holds that the HJPC is establishing professional and efficient judicial system and that the challenged decision is not the decision taken by the judicial authority, but the decision taken by an independent and autonomous authority of Bosnia and Herzegovina. Therefore, the Constitutional Court finds that in this case the HJPC did not act in the capacity of a tribunal, which is why the challenged decision has no character of the judgement. Therefore, the Constitutional Court concludes that it has no jurisdiction to decide on the appeal filed from the HJPC decision to annul the appointment of the appellant to the position of the prosecutor with the District Prosecutor's Office because it is not the decision that has a status of a judgment, at least not to the extent that „it has been rendered by any court in Bosnia and Herzegovina“, i.e. it has no status of a decision pursuant to Article 16(1) of the Rules of the Constitutional Court.

- **Decision on Admissibility No. AP 1091/07 of 14 April 2010, paragraphs 9 and 10**

The Constitutional Court has no appellate jurisdiction to consider the decision of the Constitutional Court of the Federation of BiH referring to abstract jurisdiction, that is, it has no jurisdiction to consider whether the decision by the entity constitutional court, by which a certain law or general enactment has been revoked/amended, violates certain constitutional rights of the appellant.

- **Decision on Admissibility No. AP 2391/07 of 27 November 2010, paragraph 13, published in the *Official Gazette of Bosnia and Herzegovina*, 48/11; modification of case-law from the case no. U 5/99 when it comes to decisions that the entity constitutional courts issued while assessing the constitutionality**

Withdrawal of appeal

As to the case where the appellant withdraws his appeal, that appeal shall be rejected as inadmissible.

- **Decision on Admissibility No. U 48/03 of 30 June 2004, paragraph 13**

Expiry of time-limit

By submitting a request for extraordinary mitigation of penalty and renewal of proceedings, which are ineffective legal remedies, the appellant lodged his appeal after the expiry of time limit specified under the Rules of Procedure of the Constitutional Court.

- **Decision on Admissibility No. U 20/03 of 17 March 2004, paragraph 9 *et seq.*;**
- **Decision on Admissibility No. AP 1053/05 of 28 June 2005, paragraphs 6 and 7;**
- **Decision on Admissibility No. AP 1091/05 of 14 March 2006, paragraphs 8 and 9**

A decision whereby a legal remedy was rejected for the reason that the appellant failed to comply with the formal requirements of legal remedy (time-limit, payment of fees, official form or fulfillment of other law requirements) cannot be considered a final decision. Using such a legal remedy shall not terminate the time limit of 60 days stipulated under Article 15(3) of the Rules of Procedure of the Constitutional Court.

- **Decision on Admissibility and Merits No. AP 407/04 of 23 July 2004, paragraph 14, published in the *Official Gazette of Bosnia and Herzegovina*, 43/04**

Pursuing an ineffective legal remedy shall not terminate the time limit of 60 days for lodging an appeal with the Constitutional Court.

- **Decision on Admissibility No. AP 532/04 of 23 July 2004, paragraph 12**

The requests for renewal of proceedings which were concluded by legally binding decisions do not constitute effective legal remedies, unless they have achieved success and resulted in the re-opening of the proceedings. Consequently, such requests do not terminate the time limit of 60 days for lodging an appeal with the Constitutional Court stipulated under Article 15(3) of the Rules of Procedure of the Constitutional Court (see Constitutional Court, Decision no. AP 49/03 of 17 March 2004; former European

Commission for Human Rights, judgment *G. vs. the Federal Republic of Germany*, Application no. E 10431/83 of 16 December 1983, Decisions and Reports (DR), no. 35).

• **Decision on Admissibility No. AP 723/04 of 15 June 2005, paragraph 10**

A rule on exhaustion of legal remedies requires that an appellant arrives at a final decision. A final decision represents a response to the last legal remedy used which is effective and adequate to examine a lower instance decision in both factual and legal aspects. A decision whereby a legal remedy has been rejected for the reason that the appellant has failed to meet the formal requirements (time-limit, payment of fees, form or fulfillment of other law requirements) cannot be considered a final decision. Pursuing such kind of legal remedy does not terminate the 60 days time-limit stipulated under Article 11(3) of the Rules of Procedure of the Constitutional Court. In the present case the appellant's revision petition was rejected as inadmissible and therefore it constituted an ineffective legal remedy. Accordingly, a final decision is the decision of the Cantonal Court. By submitting the revision petition which was subsequently rejected, the appellant has failed to lodge an appeal within the time limit stipulated under the Rules of the Constitutional Court.

- **Decision on Admissibility No. AP 910/05 of 28 June 2005, paragraphs 7, 8 and 9;**
- **Decision on Admissibility No. AP 1050/05 of 9 February 2006, paragraph 6;**
- **Decision on Admissibility No. AP 1051/05 of 9 February 2006, paragraphs 7 and 8;**
- **Decision on Admissibility No. AP 1068/05 of 12 April 2006, paragraphs 7 and 8**

In this specific case, the request for renewal of proceedings does not constitute an effective legal remedy which terminates the time-limit of 60 days for lodging appeal and which the appellant was not obliged to use prior to lodging the appeal. By submitting this request the appellant has failed to lodge the appeal within the time limit provided in the Rules of the Constitutional Court.

- **Decision on Admissibility No. AP 904/05 of 9 February 2006, paragraphs 9 and 10**

Article 16(1) of the Rules of the Constitutional Court, as a requirement for admissibility of appeal, stipulates an obligation for the appellant to file an appeal within a time-limit of 60 days as from the date on which the decision on the last legal remedy used was served on him/her. This time-limit of 60 days also applies filing supplements to the appeal. A supplement to the appeal filed after the expiry of the relevant time-limit will be accepted only under exceptional circumstances and it should be related to new legal circumstances that occurred after the expiry of the mentioned time limit. A possibility for filing a supplement to appeal should in no way be so widely interpreted as to imply that the appellant has a right to supplement his appeal all the time in relation to the same facts and the same challenged decisions while the proceedings conducted upon the appeal lodged with the Constitutional Court is pending and the time limit of 60 days has expired.

- **Decision on Admissibility and Merits No. AP 1426/05 of 9 November 2006, paragraph 49, published in the *Official Gazette of Bosnia and Herzegovina*, 11/07**

At the time of filing the appeal, there was a legally binding judgment rendered upon the appellant's lawsuit. Although the proceedings upon the revision petition of the defendant-counter-plaintiff is still pending, the Constitutional Court shall consider the appellant's allegations about the court's failure to adopt a decision within a reasonable time in relation to the proceedings which was conducted upon her lawsuit and then concluded by legally binding judgment of the Cantonal Court because the appellant only complains about that part of the proceedings. In a situation where the appellant complains about the violation of the right to a fair trial due to the court's failure to adopt a decision within a reasonable time and given the fact that prior to filing an appeal with the Constitutional Court there was a legally binding decision which was already adopted and delivered, the appeal shall be considered as timely appeal only if filed within the time limit stipulated under Article 16(1) of the Rules of the Constitutional Court.

• **Decision on Admissibility No. AP 1839/05 of 21 December 2006, paragraph 6**

Any formal co-litigant disposes of his/her claim independently and the competent court may take different decisions in regards to individual formal co-litigants. Accordingly, formal co-litigation is a legal mechanism, which is primarily aimed at conducting proceedings in compliance with the principle of cost-effectiveness. However, the said fact is not to be abused when it comes to pursuing legal remedies or to evade the prohibition to file a revision petition if a single or several interested parties have failed to meet the eligibility requirement relating to the amount of BAM 10,000. In other words, neither the plaintiff nor the defendant should take the advantage of the fact that in the case at hand they have brought a single action as formal co-litigants, i.e. that a single lawsuit has been launched by the formal co-litigants against the defendant. If the plaintiffs had acted independently which was procedurally possible, then neither the individual plaintiffs nor the defendants would have been entitled to file a revision petition.

• **Decision on Admissibility No. AP 2683/07 of 14 February 2008, paragraph 7**

A revision petition in civil proceedings is an effective legal remedy provided that the appellant has met all requirements prescribed by law (Decision of the Constitutional Court No. *AP 1121/04* of 13 October 2005, paragraph 21). In that case a time-limit of 60 days for filing an appeal starts running from the day of receiving the decision on revision. *A contrario*, if the revision is not admissible, the appellant is obliged to address the Constitutional Court within 60 days from the day of receiving the second-instance decision, i.e. the legally binding judicial decision (Decision of the Constitutional Court no. *AP 2684/06* of 5 June 2007, paragraph 10). Taking into account an exception provided for under Article 237(3) of the Law on Civil Proceedings according to which the Supreme Court of the Republika Srpska may allow revision in all cases, including those in which the requirement of financial means test was not met, the appellant has a possibility to address the Constitutional Court by filing an appeal within 60 days from receiving the final second instance court decision, but he/she may also file a revision petition but in that case he/she is obliged to inform the Constitutional Court. The Constitutional Court shall reject the appeal as premature because if the Constitutional Court would take a decision before the revision decision by the Supreme Court is adopted that might lead to a prejudiced opinion about the issue arising from the filed revision. However, upon

the adoption of the revision decision, regardless of the type and reasons of that decision, the appellant may file an appeal again, in which, as stipulated under Article 19(3) of the Rules of the Constitutional Court, he/she is obliged to make a note in the appeal form regarding this decision of the Constitutional Court, i.e. in item 8.a) titled „Other Decisions” (Decision of the Constitutional Court no. *AP 106/06* of 23 February 2006, paragraph 9).

- **Decision on Admissibility No. AP 2579/06 of 3 April 2008, paragraph 6**

Unauthorized person

The appeal shall be deemed to be filed by an unauthorized person if filed by persons who did not take part in the proceedings which was concluded by the judgment challenged before the Constitutional Court.

- **Decision on Admissibility No. AP 624/04 of 28 June 2005, paragraph 10;** *an administrative dispute which was related to the change of of purpose of agricultural land; the appeal is not admissible due to the lack of jurisdiction of the court to take a decision, expiry of time-limit, non-exhaustion of legal remedies, ratione materiae incompatibility with the Constitution*

In the case at hand, the appellant challenges the judgment of the Basic Court which was adopted in the criminal case against defendant T.B. due to criminal offence of money laundering under Article 280(3) and criminal offence of falsification of documents under Article 377(1) of the Criminal Code of the Republika Srpska. So, by the challenged decisions the relevant proceeding has not been completed in regards to determination of criminal charge against the appellant but against other person, and therefore the appeal is rejected as inadmissible for the reason that it was filed by an unauthorized person.

- **Decision on Admissibility No. AP 1215/05 of 9 February 2006, paragraph 10**

Based on the documents submitted with the appeal, it follows that the enforcement proceedings was conducted upon the motion of L.B., E.K., and E.M. in their capacity as enforcement creditor and that the appellant had no capacity as a party to the proceedings, neither did she take part in the enforcement proceedings which was concluded by issuance of the ruling of the Municipal Court which was subsequently challenged by this appeal. Bearing in mind the above mentioned facts, it is undisputable that the appellant is not a person authorized to challenge the mentioned decision since this decision did not deal with her rights or obligations.

- **Decision on Admissibility No. AP 1191/05 of 27 June 2006, paragraph 5**

The issue which had already been decided on by the Constitutional Court

In its decisions nos. *AP 624/04* of 28 June 2005 and *AP 1617/05* of 20 October 2006 respectively, the Constitutional Court resolved the appeals in which the appellant challenged the same decisions that have been challenged in this appeal. Therefore, the Constitutional Court concluded that the matter was related to the same issues the

Constitutional Court had already decided on and it follows that the allegations and evidence presented in the appeal cannot be the basis for taking a new decision.

- **Decision on Admissibility No. AP 1384/07 of 12 June 2008, paragraph 8**

Abuse of the right to an appeal

The appellant filed his appeal on 3 October 2005. This was following his receipt of the referenced decision of the Commission for Human Rights for Bosnia and Herzegovina on 28 April 2005. The said decision dealt with his request for payment of his old foreign currency savings. The challenged decisions of the ordinary courts dealing with the same issue do not change the very essence of the matter and the instant case concerns the same proceedings. Accordingly, the Commission has already discussed the issue of violation of the mentioned appellant's rights and adopted decisions on admissibility and merits in this regard. The Commission also established that there was a violation of the appellant's right to peaceful enjoyment of his property from Article 1 of Protocol No. 1 to the European Convention and violation of the right to a fair trial from Article 6(1) of the European Convention. Therefore, the appellant abused his right to file an appeal.

- **Decision on Admissibility No. AP 2060/05 of 20 September 2006, paragraphs 10 and 11**

Having in mind that the appellants failed to lodge the request with the Supreme Court for judicial protection against the Customs Administration's Ruling 02/1-2 no. P/II-134/03 of 25 June 2003 although, according to the delivered decision of the Constitutional Court no. *U 19/00*, they had a knowledge that it represents an effective legal remedy and that there is obligation of the Supreme Court to take a decision regardless of the relevant provisions of the Law on Minor Offences, the Constitutional Court concluded that, given the circumstances of this case, the appellants abused their right to file an appeal.

- **Decision on Admissibility No. U 157/03 of 25 June 2007, paragraph 18**

In the instant case, after the adoption of the judgment of the Supreme Court, the appellant has transferred the ownership right over the real estate in question to his father by concluding the Gift Agreement and thus he managed to make the enforcement of the Supreme Court's judgment difficult because the Constitutional Court, based on the facts that have been purposely concealed by the appellant, adopted the Decision on Interim Measure whereby it postponed the enforcement of the challenged judgment. Therefore, it follows that the meaning and the purpose of the appeal was to obstruct the proceedings not only before the Constitutional Court but also before the Basic Court in the course of the enforcement proceedings and not to refute the constitutionality of the challenged judgment of the Supreme Court and protection of the constitutional rights of the appellant. This definitely constitutes abuse of the right to file an appeal. In view of the aforesaid, the Constitutional Court recalls that it is not called upon to review the merits of appeals which have been filed by means of abusing the „the right to file an appeal” because that would require unnecessary work which is incompatible with its real function (see, *mutatis mutandis*, Decision on Admissibility of the former European

Commission for Human Rights in case *M. vs. the United Kingdom*, Application no. 13284/87 of 15 October 1987).

• **Decision on Admissibility No. AP 1001/06 of 13 September 2007, paragraphs 12 to 14**

The Constitutional Court notes that the first appellant, as a notary who processed documents enclosed to the motion for the registration of change in the court's register for the second appellant, as the subject of registration entry, filed his appeal first with the second instance court and subsequently the appeal with the Constitutional Court on his own behalf as well stating that the challenged rulings have also violated his constitutional rights. In this connection, the Constitutional Court observes that the first appellant has previously lodged the appeals with a request for protection of his constitutional rights with the Constitutional Court on his behalf in the same factual and legal situations, where he, as notary, processed documents in the proceedings in which he did not have the role of a party but acted as notary within the scope of his public authority. Given that, in the relevant cases, the first appellant was not a party to the proceedings before the ordinary courts, the Constitutional Court rejected the appeals as lodged by unauthorised person in accordance with provisions of Article VI(3)(b) of the Constitution of Bosnia and Herzegovina and Article 16(1) and (4)(5) of the Rules of the Constitutional Court (see the Constitutional Court, Decisions on Admissibility nos. *AP 413/12* of 23 February 2012 and *AP 4414/10* of 8 December 2010, available on www.ustavnisud.ba). As the first appellant is familiar with the case-law of the Constitutional Court and obviously has not been lodging the appeals for the protection of his own constitutional rights, the appellant's actions in the aforementioned manner do not indicate the existence of actual intent to exercise the protection of his constitutional rights in the appellate proceedings before the Constitutional Court. The Constitutional Court holds that such a behaviour of the appellant creates an additional unnecessary work for the Constitutional Court which is incompatible with its real function of the human rights protection of the appellants (see, *mutatis mutandis*, Decision on Admissibility of the former European Commission for Human Rights in case *M. vs. the United Kingdom*, Application no. 13284/87 of 15 October 1987). Accordingly, the Constitutional Court concludes that the first appellant abused the right to appeal.

• **Decision on Admissibility No. AP 698/13 of 10 April 2014, paragraphs 6 and 7**

Change of legal circumstances

The fact that the Decision of the Constitutional Court No. *U 68/02* was adopted in the interim and that the mentioned provisions of the Law on Excise Tax and Turnover of Goods were declared unconstitutional was the reason for the Constitutional Court to conclude that the legal circumstances have changed in relation to the situation at the time of filing the appeal. Taking into account the mentioned decision of the Constitutional Court and Articles 67 and 68 of the Rules of the Procedure of the Constitutional Court, the appellant had a possibility to address the administrative body as an issuer of the challenged ruling and request this body to modify its act which was passed based on the procedure arising from the provisions of law which were declared unconstitutional, in which case the competent body is obliged to renew the proceedings and harmonize its act with the decisions of the Constitutional Court.

- **Decision on Admissibility No. AP 376/04 of 12 April 2005**

The Constitutional Court concludes that in the interim the legal circumstances have changed considering that the Cantonal Commission adopted a ruling whereby the status of appellant as a laid-off employee was established. This ruling was delivered to the appellant on 17 June 2004. This no longer concerns the same legal matter that was valid at the time of filing the appeal, when the appellant complained that the Cantonal Commission was not willing to adopt a ruling on his appeal.

- **Decision on Admissibility No. AP 411/04 of 18 May 2005**

In the interim, as of the date on which the appeal was filed, the Commission adopted a decision. The appellant filed the respective appeal due to the fact that the Commission has failed to adopt a decision. Accordingly, the conclusion is made that the legal circumstances have changed in relation to the situation at the moment of filing the appeal.

- **Decision on Admissibility No. AP 946/05 of 9 May 2006, paragraph 5**

The appellant addressed the Constitutional Court because the Cantonal Commission was delaying adoption of a decision whereby the appellant's employment status would be resolved. Given the fact that in the interim the Cantonal Commission adopted the ruling whereby the appellant's employer was ordered to regulate her employment status in accordance with Article 143 of the Labor Law, the legal circumstances have changed and therefore there was no point in further consideration of the appellant's allegations stated in the appeal.

- **Decision on Admissibility No. AP 1186/05 of 9 May 2006, paragraph 6**

In view of the fact that modification of legislative solution relating to the regulation of the issue of the ownership right registration over the apartments purchased from the category of the so called nationalized and confiscated apartments transpired after the submission of appeal, the Constitutional Court concluded in the aforementioned decision, referring to the information of the Cantonal Court of 8 January 2009, that the modification of the competent ordinary courts' conduct occurred as regards the appellants' requests in such manner that the ordinary courts decided on the merits of their requests, and that in the present case the modified legal circumstances have arisen for which any further consideration of the allegations of this appeal became redundant.

- **Decision on Admissibility No. AP 3229/08 of 17 September 2009; registration of the ownership right over the purchased apartments falling in the category of the so called nationalized and confiscated apartments**

The appeal is *ratione materiae* incompatible with the Constitution of BiH

The essence of the right acquired by the first appellant does not constitute an economic value within the meaning of Article 1 of Protocol No. 1 to the European Convention, but only a possibility for designating an employee whose social status will be resolved by the owner's subsequent allocation of the apartment.

- **Decision on Admissibility No. U 69/03 of 19 April 2004, paragraph 18**

When the appellant invokes an alleged violation of the Constitution of the Republika Srpska without referring to any of the provisions of the Constitution of Bosnia and Herzegovina or the European Convention for the Protection of Human Rights and Fundamental Freedoms which he deems to have been violated, the appeal shall be rejected as inadmissible for being *ratione materiae* incompatible with the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility No. U 73/03 of 23 April 2004, paragraph 8;**
- **Decision on Admissibility No. AP 1264/06 of 11 March 2008, paragraph 17;**
- **Decision on Admissibility No. AP 2001/06 of 14 July 2008, paragraph 14**

Given the fact that the first instance judgment granted the appellant's claim and that the challenged second instance judgment dismissed the defendant's complaint against the first instance judgment as ill-founded and the first instance judgment was upheld, it is evident that the appellant's reply to the complaint of the defendant was not necessary in regards to the protection and exercise of his rights in the instant dispute. Accordingly, his claim relating to the compensation for expenses incurred by drafting a reply to the complaint is not guaranteed under Article II(3)(k) of the Constitution of Bosnia and Herzegovina, Article 6(1) of the European Convention and Article 1 to Protocol No. 1 to the European Convention.

- **Decision on Admissibility No. U 76/03 of 28 April 2004, paragraph 9**

The text of Article 6 of the European Convention and the relevant case-law of the European Court of Human Rights provides for, *inter alia*, the right of access to a court, but it does not provide for a possibility to lodge a complaint with a higher court after the decision on the relevant legal matter has been taken by an independent and impartial tribunal. Accordingly, Article 13 of the European Convention does not oblige a state to ensure a possibility of lodging a complaint with a higher court in order to establish whether there was a violation of the rights under the European Convention (see former European Commission for Human Rights, Decision on Admissibility No. 10153/82 of 13 October 1986, Decisions and Reports 49, 67). In such cases Article 13 of the European Convention does not provide for additional protection other than the one provided for by Article 6 of the European Convention.

- **Decision on Admissibility No. AP 547/03 of 26 August 2004**

The appeal is *ratione materiae* incompatible with the Constitution since the subject of appeal is related to the right to acquire an apartment and not to the interference with an already acquired right.

- **Decision on Admissibility No. AP 803/04 of 23 March 2005, paragraph 6**

The Constitutional Court has no jurisdiction to examine the alleged violations of Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 of the European Convention in the proceedings where the appellant, a public office holder, complains about the decision of the Council on Termination of Term of office. It follows that the

appellant's allegations are *ratione materiae* incompatible with the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility No. AP 121/04 of 22 April 2005**

A dispute between the public authority and employees, whose work positions include participation in the exercise of powers relating to public law, does not require application of Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 of the European Convention.

- **Decision on Admissibility No. AP 422/04 of 18 May 2005, paragraph 12;**
- **Decision on Admissibility No. AP 354/04 of 15 June 2005, paragraph 10;**
- **Decision on Admissibility No. AP 423/04 of 15 June 2005, paragraph 9;** *decision of HJPC on rejecting the re-election of judge, decision of HJPC on termination of term of office*

As to the instant case, the appellant had expectations that he would become the owner of the property through inheritance. Therefore it follows that the appeal referring to the Ruling of the Inheritance Court in regards to a violation of the right to the property under Article II (3)(k) of the Constitution of Bosnia and Herzegovina and Article 1 to Protocol No. 1 to the European Convention is *ratione materiae* incompatible with the Constitution of Bosnia and Herzegovina.

- **Decision on the Merits No. AP 1113/04 of 13 September 2005, paragraph 14, published in the *Official Gazette of Bosnia and Herzegovina*, 17/06;**
- **Decision on Admissibility No. AP 2250/05 of 9 November 2006, paragraph 8;**
- **Decision on Admissibility No. AP 2259/05 of 20 October 2006, paragraph 13;** *future property*

An appeal shall be deemed to be *ratione materiae* incompatible with the Constitution if the appellant complains about the violation of right to a home and the fact is that she has never lived in the apartment.

- **Decision on Admissibility No. AP 690/04 of 13 October 2005, paragraph 8**

There is no interference with the appellant's right to respect for home since the appellant complains of being unable to exercise his right to alternative accommodation after being evicted from the apartment in which he lived in as temporary user. Given the circumstances of this case, Article 8 of the European Convention is not applicable since the provision of this Article generally protects the right to respect for home which the appellant does not have in the instant case within the meaning of Article 8 of the European Convention.

- **Decision on the Merits No. AP 899/05 of 14 March 2006, paragraph 29, published in the *Official Gazette of Bosnia and Herzegovina*, 17/06**

Given the fact that the appellant's request for alternative accommodation was rejected for the reason that the request has failed to meet the requirements stipulated under the relevant law, the appellant could not have had „legitimate” expectations that he would exercise the desired right because it was established that the requirements stipulated by

the relevant law on alternative accommodation were not met. Therefore, in the instant case no violation of the right to property from Article 1 of Protocol No. 1 to the European Convention could have occurred and therefore the appellant's allegations concerning this part of the appeal are *ratione materiae* incompatible with the Constitution of Bosnia and Herzegovina.

- **Decision on the Merits No. AP 899/05 of 14 March 2006, paragraph 30, published in the Official Gazette of Bosnia and Herzegovina, 17/06**

When the appellant did not move into the apartment allocated to him based on the ruling of the apartment's owner and the apartment was subsequently allocated to some other person, the subject of dispute before ordinary courts was not the appellant's property since the appellant was not the occupancy right holder over the apartment in question. Therefore, in the instant case, Article II(3)(k) of the Constitution of Bosnia and Herzegovina and Article 1 of Protocol No. 1 to the European Convention cannot be applied.

- **Decision on Admissibility No. AP 1035/05 of 12 April 2006, paragraph 8**

The subject of dispute before ordinary courts is the annulment of the defendant's decision on adoption of final candidate list for allocation of apartments. The apartment which might be allocated to the appellant for his use does not constitute the appellant's property. Such an apartment may eventually constitute a prospective property since the appellant may acquire the right to be allocated the apartment by application of the relevant defendant's Rule Book. However, the right to acquire an apartment upon the allocation of the holder of disposal right is not protected by the Constitution of Bosnia and Herzegovina and European Convention because the mentioned provision provides no protection for the „future” property and therefore this part of the appeal is *ratione materiae* incompatible with the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility No. AP 1419/05 of 27 June 2006, paragraph 16**

The issuance of work permit to an alien is not only in direct connection with the right of an alien to stay in Bosnia and Herzegovina but the said issue is to be resolved within an administrative procedure to be conducted based on the relevant public authority's margin of appreciation and in accordance with the special Law on Employment of Aliens. In view of the aforesaid, the allegations of the appeal about violation of the right to a fair trial are *ratione materiae* incompatible with the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility No. AP 1427/05 of 27 June 2006, paragraphs 9 and 10;**
- **Decision on Admissibility No. AP 1428/05 of 12 September 2006, paragraph 9**

As to the instant case, a conclusion is not to be drawn that there is interference with the appellant's home because he has never set up a home but just submitted a request for issuance of ruling that would grant him a right to construct an additional floor on the facility which represents a collective housing unit. The constructed floor might eventually become his home, that is his property, and therefore his allegations about the violation of the right to property and right to home are *ratione materiae* incompatible with the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility No. AP 2129/05 of 20 September 2006, paragraph 11**

The appellant's allegations about the violation of his right to property due to the Court's refusal to award him the appeal fee, which he has never paid, are *ratione materiae* incompatible with the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility No. AP 2178/05 of 20 October 2006, paragraph 11**

By the challenged judgments the appellant's request for repossession of the apartment was not granted for the reason that the she has never moved into the disputed apartment and she has never concluded the contract on use of the apartment. Accordingly, the subject of the administrative proceedings and administrative dispute is not the appellant's property because the appellant was not the occupancy right holder over the disputed apartment and the above referenced apartment cannot be considered her „property” within the meaning of Article II(3)(k) of the Constitution of Bosnia and Herzegovina and Article 1 of Protocol No. 1 to the European Convention and thus it cannot enjoy the protection provided for by the mentioned provisions.

- **Decision on Admissibility No. AP 1785/05 of 21 December 2006, paragraph 10**

The appeal is *ratione materiae* incompatible with the Constitution of BiH in relation to the allegations about the violation of Article II(3)(f) of the Constitution of BiH and Article 8 of the European Convention because the appellant has never moved into the disputed apartment and this fact was indisputably established by the administrative bodies and ordinary courts. Therefore, it is obvious that Article 8 of the European Convention cannot be applied to this case since the appellant has never lived in the disputed apartment and the apartment has never been her „home” within the meaning of Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention.

- **Decision on Admissibility No. AP 1785/05 of 21 December 2006, paragraph 9;**

- **Decision on Admissibility No. AP 1825/05 of 21 December 2006, paragraph 11**

The appellant referred to the provisions of the Constitution of the Federation of Bosnia and Herzegovina but failed to refer to the provisions of the Constitution of Bosnia and Herzegovina and European Convention for the Protection of Human Rights and Fundamental Freedoms that he deems to have been violated by the challenged decision of the Constitutional Court of the Federation of Bosnia and Herzegovina. Universal Declaration of Human Rights is not a legally compulsory agreement and has no constitutional law status in Bosnia and Herzegovina. It follows that the Universal Declaration of Human Rights and the provisions of the Constitution of Federation of Bosnia and Herzegovina he referred to, are not applicable to the instant case. Therefore, the appeal is *ratione materiae* incompatible with the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility No. AP 1931/05 of 16 January 2007, paragraph 6**

The provisions of the Constitution of Bosnia and Herzegovina and the European Convention are applicable only to the proceedings where the subject of dispute is property and not the proceedings where an appellant attempts to ensure that he has the right to acquire the property. In the case at hand, the subject of dispute before ordinary

court is the compensation for non-pecuniary damages, which means the „future” property. Accordingly, Article II(3)(k) of the Constitution of Bosnia and Herzegovina is not to be applied in the instant case nor Article 1 of Protocol No. 1 to the European Convention. Therefore, a conclusion follows that this part of the appeal is *ratione materiae* incompatible with the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility No. AP 969/05 of 16 January 2007, paragraph 16**

In the case at hand, the subject of dispute before ordinary courts is the amount of money awarded to the appellant for the costs of representation which is less than expected by the appellant. In connection with this, the Constitutional Court points out that Article II(3)(k) of the Constitution of Bosnia and Herzegovina and Article 1 of Protocol No. 1 to the European Convention only protects the existing possessions and not the right to acquire the possessions (see European Court of Human Rights, *Marckx*, judgment of 13 June 1979, Series A-31). The Constitutional Court recalls of a position of the European Commission for Human Rights according to which a request relating to the tariff for public notary service may be considered „property” only if such a conclusion is reached in the instant case based on the services that were indeed provided and based on the existing tariff regulations (see European Commission for Human Rights, *X vs. the Federal Republic of Germany*, 1979). In the instant case the appellant failed to prove in the court proceedings that her claim is based on the valid Attorney’s Fees. Therefore, the Constitutional Court considers that neither Article II(3)(k) of the Constitution of Bosnia and Herzegovina nor Article 1 of Protocol No. 1 to the European Convention are to be applied to the instant case. Therefore, it follows that that this part of the appeal is *ratione materiae* incompatible with the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility No. AP 926/06 of 9 May 2007, paragraph 18**

The proceedings in which the appellant appears as plaintiff seeking protection from alleged slander, which implies that the claim was not directed against the appellant with regards to his manner of expression, does not concern the appellant’s right to freedom of expression and therefore the appellant’s allegations in relation to violation of Article II(3)(h) of the Constitution of Bosnia and Herzegovina and Article 10 of the European Convention must be dismissed as *ratione materiae* incompatible with the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility and Merits No. AP 90/06 of 6 July 2007, paragraph 18, published in the *Official Gazette of Bosnia and Herzegovina*, 77/07**

The Constitutional Court considers that the appellant’s belief that she would be successful in her claim for the repossession of nationalized property, regardless of the fact that the decision on nationalization of the disputed land has never been annulled as an individual act by the decision of the competent body, does not constitute a „legitimate expectation „within the meaning of Article 1 of Protocol No. 1 to the European Convention since the „legitimate expectation” must be more specific than a mere hope for the restitution and must be based on the legal provisions or on certain legal act. Therefore, the Constitutional Court accordingly concludes that the applicant has not shown that she had a claim which was sufficiently established to be enforceable, and she therefore cannot argue that she

had a „possession” within the meaning of Article 1 of Protocol No. 1 to the European Convention (op.cit, decision *Gratzinger*, paragraph 74), for which reason the appellant’s allegations about the violation of the right to property do not fall within the scope of the mentioned provision, but they are rather *ratione materiae* incompatible with the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility No. AP 2361/06 of 10 January 2008, paragraph 10;**
- **Decision on Admissibility No. AP 2655/06 of 11 March 2008, paragraph 10**

The Constitutional Court concludes that pursuant to the provisions of valid laws the prison sentences exceeding three years cannot be the subject of the proceedings in which the sentence would be removed (Article 125(7) of the FBiH Criminal Code). Therefore, the appellant’s allegations that his right to a fair trial was violated during the proceedings at hand must be rejected as *ratione materiae* incompatible with the Constitution of Bosnia and Herzegovina. Accordingly, given that this case does not concern the *determination of civil rights and obligations or grounds for any criminal charge*, it follows that the appellant’s allegations about violation of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention in regards to the procedure of deleting the prison sentence from the criminal record is *ratione materiae* incompatible with the Constitution of Bosnia and Herzegovina. Furthermore, as to the appellant’s allegations that ordinary courts violated his right to freedom of movement and residence while conducting the procedure of deleting the prison sentence from the criminal record, it follows that no decision was to be taken on the appellant’s right to freedom of movement and residence and therefore, even when it comes to the alleged violation of rights under Article II(3)(m) of the Constitution of Bosnia and Herzegovina and Article 2 of Protocol No. 4 to the European Convention, the appeal is to be deemed as *ratione materiae* incompatible with the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility No. AP 2258/06 of 3 April 2008, paragraphs 10 and 11**

As to the challenged rulings of the Supreme Court whereby the appellant’s motion for hearing the protected witness was rejected as inadmissible and untimely, it is concluded no deliberation was conducted on the lawfulness of deprivation of liberty, i.e. on the grounds for the appellant’s detention, but on the procedural admissibility of the appellant’s motion. The accessory proceedings within the criminal proceedings is not related to the rights guaranteed under Article II(3)(d) of the Constitution of Bosnia and Herzegovina and Article 5 of the European Convention. Therefore, the appellant’s allegations must be rejected as *ratione materiae* incompatible with the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility No. AP 615/08 of 3 April 2008, paragraph 9**

The appellant, i.e. the Chamber of Commerce of the Republika Srpska, as an organization established *ex lege*, is not entitled to protection under Article 11 of the European Convention.

- **Decision on Admissibility No. AP 1435/06 of 12 June 2008, paragraph 8**

Given the fact that the appellant did not refer to the violation of the right to an effective legal remedy and that he failed to submit evidence or point to the facts based on which a conclusion could be made that the case falls within the scope of the provisions of the European Convention, the Constitutional Court concludes that the appeal is *ratione materiae* incompatible with the Constitution of Bosnia and Herzegovina (see, the Constitutional Court, for example *AP 1047/07* of 26 June 2007, paragraph 26).

- **Decision on Admissibility No. AP 1652/08 of 4 September 2008, paragraph 9**

Article 179(3) of the Law on the Service in the Armed Force of Bosnia and Herzegovina provides that *administrative dispute [...] shall not be conducted against the act relating to [...] termination of service of professional military person*. Thus, taking into account that in the instant case the military persons are explicitly excluded from having access to court and that the state, by regulating this issue, has used its „discretionary right” in the course of defense reform, both requirements for the exclusion of appellants, as civil servants, from the protection provided for under Article 6(1) of the European Convention have been met in the instant case.

- **Decision on Admissibility No. AP 1765/08 of 17 September 2008, paragraph 10;**
- **Decision on Admissibility No. AP 1986/10 of 29 June 2010, paragraph 10**

The Constitutional Court notes that the challenged judgements issued by the ordinary court on the basis of Article 431 of the Criminal Procedure Code of FBiH and the Agreement between Serbia and Montenegro and Bosnia and Herzegovina on the mutual enforcement of foreign judicial decisions in criminal procedures, in the present case do not fall under the scope of Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention.

- **Decision on Admissibility No. AP 56/09 of 25 October 2011, paragraph 20**

- **Procedures not dealing with the „determination of civil rights and obligations” in the context of Article 6 of the ECHR**

According to the presented opinions, the procedure in which the appellant is obliged to pay the customs and other duties does not fall within the scope of the protection of the right to a fair trial within the meaning of Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention. Therefore, the appeal is *ratione materiae* incompatible with the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility No. AP 382/04 of 23 March 2005, paragraph 6**

The procedure of payment of duties arising from tax (public) law does not fall within the scope of rights guaranteed under Article 6, paragraph 1 of the European Convention.

- **Decision on Admissibility No. AP 529/04 of 12 April 2005, paragraph 6; obligation of payment of public revenues; appeal is *ratione materiae* incompatible with the Constitution of BiH**

The procedure relating to cashing in on the property of the debtor for the purpose of settling accounts of the creditors does not in any way concern the appellants' „civil rights and obligations” as creditors since they tried to acquire the property through applying for the tender, which is not to be considered a „civil right or obligation” and therefore it does not fall within the scope of Article 6(1) of the European Convention.

- **Decision on Admissibility No. AP 914/04 of 12 April 2005, paragraph 12; bankruptcy proceedings**

Deciding the issues of movement and stay of aliens falls exclusively within the competence of state authorities and it cannot be associated with the concept of „civil rights and obligations” as protected under Article 6 of the European Convention.

- **Decision on Admissibility No. AP 244/05 of 9 February 2006, paragraph 7**

The decision of Municipal Council to allocate the construction land in accordance with the existing criteria to the appellant's neighbor by direct settlement for the purpose of extending the courtyard, that decision constitutes an act of land disposal since the appellant has been renting that land for more than ten years. Therefore, in the instant case there is no „determination of the appellant's civil rights and obligations”. As to the procedure against the challenged judgment in which the appellant challenges the mentioned decision on allocation of land to the neighbor, the conclusion is made that he is not entitled to the protection within the meaning of the mentioned constitutional right. Therefore, the appeal is *ratione materiae* incompatible with the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility No. AP 1038/05 of 14 March 2006, paragraphs 6 and 7**

According to the position of the European Court of Human Rights, the right of an alien to settle in a certain country falls within the domain of public law of each country. If a certain country, even on temporary basis, has denied the right of stay in to an alien for the reasons stipulated by law, that is to be considered an act of the state which falls within the scope of its public legal domain and it does not enjoy the protection of Article 6 of the European Convention as „civil right or obligation”. Therefore, although such a decision may have certain effect on the appellant's civil rights and obligations, the respective state shall not be required to ensure a public hearing in such case neither would it be required to meet other requirements set out in Article 6 of the European Convention.

- **Decision on Admissibility No. AP 1189/05 of 12 April 2006, paragraph 8**

The procedure in which the appellant, as a state authority, was ordered to conduct a new vacancy announcement procedure after the previous procedure had been annulled because of being unlawfully conducted, is not a procedure in which some of the appellant's civil rights and obligations were determined. Article II(3)(e) of the Constitution of Bosnia and Herzegovina is not applicable in the instant case, and therefore the appeal is *ratione materiae* incompatible with the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility No. AP 1929/05 of 12 September 2006, paragraph 6**

Civil rights and obligations are not to be determined in the procedure which concerns managing the main hearing. In the view of the aforesaid, the outcome of such a procedure

is not decisive for determination of civil rights and obligations. Article 6(1) of the European Convention is not applicable to the case at hand and the appeal is rejected as inadmissible for it is *ratione materiae* incompatible with the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility No. AP 2160/05 of 20 October 2006, paragraphs 9 and 10**

In his appeal, the appellant complains of the violation of Article 6 of the European Convention for he considers that the decision on annulment of appellant's decision dealing with appointment of a candidate to the fireman's position should have been taken in the course of administrative dispute and not in the course of civil proceedings. Given that Article 6 of the European Convention guarantees that „in the determination of his civil rights and obligations [...] everyone is entitled to a fair and public hearing [...]”, and in this specific case the rights the appellant complains to have been violated do not fall within the scope of „civil rights and obligations” within the meaning of Article 6 of the European Convention.

- **Decision on Admissibility No. AP 2104/05 of 9 November 2006, paragraph 17**

The civil rights and obligations are not to be determined in the procedure of issuance of documents from the collection of land registry documents.

- **Decision on Admissibility No. AP 299/07 of 3 April 2008, paragraph 6**

The Constitutional Court is of the opinion that in the procedure in which the ordinary courts were deciding the appellant's motion for the annulment of the „validity clause”, the decision was not taken on the determination of the appellant's rights and obligations within the meaning of Article 6 paragraph 1 of the European Convention. Namely, in the proceedings at hand, the ordinary courts were merely resolving the procedural issues concerning the fulfillment of requirements for annulment of validity clause. Therefore, the outcome of that procedure cannot be decisive for determination of civil rights and obligations.

- **Decision on Admissibility No. AP 459/08 of 12 June 2008, paragraph 8**

The Constitutional Court concludes that in the proceedings at hand, which has the characteristics of dispute arising from the election process, the decision was not taken on the appellant's civil rights and obligations but it is rather that the decision was taken on his political rights. Given that the guarantees from Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6, paragraph 1 of the European Convention are not applicable to the proceedings in question, the Constitutional Court concludes that the appeal is *ratione materiae* incompatible with the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility No. AP 3593/08 of 18 December 2008, paragraph 10**

The electoral disputes relating to the elected officials are outside of the civil and criminal scope of Article 6(1) of the European Convention.

- **Decision on Admissibility No. AP 2418/06 of 18 December 2008; *conflict of interest***

The Constitutional Court holds that no applicant's civil rights or obligations were not decided upon in the relevant proceedings but on the legality of decision issued by the appellant (the Assembly of the Brčko District of Bosnia and Herzegovina) within the scope of authorities stemming from its position of the legislative power holder. Therefore, the appellant's allegations on the violation of the right to a fair trial must be rejected as *ratione materiae* incompatible with the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility No. AP 3080/11 of 23 September 2011, paragraph 15**

■ Enforcement proceedings

An appeal is *ratione materiae* incompatible with the Constitution where a challenged decision, which has been adopted in the course of enforcement proceedings, does not relate to new and special determination of civil rights in relation to the decision adopted in the civil proceedings.

- **Decision on Admissibility No. AP 939/04 of 13 October 2005, paragraph 12**

The decisions that are adopted in the course of enforcement of legally binding judgment are not relating to a new and special determination of civil rights in the case where the appellant has failed to present a relevant fact in the civil proceedings which could then lead to different outcome of that civil proceedings. It is because presenting that fact in the enforcement proceedings could not and it did not lead to new and special determination of the appellant's rights in relation to the civil proceedings.

- **Decision on Admissibility No. AP 1075/04 of 17 November 2005, paragraph 7;**
enforcement proceedings; the appeal is ratione materiae incompatible with the BiH Constitution

The challenged ruling on enforcement was adopted on the basis of the Order requesting the return of items and therefore it is not an act of the court which was adopted as a result of „determination of grounds for criminal charge” against the appellant *in the criminal proceedings* because the said proceedings was terminated 8 years prior to adoption of the mentioned order. Also, the order on return of items is not a result of proceedings in which „civil rights and obligations” would be determined within the meaning of Article 6(1) of the European Convention. Therefore, the ruling on enforcement which was adopted based on the Order not arising from the criminal or civil proceedings does not fall within the scope of Article 6(1) of the European Convention.

- **Decision on Admissibility No. AP 895/05 of 9 February 2006, paragraphs 16 and 18;**
- **Decision on Admissibility No. AP 1135/05 of 27 June 2006, paragraph 9;**
- **Decision on Admissibility No. AP 1236/05 of 13 June 2006, paragraph 10;**
- **Decision on Admissibility No. AP 1336/05 of 20 October 2006, paragraph 9**

■ Renewal of proceedings

There will be no guarantees for the protection of constitutional rights and primarily procedural rights such as those from Article 6 of the European Convention, in the course of proceedings in which the appellants pursue non-effective legal remedies because the issues from the substantive domain of individual constitutional rights cannot be resolved in those proceedings in an effective manner.

- **Decision on Merits No. AP 945/04 of 20 December 2005, paragraph 27, which was published in the *Official Gazette of Bosnia and Herzegovina*, 43/06;**
- **Decision on Admissibility No. AP 1517/05 of 14 March 2006, paragraph 8;**
- **Decision on Admissibility No. AP 1159/05 of 12 April 2006, paragraphs 7 and 8;**
- **Decision on Admissibility No. AP 1480/05 of 9 November 2006, paragraph 9**

■ Issuance of an interim measure/security measure

An interim measure shall not prejudice a main decision in any way. An interim measure ceases to have effect after the adoption of the main decision. It regulates the interim legal position of the appellant until the main proceedings is concluded. Accordingly, no civil rights of the appellant are to be determined for the purpose of Article 6 of the European Convention in the proceedings of adoption of ruling on interim measure. In view of the aforesaid, this part of the appeal where the Constitutional Court was requested to review the constitutionality of the ruling must be rejected as inadmissible for it is *ratione materiae* incompatible with the European Convention.

- **Decision on Admissibility and Merits No. AP 207/02 of 26. August 2004, published in the *Official Gazette of Bosnia and Herzegovina*, 48/04;**
- **Decision on the Merits No. AP 743/04 of 17 November 2005, paragraph 40, published in the *Official Gazette of Bosnia and Herzegovina*, 17/06**

■ Restoration to original condition (*restitutio in integrum*)

The procedure of *restitutio in integrum* does not fall within the scope of Article 6 of the European Convention since it does not involve the proceedings for determination of the civil rights and obligations but rather a decision on whether the formal requirements have been met for restoration to original condition. Therefore, this part of the appeal is *ratione materiae* incompatible with the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility No. AP 1954/05 of 16 January 2007, paragraph 7**

■ Procedure of registration into the court register

No decision was taken on the appellants' civil rights and obligations in the course of the procedure of erasing the final entry from the court register which concerns the foreign founders' joining the company, increase of basic capital, erasing of some activities

within the company's internal business transactions, registration of persons authorized to represent the company, as well as all other subsequent registrations of changes brought in the court register, which are based on the erased registration. In other words, that procedure was not decisive for the appellants' private rights and obligations.

- **Decision on Admissibility No. AP 2460/08 of 14 October 2008, paragraph 11**

■ Instigating criminal proceedings against third parties

The Constitutional Court notes that the Criminal Procedure Code provides for the right of an injured party to participate in the proceedings since he is „a person whose personal or property right has been violated or endangered by criminal offence (Article 139(1) (6)). However, this right is not protected by Article 6 of the European Convention. In view of the aforesaid, the Constitutional Court concluded that this part of the appeal is *ratione materiae* incompatible with the Constitution of Bosnia and Herzegovina and taking into account the provisions of Article 16(2)(9) of the Rules of Procedure of the Constitutional Court, this part of the appeal is also inadmissible.

- **Decision on Admissibility and Merits No. AP 12/02 of 19 April 2004, paragraphs 21, 22 and 23, published in the *Official Gazette of Bosnia and Herzegovina*, 40/04**

The appeal is *ratione materiae* incompatible with the Constitution in the event the appellant complains of adoption of judicial decision within reasonable time in the proceedings in which the appellant takes part in his capacity as an injured and not as an accused person.

- **Decision on Admissibility No. AP 688/04 of 17 February 2005, paragraph 10**

An appeal is *ratione materiae* incompatible with the Constitution in the event the appellant complains about judicial decisions whereby the decisions were taken on the appellant's accusations against third persons, in other words if the appellant does not complain about judicial decisions relating to his culpability.

- **Decision on Admissibility No. AP 560/04 of 28 June 2005, paragraph 14; *the institution of criminal proceedings against third persons due to violation of employment rights***

The opposite interpretation of Article 6 of the European Convention, according to which a right to a fair trial would also be guaranteed to a person seeking determination of grounds for criminal accusation against other person, would exceed the linguistic scope of interpretation of Article 6 of the European Convention.

- **Decision on the Merits No. AP 949/04 of 17 November 2005, paragraphs 47 and 48;**
- **Decision on Admissibility No. AP 1221/05 of 9 February 2006, paragraphs 11 and 12;**
- **Decision on Admissibility No. AP 1104/05 of 12 April 2006, paragraph 7;**
- **Decision on Admissibility No. AP 1304/05 of 27 June 2006, paragraph 12**

■ Not a criminal charge

By rendering the challenged rulings, the Court of Bosnia and Herzegovina has taken over the criminal case *ex officio* from the County Court in Trebinje and the decision was taken to resume the criminal proceedings against the appellant in accordance with the Criminal Procedure Code of Bosnia and Herzegovina. Accordingly, there is no dispute that in this stage of the proceedings no decision on the grounds for the criminal charge against the appellant was to be taken within the meaning of Article 6, paragraph 1 of the European Convention, and therefore that provision is not applicable to the case at hand and the appeal is rejected as *ratione materiae* incompatible with the Constitution of Bosnia and Herzegovina.

• Decision on Admissibility No. AP 2094/05 of 17 November 2005, paragraph 6

The appellant's allegations with regards to the proceedings for the postponement of execution of criminal sanction are not relating to determination of grounds for any criminal charges against him, in which case the examination of the alleged violation of rights the appellant refers to, would fall within the scope of Article 6 of the European Convention. In this case Article II(3)(e) of the Constitution of Bosnia and Herzegovina provides no wider scope of protection. It follows that the appellant's allegations of the violation of the right to a fair trial are incompatible *ratione materiae* with the Constitution of Bosnia and Herzegovina.

• Decision on Admissibility No. AP 2054/05 of 17 November 2005, paragraph 7

The procedure of sending a person to a solitary confinement cell after a disciplinary measure being pronounced is not a procedure in which criminal charge is to be established for the purpose of Article 6 of the European Convention. Therefore, the appeal is incompatible *ratione materiae* with the Constitution of Bosnia and Herzegovina.

• Decision on Admissibility No. AP 2076/05 of 9 November 2006, paragraph 13

■ No protection provided for by the Constitution of BiH and ECHR

The right to „engage in work and pursue a freely chosen profession as prescribed by law”, does not exist in the Constitution of Bosnia and Herzegovina and European Convention.

• Decision on Admissibility No. AP 750/04 of 9 December 2004, paragraph 4

■ Procedure of recognition of a foreign judicial decision

The procedure in which a decision is to be taken about whether legal requirements have been met for recognition of a foreign decision, without a decision on the merits of the case, is not a procedure falling within the scope of Article 6 of the European Convention or Article No. 1 to Protocol No. to this Convention.

• Decision on Admissibility No. U 16/03 of 17 March 2004, paragraph 16;

• Decision on Admissibility No. AP 1199/05 of 9 May 2006, paragraph 8

■ Divorce

The rights and freedoms provided for under the European Convention for the Protection of Human Rights and Freedoms and its Protocols are directly applicable in Bosnia and Herzegovina. Article II, paragraph 3 of the Constitution of Bosnia and Herzegovina lists the catalogue of rights for all persons in the territory of Bosnia and Herzegovina which, within the meaning of the said provision, does not include the right to divorce.

- **Decision on Admissibility No. AP 136/02 of 15 June 2004, paragraph 5**

Appeal is incompatible *ratione personae* with the Constitution of BiH

Contrary to the previous case-law that the issue concerns appeals which are incompatible *ratione personae* with the BiH Constitution, the conclusion was made that the European Convention provides for a minimum of protection regarding the human rights and freedoms, while the BiH Constitution provides for the wide range of protection. In view of the aforesaid and taking into account the fact that the Constitution of Bosnia and Herzegovina does not contain precise provisions on the functioning of state bodies, the Constitutional Court considers that it is necessary that this court changes its current judicial practice and allows the state bodies to file appeals in accordance with the Rules of Procedure of the Constitutional Court.

- **Decision on Admissibility and Merits No. AP 39/03 of 27 February 2004, paragraphs 12 to 15, published in the *Official Gazette of Bosnia and Herzegovina*, 19/04**

Bosnia and Herzegovina is not *ratione personae* responsible for the payment of old foreign currency savings in relation to the Ljubljanska Bank d.d. Ljubljana, Main Branch Office Sarajevo and Invest Bank Beograd and Bosnia and Herzegovina cannot be held responsible for the payment of old foreign currency savings to the appellants since those obligations occurred in the territory of other states. It follows that the appeals are *ratione personae* incompatible with Article VI(3)(b) of the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility No. AP 164/04 of 1 April 2006, paragraph 68, published in the *Official Gazette of Bosnia and Herzegovina*, 49/06; *old foreign currency savings***

There is no responsibility on the part of Bosnia and Herzegovina and Federation of Bosnia and Herzegovina with regards to the payment of old foreign currency savings which were deposited at the Investbanke Beograd and the Jugoslovenske izvozne i kreditne banke Beograd (*Yugoslav Export Credit Bank Belgrade*) because the appeal is incompatible *ratione personae* with the Constitution of Bosnia and Herzegovina.

- **Decision on the Merits No. AP 498/05 of 27 June 2006, paragraph 10, published in the *Official Gazette of Bosnia and Herzegovina*, 77/06**

An appeal is incompatible *ratione personae* with the Constitution in the case where the appellant appears before the Cantonal Public Prosecutor's Office and the facts of the case indicate that the issue does not concern the property owned by the appellant but rather the state-owned capital.

- **Decision on Admissibility No. AP 929/06 of 17 April 2008, paragraph 8;** *the proceeding for establishing the nullity of the contract on purchase of apartment for which the appellant, who is a legal representative of the Canton, claims to be the property of the Republic of Bosnia and Herzegovina (state-owned capital)*

The Constitutional Court has no jurisdiction to review the decisions of courts outside Bosnia and Herzegovina. Accordingly, the appeal lodged against the decision of the European Court of Human Rights incompatible *ratione personae* with the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility No. AP 2815/07 of 14 July 2008, paragraph 7**

The Constitutional Court considers that in the case at hand, Bosnia and Herzegovina had no positive obligation to provide for the appellant an effective legal remedy to make compensation for damage caused by an international organisation with special status, in particular in cases where such a legal remedy is provided through the international organization, i.e. its insurer. The Constitutional Court considers that in this specific case Bosnia and Herzegovina cannot be held responsible for making compensation for damage caused to the appellant while she was in the UNHCR vehicle, neither could Bosnia and Herzegovina be held responsible for providing special legal remedy in such cases. Therefore, the appeal is inadmissible *ratione personae*.

- **Decision on Admissibility No. AP 1898/06 of 26 February 2009, paragraph 11**

The Constitutional Court has no jurisdiction to examine decisions of an authority not falling under the responsibility of Bosnia and Herzegovina. Therefore, an appeal filed against the decision of the High Representative, i.e. the act of the United Nations Organisation is incompatible *ratione personae* with the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility No. AP 3879/08 of 15 April 2009, paragraph 14;** *appeal filed against the supervisory order of the Supervisor for Brčko;*
- **Decision on Admissibility No. AP 1424/07 of 16 July 2009, paragraph 6**

The Constitutional Court refers to explicit provision under Article VI(3)(b) of the Constitution of BiH, according to which: *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* and it is indisputable that it has jurisdiction to deal with appeals because the appeal challenges the decisions of the courts in Bosnia and Herzegovina, whereby the decision was taken with regards to the employment status of the appellant. However, given that the challenged decisions were taken solely on the basis of the decision of the High Representative in respect of which the European Court of Human Rights concluded that Bosnia and Herzegovina has no responsibility, the Constitutional Court concludes that the appeal is incompatible *ratione personae* incompatible with the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility No. AP 680/07 of 13 May 2009, paragraph 13;** *termination of employment upon the decision of the High Representative*

Relatives of the victims of violations of human rights must provide evidence that sufferings they are exposed to due to violation of human rights of their relatives exceed, by its scope and intensity, the emotional stress, which the relatives of the victims of the alleged violation of human rights are exposed to. Unless they provide evidence in this regard, their application will be rejected as incompatible *ratione personae* with the European Convention (see, the European Court of Human Rights, *Onay vs. Turkey*, judgement of 20 September 2007, paragraphs 23 and 24).

- **Decision on Admissibility No. AP 595/07 of 17 September 2009, paragraph 9;** *in the instant case the appellant failed to provide documents showing that her son was exposed to inhuman treatment due to which the appellant, as his close relative, was be exposed to suffering which, by its scope and intensity, exceeds normal suffering of the alleged victims of violation of human rights*

Bosnia and Herzegovina has no responsibility with regards to the IPTF Commissioner's decision, whereby the appellant was temporarily removed from performing police duties and that decision was adopted within the mandate of United Nations Mission in Bosnia and Herzegovina. Therefore, the appeal is incompatible *ratione personae* with the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility No. AP 2746/09 of 11 February 2016, paragraph 10;**
- **Decision on Admissibility No. AP 2894/09 of 11 February 2010, paragraph 12**

The appeal is *ratione temporis* incompatible with the Constitution of BiH

The Constitutional Court has no jurisdiction to consider the issues that occurred prior to the entry into force of the Constitution of Bosnia and Herzegovina. However, the Constitutional Court has jurisdiction to consider the facts relating to the events preceding the entry into force of the Constitution of Bosnia and Herzegovina for the purpose of obtaining the necessary information.

- **Decision on Admissibility and Merits No. AP 752/04 of 18 January 2005, paragraph 20, published in the *Official Gazette of Bosnia and Herzegovina*, 44/05;** *payment of war-time salaries*

Having regard to its responsibilities, the Constitutional Court has no *ratione temporis* competence to take a decision on whether the events that occurred prior to the entry into force of the Constitution of BiH, *i.e.* prior to 14 December 1995, are in violation of the human rights. The ruling in dispute, which is the subject of the appellant's appeal, was adopted on 1 March 1995, which means that it is related to the event which occurred prior to 14 December 1995. It follows that the appeal relating to the referenced ruling on termination of employment status is *ratione temporis* incompatible with the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility No. AP 147/04 of 23 March 2005, paragraph 6**

The Constitutional Court has no *ratione temporis* competence to examine the statements concerning the nationalization process which was conducted prior to the entry into force of the Constitution of Bosnia and Herzegovina, *i.e.* prior to 14 December 1995 (see European Court of Human Rights, *Jasiūnienė vs. Lithuania*, Judgment of 6 March 2003, Application No. 41510/98, paragraph 38).

- **Decision on Admissibility No. AP 2361/06 of 10 January 2008, paragraph 9**

As to the case at hand, the appellants requested an official investigation into the circumstances of death and information about the person who is to be held responsible for the death of their family member. They also requested the perpetrators to be punished in accordance with the law. However, the investigation has not been initiated so far. Therefore, the alleged violations are deemed to be continuous and the Constitutional Court has *ratione temporis* competence to take the appeal into its consideration.

- **Decision on Admissibility and Merits No. AP 1107/06 of 27 February 2008, paragraph 22, published in the *Official Gazette of Bosnia and Herzegovina*, 27/08; *failure of state authorities to conduct investigation into the circumstances surrounding the death of the appellants' son***

The same proceedings had been initiated before the Human Rights Chamber

The appellant lodged an appeal with the Constitutional Court seeking compensation for the damage caused to his family during the World War II. In connection with the above, the Constitutional Court notes that the appellant also addressed the Chamber/Commission with regards to the same issue and that a final and legally binding decision on admissibility was adopted, Decision No. CH/03/14198 of 4 October 2004. In view of the aforesaid, the Constitutional Court concluded that the appeal is inadmissible since the appellant had previously initiated the same proceedings before the Human Rights Chamber/Commission.

- **Decision on Admissibility No. AP 408/08 of 13 May 2008, paragraph 4**

The appeal is not amended/specified

Upon the request of the Constitutional Court to amend/specify his appeal, the appellant's legal representative has just repeated the general statements from the appeal without making reference to the appellant's rights under the Constitution of Bosnia and Herzegovina which he deems to have been violated and failing to submit the evidence on which the appellant based his appeal.

- **Decision on Admissibility No. U 7/03 of 23 April 20004, paragraph 6**

As to the case at hand, the appeal did not contain the necessary elements from Article 19(2)(1) and (2) of the Rules of the Constitutional Court and the appellants failed to

amend/specify their appeal within the given time/limit thus causing the appeal to be rejected as inadmissible.

- **Decision on Admissibility No. AP 902/05 of 12 April 2006, paragraphs 5 and 6;**
- **Decision on Admissibility No. AP 964/05 of 12 April 2006, paragraph 4**

Appeal is premature

An appeal is deemed to be premature if it is lodged against the decision adopted in the course of enforcement proceedings while the proceedings on admissibility of enforcement is pending before the competent Municipal Court.

- **Decision on Admissibility No. U 28/03 of 17 May 2004, published in the *Official Gazette of Bosnia and Herzegovina*, 41/04, paragraph 7**

Pursuant to the Civil Procedure Code (Article 364), even though according to the domestic legislation the revision is classified as extraordinary legal remedy, the effects that it may produce on the parties to the proceedings, if deemed to be admissible, are the reason for classifying it within the category which is at the same level as ordinary legal remedies. Accordingly, with the aim of meeting the formal requirements under Article 15 paragraph 3 and Article 16 paragraph 2 of the Rules of the Procedure of the Constitutional Court, the exhaustion of this remedy is required as well. As to the case at hand, the proceedings are pending before the Supreme Court of the Federation of Bosnia and Herzegovina upon the request for revision-appeal.

- **Decision on Admissibility No. U 78/03 of 25 June 2004, paragraph 13;**
- **Decision on Admissibility No. AP 1134/05 of 18 May 2005, paragraphs 8 and 9;**
- **Decision on Admissibility No. AP 969/05 of 28 June 2005, paragraph 6**

The appeal is considered premature if the appellant's case, after the proceeding upon the complaint before the Supreme Court, is remitted to the court of first instance for the renewal of proceedings.

- **Decision on Admissibility No. AP 616/04 of 9 December 2004, paragraph 7**

The appeal is considered premature if the subject of challenge by the appeal is the ruling which does not constitute a „final decision on the appellant's civil rights and obligations”, i.e. which does not constitute a final decision on the appellant's claim

- **Decision on Admissibility No. AP 650/04 of 28 June 2005, paragraph 6**

As to the appellant's allegations relating to the right to a fair trial, the appeal is deemed to be premature since the Ruling of the Court of BiH on extending the appellant's prison sentence, which is challenged by this appeal, is not a decision that would represent a result of an entire criminal proceedings against the appellant but rather the said proceedings are in the stage of repeated presentation of evidence, which means that the proceedings has not been concluded yet.

- **Decision on the Merits No. AP 252/05 of 12 April 2006, paragraph 25, published in the *Official Gazette of Bosnia and Herzegovina*, 49/06**

- **Decision on the Merits No. AP 542/05 of 14 March 2006, paragraph 24, published in the *Official Gazette of Bosnia and Herzegovina*, 57/06;**
- **Decision on Admissibility No. AP 2162/05 of 17 November 2005, paragraph 14**

In the case at hand, the appeal is deemed to be premature for it is lodged prior to adoption of the decision of the Supreme Court on revision-appeal. After the adoption of the decision on revision-appeal, regardless of the type and reasons for that decision, the appellant has a possibility to lodge an appeal again, in which he is obliged to refer to this decision of the Constitutional Court under item 8(a) of the appeal form titled „other decisions” as stipulated under Article 19(3) of the Rules of the Constitutional Court.

- **Decision on Admissibility No. AP 909/05 of 12 April 2006, paragraph 9;**
- **Decision on Admissibility No. AP 1277/05 of 27 June 2006, paragraph 10**

In the instant case, the appellant lodged the appeal with the Cantonal Ministry of Housing Affairs in Sarajevo against the challenged ruling of the Administration. According to the allegations from the appeal, the Cantonal Ministry of Housing Affairs in Sarajevo has not adopted the decision on the complaint yet. Therefore, the appeal is premature.

- **Decision on Admissibility No. AP 1077/05 of 18 May 2005, paragraph 8**

In the case at hand, upon the motion of the Institution for Parental Rights Revocation, the appellate proceeding against the appellant is pending before the Municipal Court. Thus, the appeal is premature.

- **Decision on Admissibility No. AP 1278/05 of 13 July 2005, paragraph 7**

The proceeding initiated by the appeal is pending before the Cantonal Court, which received the lawsuit for resolution of administrative dispute. Therefore, it follows that the appeal is premature.

- **Decision on Admissibility No. AP 1302/05 of 13 September 2005, paragraph 6;**
- **Decision on Admissibility No. AP 2075/05 of 12 September 2006, paragraph 10**

In the instant case the appellants have failed to initiate any proceedings in which they would arrive at a final judgment, in other words a decision that could be the subject of review by the Constitutional Court. Therefore, the appeal is deemed to be premature.

- **Decision on Admissibility No. AP 2106/05 of 17 November 2005, paragraph 6**

Bearing in mind the consistent case-law of the European Court of Human Rights and its own prevailing case-law, the Constitutional Court finds that the challenged decision of the Court of BiH is not a decision which in any of its parts constitutes an outcome of the entire criminal proceeding against the appellant within the meaning of establishing well-foundedness of criminal charge against them, because in the challenged decisions only procedural issues have been resolved, i.e. the decision was made with regards to the well-foundedness of previous remarks of the appellant against the criminal charge, including the issue of subject-matter jurisdiction. Given that the proceeding of establishing well-foundedness of „the criminal charge” against the appellant within the meaning of Article 6 paragraph 1 of the European Convention is in progress before the Court of BiH, it follows that the appeals are premature.

- **Decision on Admissibility No. AP 785/08 of 31 January 2009, paragraph 29;** *subject-matter jurisdiction, examination of the right to a fair trial with regards to the issue of subject-matter jurisdiction in cases where criminal proceeding has not been completed yet;*
- **Decision on Admissibility No. AP 894/09 of 30 May 2009, paragraph 10**

Non-exhaustion of legal remedies

Given that the appeal filed against the first instance ruling was not timely, the appeal could not be taken into consideration for the reason that the requirement of exhaustion of all effective legal remedies available under law was not met.

- **Decision on Admissibility No. U 21/03 of 23 March 2004, paragraph 4;**
- **Decision on Admissibility No. AP 1181/05 of 13 June 2006, paragraphs 7 and 8**

As to the case where the ordinary courts rejected the lawsuit as untimely and did not take a decision on the merits of the case, there are no legal presumptions for consideration of the appeal because the appellant, as stipulated in the rules on exhaustion of legal remedies, did not arrive at decision that could be considered final and against which an appeal may be lodged with the Constitutional Court.

- **Decision on Admissibility No. U 92/03 of 17 March 2004, paragraph 8;**
- **Decision on Admissibility No. AP 1247/05 of 20 December 2005, paragraphs 10 and 11;**
- **Decision on Admissibility No. AP 1295/05 of 27 June 2006, paragraph 6;**
- **Decision on Admissibility No. AP 1473/05 of 12 September 2006, paragraph 9**

The appellant has failed to use a lawful opportunity to file a revision-appeal against the challenged judgment of the Cantonal Court as provided for under Article 26 of the Law on Non-Contentious Proceedings. Therefore, the appellant could have filed the revision-appeal and failed to do so. Accordingly, the requirement of exhaustion of legal remedies available under law for the appeal to be examined has not been met.

- **Decision on Admissibility No. U 29/03 of 19 April 2004, paragraph 12;** *non-contentious proceedings for determination of occupancy right holder;*
- **Decision on Admissibility No. AP 1141/05 of 9 May 2006, paragraph 6**

By failing to file a complaint within the ordinary minor offence proceedings, the appellant has failed to pursue effective legal remedies available under law.

- **Decision on Admissibility No. AP 687/04 of 29 September 2004, paragraph 8**

An appeal failed to meet the requirement of exhaustion of legal remedies available under law if the appellants did not comply with the time-limit for filing a complaint against the ruling of the first instance administrative body and if, after the adoption of the ruling of the second instance administrative body, they failed to initiate an administrative dispute... A lawsuit in administrative dispute against final rulings of administrative bodies shall be

deemed to be an effective legal remedy and the said remedy must be exhausted prior to filing an appeal.

- **Decision on Admissibility No. AP 565/04 of 9 December 2004, paragraph 7**

As to the instant case, the appellant's motion for enforcement has been dismissed as unspecified, *i.e.* the formal requirements on legal remedies have not been met. Therefore, the challenged ruling cannot be considered a final decision and the appellant has failed to exhaust all legal remedies available under law.

- **Decision on Admissibility No. AP 355/04 of 23 March 2005**

The requirement of exhaustion of legal remedies is not to be deemed to have been met if the appellant has failed to initiate administrative dispute due to the fact that the decision on complaint was not adopted within a legally prescribed time limit.

- **Decision on Admissibility No. AP 683/04 of 23 March 2005, paragraph 6**

As to the case at hand, by following a wrong legal remedy instruction, the appellant filed a lawsuit with the Court of Bosnia and Herzegovina against the referenced ruling as a final administrative act. However, an effective legal remedy available to the appellant was a lawsuit before the competent ordinary court for the purpose of initiating the employment dispute. The appellant should not bear the consequences of wrong legal remedy instruction which was given in the referenced ruling. However, the fact that such an instruction was given cannot justify establishing a subject-matter jurisdiction of the Court of Bosnia and Herzegovina for resolution of this specific case. As a rule, in the event of incorrect legal remedy instruction in decisions that may be challenged by some of the prescribed legal remedies, the interested parties shall be under the obligation to pursue the prescribed legal remedies and not those given in the wrong legal remedy instruction. Accordingly, the appellant was under the obligation to file a lawsuit before the competent ordinary court for the purpose of initiating the employment dispute.

- **Decision on Admissibility No. AP 309/04 of 12 April 2005, paragraph 12**

In the instant case the appellant challenges the ruling of the Federal Commission for Implementation of Article 143 of the Labor Law against which he could have filed a lawsuit before the competent municipal court as stated in the legal remedy's instruction of the challenged ruling. However, this legal remedy was not used by the appellant and it appears that a requirement of exhaustion of available legal remedies has not been met and therefore the appeal could not be considered.

- **Decision on Admissibility No. AP 970/05 of 18 May 2005, paragraph 7**

In the instant case the appellant challenges the ruling of the Administration against which it was possible to lodge a complaint to the second instance administrative body – to the Cantonal Ministry. Since the appellant did not arrive at a final decision that could be a subject of review by the Constitutional Court but lodged the appeal against the first instance ruling, it follows that the requirement of exhaustion of available legal remedies has not been met and thus the appeal could not be considered.

- **Decision on Admissibility No. AP 1071/05 of 18 May 2005, paragraph 8;**

- **Decision on Admissibility No. AP 1287/05 of 20 October 2006, paragraph 6**

The appellants stated that they were deprived of the opportunity to repossess their real properties since those properties were devastated during the war and that they sustained both pecuniary and non-pecuniary damage. It follows from the appeal and attached documents that the appellants have failed to initiate any proceedings for the purpose of being compensated for the damage, in accordance with positive legal regulations, in order to be able to arrive at decision that could be challenged before the Constitutional Court. In other words the appellants have failed to pursue the effective legal remedies available under law within the meaning of Article 16(1) of the Rules of the Constitutional Court.

- **Decision on Admissibility No. AP 1303/05 of 13 September 2005, paragraph 4;**
- **Decision on Admissibility No. AP 965/05 of 12 April 2006, paragraph 5;**
- **Decision on Admissibility No. AP 1254/05 of 27 June 2006, paragraph 4;**
- **Decision on Admissibility No. AP 1633/05 of 12 September 2006, paragraph 6**

The appellant's request for protection of individual rights and freedoms in relation to the ruling of the Ministry dated 1 July 2005 has been rejected by the challenged ruling and an explanation was given that the appellant was granted judicial protection because she could have initiated the administrative dispute. So, as to the principle referred to in the preceding paragraph of this decision, the appellant failed to comply with formal requirements of this legal remedy and she did not reach a final decision that could be the subject of review by the Constitutional Court. In view of the aforesaid, as to this part of the appellant's allegations, the conclusion was made that the appellant failed to pursue an effective legal remedy within the meaning of Article 16(1) of the Rules of the Constitutional Court.

- **Decision on Admissibility No. AP 2111/05 of 16 January 2006, paragraph 8**

As to the case at hand, the appellant failed to file a lawsuit against the ruling of Federal Commission in accordance with the provisions of the Law on Administrative Disputes in order to arrive at a decision on the merits of the case for the purpose of protection of her rights. Therefore, given the fact that the requirement of exhaustion of all legal remedies available under law was not met, the appeal cannot be considered.

- **Decision on Admissibility No. AP 1475/05 of 9 February 2006, paragraph 5;**
- **Decision on Admissibility No. AP 898/05 of 12 April 2006, paragraph 5**

In the instant case, the appellant complains about non-enforcement of the decision of the Commission for Implementation of Article 143 of the Labor Law. However, the appellant failed to file a motion for enforcement of this decision although he had a possibility to do so in accordance with Article 215 of the Law on Enforcement Proceedings. Therefore, given the fact that the requirement of exhaustion of all available legal remedies was not met, the appeal cannot be considered.

- **Decision on Admissibility No. AP 1339/05 of 9 February 2006, paragraph 6;**
- **Decision on Admissibility No. AP 1418/05 of 12 September 2006, paragraph 6**

In case the appellants consider that they could have some financial claim from the "Sarajevo osiguranje" dd Sarajevo due to the fact that they were not paid out their earned dividends, they had a possibility to initiate the relevant court proceedings and get paid. However, they failed to initiate the said proceedings. Therefore, since the requirement of exhaustion of all available legal remedies was not met, the appeal cannot be examined.

- **Decision on Admissibility No. AP 1351/05 of 9 February 2006, paragraph 6;**
- **Decision on Admissibility No. AP 1885/05 of 14 March 2006, paragraph 9**

The proceedings in the appellant's case were not concluded since the competent body failed to take a decision on his request. However, the appellant failed to lodge a complaint with the competent second instance body as if his request was dismissed although he had this possibility as per Article 216, paragraph 3 of the Law on Administrative Proceedings of the Federation of BiH. Therefore, given that the requirement of exhaustion of all legal remedies available under law was not met, the appeal cannot be considered.

- **Decision on Admissibility No. AP 1101/05 of 9 February 2006, paragraph 6**

In the case where the appellant did not complain against the rulings on determination and extension of prison sentence and thus failed to pursue an available effective legal remedy although he was instructed to do so, it follows that the requirement of exhaustion of legal remedies available under law has not been met.

- **Decision on the Merits No. AP 263/05 of 14 March 2006, paragraph 17, published in the *Official Gazette of Bosnia and Herzegovina*, 49/06;**
- **Decision on Admissibility No. AP 1346/05 of 13 July 2005, paragraph 9**

The appellants have stated that they did not file any lawsuit for protection of their constitutional right to property. Given the fact that Article 16(1) of the Rules of the Constitutional Court provides that the Constitutional Court may consider appeals only if all effective legal remedies available under law have been exhausted in regards to the decision challenged by the appeal, it follows that a necessary requirement for making an assessment whether someone's constitutional rights have been violated is the existence of judgment or decision of competent bodies, *i.e.* the courts. In the instant case the appellants failed to initiate either civil or administrative proceedings before the competent bodies for the purpose of establishing violation of their ownership rights. Therefore, the requirement of exhaustion of all legal remedies available under law was not met in order for the appeal to be considered.

- **Decision on Admissibility No. AP 1139/05 of 14 March 2006, paragraphs 5 and 6**

Given the fact that under the Law on Movement and Stay of Aliens and Asylum it is not explicitly stated that an administrative proceedings cannot be initiated against the second instance ruling whereby the appellant's application for temporary stay in Bosnia and Herzegovina was dismissed, it follows that the appellant has failed to pursue all legal remedies available under law prior to filing her appeal with the Constitutional Court.

- **Decision on Admissibility No. AP 893/05 of 12 April 2006, paragraph 7**

The appellant has failed to present any evidence in order to justify her allegations that she filed a lawsuit before the competent court against the Decision of the Employer's

Complaints Commission and that in this way she tried to arrive at a decision on the merits of the case for the purpose of protecting her rights in accordance with Article 83 of the Law on Basic Employment Rights. Therefore, given the fact that the requirement of exhaustion of all legal remedies available under law was not met, the appeal cannot be considered.

- **Decision on Admissibility No. AP 911/05 of 12 April 2006, paragraphs 6 and 7**

In the instant case the appellant failed to pursue an effective legal remedy by failing to lodge a complaint before the County Court against the challenged ruling of the Basic Court. Thus, the appellant has failed to pursue all legal remedies available under law. Given the fact that the requirement of exhaustion of all legal remedies available under law was not met, the appeal cannot be examined.

- **Decision on Admissibility No. AP 1142/05 of 9 May 2006, paragraph 6;**
- **Decision on Admissibility No. AP 1217/05 of 9 May 2006, paragraph 7;**
- **Decision on Admissibility No. AP 1227/05 of 9 February 2006, paragraph 13;**
- **Decision on Admissibility No. AP 1480/05 of 9 November 2006, paragraph 13**

It is apparent that under the circumstances of this case the appellant's claim was relating to legal and procedural issues concerning the administrative proceedings before ordinary courts. Under such kind of circumstance the appellant could have submitted his case to the competent administrative body and could have justified the fact that it was not possible to file a request before the competent body that has a subject matter jurisdiction over the relevant case. Therefore, the requirement of exhaustion of all available legal remedies was not met for merits of the appeal to be considered.

- **Decision on Admissibility No. AP 1153/05 of 9 May 2006, paragraph 15;**
- **Decision on Admissibility No. AP 1772/05 of 27 June 2006, paragraph 8**

In the instant case, the appellant failed to present any evidence to prove that he submitted the complaint to the Supervisor of the Penitentiary and Correction Facility in Foča or to the Ministry of Justice claiming violation of his rights. Therefore, the requirement of exhaustion of all legal remedies available under law was not met for appeal to be considered.

- **Decision on Admissibility No. AP 1237/05 of 9 May 2006, paragraph 6;**
- **Decision on Admissibility No. AP 1719/05 of 20 September 2006, paragraphs 22 and 23**

Given the fact that the appellant has failed to lodge a complaint due to the failure of the Cantonal Commission for Implementation of Article 143 of the Labor Law to adopt a relevant decision, her appeal lodged with the Constitutional Court must be rejected as inadmissible for the reason that the requirement of exhaustion all legal remedies available under law was not met.

- **Decision on Admissibility No. AP 1354/05 of 9 May 2006, paragraph 8**

As to the instant case, the appellant has failed to initiate any proceedings before the Federal Institution for Pension-Disability Insurance in accordance with valid regulations

for the purpose of determination of the amount of family pension and compensation for unpaid pensions with cash instead of certificates. Accordingly, the appellant has failed to seek adoption of the decision in which way she would have exhausted all legal remedies and thus arrived at a final decision on the merits, which could have been the subject of review by the Constitutional Court. Therefore, given the fact that the requirement of exhaustion of all legal remedies available under law was not met, the appeal cannot be considered.

- **Decision on Admissibility No. AP 2146/05 of 9 May 2006, paragraph 4**

In the instant case the appellants did not arrive at a final decision on the merits which could be the subject of review by the Constitutional Court. Therefore, by filing a lawsuit before the Cantonal Court against the defendant that has no legal standing, the appellants have failed to meet the requirement of exhaustion of effective legal remedies and they only formally filed a lawsuit based on which the ordinary courts could not take a decision on the merits of the case since the said lawsuit has failed to meet the formal requirement of exhaustion of all legal remedies. Therefore, given the fact that the requirement of exhaustion of all available legal remedies is not met, the appeal cannot be considered.

- **Decision on Admissibility No. AP 1256/05 of 27 June 2006, paragraph 9**

In the proceedings of enforcement of legally binding judgment, the appellant - as a party seeking the enforcement - had an opportunity to request the Municipal Court to adopt a ruling whereby the defendants would be imposed a financial sanction due to failure to enforce the judgment and thus they will be obliged to enforce the judgment, i.e. reinstate the appellant to his work position. Next, as to the appellant's request submitted to the Constitutional Court for recognition of his length of service, the appellant had an opportunity, within the meaning of Article 53 of the Civil Procedure Code, to initiate a civil proceedings against the employer who would be obliged to pay the employment related contributions and thus make it possible for the appellant to arrive at a final decision that could be the subject of review by the Constitutional Court. Thus, the appellant has failed to exhaust all effective legal remedies available under law within the meaning of Article 16(1) of the Rules of the Constitutional Court. Therefore, one of the basic formal requirements was not met for appeal to be considered before the Constitutional Court.

- **Decision on Admissibility No. AP 1338/05 of 27 June 2006, paragraphs 7 and 9;**

- **Decision on Admissibility No. AP 1388/05 of 27 June 2006, paragraph 4**

By failing to lodge a timely complaint before the competent administrative body, the appellant has failed to pursue all effective legal remedies and only formally lodged his complaint after the prescribed time limit. Therefore, neither the administrative nor judicial bodies could take a decision on the merits of the case since a formal requirement of exhaustion of relevant legal remedy was not met.

- **Decision on Admissibility No. AP 1842/05 of 13 June 2006, paragraph 6**

In the instant case the appellant could have filed a lawsuit with the competent ordinary court and, in the civil proceedings, she could have challenged the Agreement on Settlement of Debt that she concluded with the RS Government. In other words, she could have

requested the termination of the mentioned agreement since she had unwillingly given her statement on waiving her right to the interest rate, in other words she had a false belief about the said agreement and gave the mentioned statement by coercion and deceit and after that she could have sought payment of legally prescribed default interest.

• **Decision on Admissibility No. AP 2040/05 of 20 October 2006, paragraph 7**

There is no evidence in the case-file of the Constitutional Court that the appellant initiated civil proceedings before the competent court for the purpose of repossession of movables which disappeared from her apartment. Accordingly, since the appellant has failed to initiate the civil proceedings against the defendant for the purpose of settlement of her claims, as advised by the criminal court, the Constitutional Court concludes that the requirement of exhaustion of all legal remedies available under law was not met in relation to Article II(3)(k) of the Constitution of Bosnia and Herzegovina and Article 1 of Protocol No. 1 to the European Convention.

• **Decision on Admissibility No. AP 2057/05 of 20 October 2006, paragraph 10**

The appellant has failed to seek the renewal of administrative proceedings in which a final and challenged first instance ruling was adopted. That would have resulted in a new decision proving that a motion had been filed. However, as the requirement of exhaustion of all legal remedies available under law was not met, the appeal cannot be considered.

• **Decision on Admissibility No. AP 2177/05 of 9 November 2006, paragraph 11**

As to the instant case, the Constitutional Court observes that by the challenged judgment the Municipal Court imposed the two-year prison sentence on the appellant and that prison sentence is regulated by the guilty plea agreement between the appellant and Cantonal Prosecutor's Office. Then, by application of Article 54 of the F BiH Criminal Code, which Article 56 paragraph 1 of F BiH Criminal Code points to, the court pronounced a single prison sentence for the period of two years and two months. Since the single prison sentence exceeded the frame of the sanction envisaged by the agreement which the court accepted, the appellant had a right to lodge the complaint against the pronounced single sentence and challenge the fact that the court had failed to include into that sentence the previously pronounced prison sentence of one year and two months imposed in the judgment of the Municipal Court no. 07-58-K-021427-07-K of 4 February 2008 and also challenge the correctness of the revocation of the conditional sentence imposed in the judgment of that court no. K-009723/06 of 20 June 2006. Those are the issues raised in the appeal. During that proceeding the appellant would challenge the application of other provisions of the FBiH Criminal Code (Article 56) and not the application of the provisions of the FBiH Criminal Procedure Code that regulates the mechanism of „admission of guilt”, in respect of which, according to the explicit law provision of Article 246 paragraph 4 item c) of the FBiH Criminal Procedure Code, and that an appeal may not be filed against the pronounced criminal sanction.

• **Decision on Admissibility No. AP 3246/08 of 29 June 2011, paragraph 13**

Interim measure – granted

The appellant presented sufficient evidence to the Constitutional Court as to the alleged violations of her rights that could be taken as basis for issuance of interim measure. She also offered a sufficient number of facts to the Constitutional Court justifying her fear that irreparable consequences might occur by the enforcement of the mentioned judgments given the fast privatization process in the Brčko District of Bosnia and Herzegovina.

- **Decision on Interim Measure No. AP 214/03 of 19 April 2004, paragraph 13;** *transfer of disposal right over the real properties – Privredna Bank in Brčko*

The Constitutional Court finds it evident that the circumstances of these two cases raise an issue under Article 7 paragraph 1 of the European Convention in conjunction with Article 6 paragraph 1 of the European Convention. This conclusion concerns the complaints of the appellants that by misapplication of criminal legislation they were deprived of the right to immunity from criminal prosecution in criminal cases conducted before the Cantonal Court and this right is guaranteed under the Constitution of the Federation of Bosnia and Herzegovina.

- **Decision on Interim Measure No. AP 72/04 of 19 April 2004, paragraph 6**

Making it possible for the temporary user to purchase the apartment in question, in which case a final decision on the merits of the case about to the right of the appellant to repossession of the apartment was not adopted, attaches both legal and factual consequences to the appellant and leads to irreparable damage. On one hand, both enjoyment of rights and revocation of rights in the course of administrative proceedings must not be to the detriment of other persons for it would cause legal anarchy. For the mentioned reasons and due to failure to adopt decision on repossession of the apartment, the appellant could suffer irreparable consequences. On the other hand, there is no lenient measure which would help reach the same goal. Those were the sufficient reasons for the Constitutional Court to conclude, pending the adoption of the decision on the merits, that the requirements have been met for adoption of an interim measure whereby the temporary user would be temporarily banned from purchasing the apartment in dispute.

- **Decision on Interim Measure No. AP 1404/05 of 13 September 2005, paragraph 14**

Both the exercise and revocation of rights in the course of judicial proceedings must be in accordance with law and not to the detriment of someone else's rights, otherwise it would lead to legal anarchy. For the said reasons, due to the lack of access to court and untimely adoption of the decision on the appellant's claim for annulment of the disputed sales contract and given the fact that the disposal of the disputed apartment by the defendant was made possible, the irreparable consequences might occur to the detriment of the appellant. The Constitutional Court is of the opinion that there is no lenient measure, whereby the same goal would be achieved when it comes to preventing or limiting the prospective damage.

- **Decision on Interim Measure No. AP 1925/05 of 13 October 2005, paragraph 14**

It is necessary to adopt an interim measure under the circumstances where the facts *prima facie* indicate that there are failures in the proceedings that could have decisive effect on the outcome of the proceedings.

- **Decision on Interim Measure No. AP 1926/05 of 23 March 2006, paragraph 11**

Interim measure – dismissed

The well-foundedness of the appeal is examined separately from the well-foundedness of the request to adopt an interim measure. Thus, the reasons the Constitutional Court is guided by in the course of granting or non-granting the request for interim measure are different from the reasons the Constitutional Court is guided by when it takes a decision on the appeal. The reasons and evidence that the appellant referred to in respect of the alleged violations of constitutional rights by the challenged judgment are not to be applied to the instant case by way of analogy when deciding on the well-foundedness of the request for interim measure. Therefore, it follows that the appellants have to offer valid arguments and they also have to prove that their request for adoption of interim measure is justified. As to the instant case, the appellants have failed to offer any evidence or actual allegations which would justify granting of their request for adoption of interim measure due to occurrence of irreparable consequences. In view of the aforesaid, the request of the appellant is ill-founded.

- **Decision on Interim Measure No. AP 901/05 of 26 April 2005, paragraphs 8 and 9;**
- **Decision on Interim Measure No. AP 966/05 of 18 May 2005, paragraphs 7 and 8;**
- **Decision on Interim Measure No. AP 1057/05 of 18 May 2005, paragraphs 11 and 12**

A right to liberty of person, including other related rights, is protected under Article 5 of the European Convention and constitutes one of the most important rights of every person. However, the competent authorities are entitled, pursuant to positive regulations, to deprive person of that right during the course of the proceedings. Under those circumstances, the Constitutional Court may examine whether the deprivation of the said right was justified if the appellant, in the proceedings before the Constitutional Court, proves that the deprivation was inconsistent with the Constitution of Bosnia and Herzegovina and European Convention, in which case the appellant has to offer evidence proving his allegations. However, a person who unjustifiably refers to this right with the request to terminate the enforcement of the criminal sanction imposed in the course of lawful proceedings, cannot seek the termination of the enforcement of that particular criminal sanction. The appellant has failed to present any facts or reasons relating to the instant case or any evidence on the possibility of occurrence of irreparable consequences which are inconsistent with the legitimate aim that is sought to be achieved. Due to the lack of such statements that would be substantiated by adequate evidence, the Constitutional Court decided to dismiss the request for interim measure.

- **Decision on Interim Measure No. AP 1065/05 of 18 May 2005, paragraphs 7 and 10**

Request for review – granted

Upon the adoption of the decision which is a subject of review, the Constitutional Court, in its subsequent decisions No. *U 1/02* of 19 November 2004 (paragraph 26) and *U 77/03* of 19 November 2004 (paragraphs 27 and 28), has taken a position that could have a decisive effect on the outcome of the dispute in question when it comes to determining whether the issue concerned the „home” of the appellant within the meaning of Article 8 of the European Convention. Furthermore, in the decision which is the subject of review (paragraph 36), the Constitutional Court referred to its previous position from decision No. *U 1/02* of 26 September 2003. The said decision was published in the *Official Gazette of Bosnia and Herzegovina*, 8/04 of 24 March 2004. However, the Constitutional Court subsequently adopted Ruling No. *U 1/02* of 29 October 2004 on review of the above referenced decision and adopted a new decision No. *U 1/02* on 19 November 2004

- **Ruling No. U 49/03 of 22 July 2005, paragraph 10**

MISCELLANEOUS

The Constitutional Court of the F BiH is „the court in Bosnia and Herzegovina” within the meaning of Article VI(3) of the Constitution of Bosnia and Herzegovina. It is not inconsistent with the Constitution of BiH, if the Constitutional Court of the F BiH interprets the relevant provisions of the Constitution of the F BiH in a manner as to determine that the term of office of the judges commences from the day when the first court session is held. In addition, it is not inconsistent with the European Convention or Constitution of BiH if the Constitutional Court of the FBiH finds that the names of government bodies and units defined in the Constitution of the Herzegovina-Neretva Canton, which are different from those defined in the Constitution of FBiH are inconsistent with the Constitution of FBiH.

- **Decision No. U 39/00 of 4 May 2001, published in the *Official Gazette of Bosnia and Herzegovina*, 24/01**

Even though the appellant could have presented the evidence before the administrative bodies and the courts with the aim of establishing the facts decisive for adoption of decision, the administrative bodies and the Supreme Court have failed to pay particular attention to the evidence proving that the appellant had lived at the residence address of the apartment in dispute until 1992 and that, due to the war conflict in Bosnia and Herzegovina, he abandoned the mentioned apartment. This caused the violation of Article II(5) of the Constitution of Bosnia and Herzegovina. It follows that there was no sufficient protection provided by the courts or administrative bodies in relation to the appellant’s right to return to the place he considers as his home.

- **Decision on Admissibility and Merits No. AP 2275/05 of 26 January 2007, paragraph 42, published in the *Official Gazette of Bosnia and Herzegovina*, 55/07; a violation of the appellant’s right to return to his home referred to under Article II(5) of the Constitution of Bosnia and Herzegovina established**

CASES ARISING UNDER ARTICLE VI(3)(a) OF THE CONSTITUTION OF BIH

Partial Decisions *U 5/98*

U 5/98 Partial Decision I dated 29 January 2000, published in the *Official Gazette of Bosnia and Herzegovina*, 11/00 – it was established that the term „border” in Article 2, paragraph 2; the words „or extradited” in Article 6, paragraph 2; Article 44, paragraph 2; Article 98 and Article 76, paragraph 2, as amended by Amendment XXXVIII and Article 138, as amended by Amendments LI and LXV of the Constitution of Republika Srpska are unconstitutional. In Constitution of Federation of BiH, under Article IV.B.7.a) (I) the words „heads of diplomatic missions” and, under Article IV.B.8, the words „heads of diplomatic missions” are unconstitutional.

Constitution of the Republika Srpska

Article 2, paragraph 2

The provision of the Constitution of RS, referring to the „border” between the Republika Srpska and the Federation of BiH, is not in conformity with the Constitution of BiH (Article III of the General Framework Agreement for Peace in Bosnia and Herzegovina speaks of „boundary lines” between the two Entities, while Article X uses the term border in the sense of borders between states

Article 6, paragraph 2

The provisions of the Constitution of RS regulating that an RS citizen may not be extradited, are unconstitutional as this issue falls within the competence of institutions of BiH.

Article 44, paragraph 2

The provision of Article 44 paragraph 2 of the Constitution of RS is unconstitutional as, according to the Constitution of BiH (Article III(1)(f)), policy and regulation of asylum falls within the competence of institutions of BiH. Accordingly, Entities have no authority to regulate the asylum policy.

Articles 98 and 76, paragraph 2

Despite the fact that the National Bank no longer exists, the RS People’s Assembly failed to repeal provisions relating thereto and they still remain in effect.

According to Article VII of the Constitution of BiH, the Central Bank of BiH shall be the sole authority for issuing currencies and for monetary policy throughout BiH. Pursuant to Article III(3) of the Constitution of BiH, the Entities have no authority in this respect.

Given that the challenged provisions of Article 98 of the RS Constitution provide that the regulation of the status and business running of the RS National Bank falls within the competence of the RS legislation without paying a due respect to the limitations given in Article VII of the BiH Constitution, the said provisions cannot be interpreted as consistent with the BiH Constitution. Therefore, those provisions are declared unconstitutional.

The Central Bank, in pursuance of Article VII of the Constitution of BiH, is the sole authority for monetary policy throughout BiH, which includes proposed bills in this respect. The challenged provision of the Constitution of RS regulating that the RS National Bank shall have the right to propose laws, other regulations and general enactments relating to monetary, foreign exchange and credit system is therefore unconstitutional.

Article 138 (as amended by Amendments LI and LXV)

The Provision of Article 138 of the Constitution of RS, empowering the RS authorities to pass enactments and undertake measures for the protection of rights and interests of the RS against enactments of institutions of BiH or the Federation of BiH, is declared unconstitutional. The above referenced stands since the Constitutional Court of BiH shall have exclusive jurisdiction to serve as a protective mechanism in case of „any dispute of this kind” pursuant to Article VI(3)(a) of the Constitution of BiH and since Article 75 of the Constitutional Court’s Rules of Procedure provides a possibility for an interim measure to be adopted.

Constitution of the Federation of Bosnia and Herzegovina

Article IV.B.7.a. (I) and Article IV.B.8

The provisions of the Constitution of the Federation of BiH which provide that the President of the Federation shall be responsible for nominating the heads of diplomatic missions, are unconstitutional since the Presidency of BiH, pursuant to Article V(3) (b) of the Constitution of BiH, has responsibility for appointing ambassadors without restriction in its decision-making right.

U 5/98 Partial Decision II dated 18 February 2000, published in *Official Gazette of Bosnia and Herzegovina*, 17/00 - Article 59, paragraphs 1, 2, and 3 of the Constitution of Republika Srpska was declared unconstitutional. It was concluded that a designation of natural resources, city construction land, real estate and goods of public interest as state owned property *ex constitutione*, represents the violation of the very „nature” of privately owned property which is an individual right and an institutional safeguard. A constitutionally guaranteed right to privately owned property, as an institutional safeguard in the entire BiH, requires a framework legislation at the level of BiH for the purpose of identification of standards necessary to fulfill previously mentioned obligations of the Constitution. Such framework legislation should therefore provide different forms of property, holders of those rights and general principles for their enforcement in the sense of property law that normally stands for an element of civil law statutes in democratic

societies. In addition, Article III of the Constitution of BiH does not provide for exclusive division of competencies between institutions of BiH and Entities. However, it requires the implied powers of both institutions of BiH and Entities' authorities to be taken into account, as necessary for cooperation within a state.

U 5/98 Partial Decision III dated 1 July 2000, published in the *Official Gazette of Bosnia and Herzegovina*, 23/00 - It was established that the following paragraphs were declared unconstitutional: paragraphs 1, 2, 3 and 5 of the Preamble, as amended by Amendments XXVI and LIV and the wording „a State of the Serb people and” of Article 1, as modified by Amendment XLIV. Regarding the Constitution of the Federation of Bosnia and Herzegovina, the following wordings were declared unconstitutional: „Bosniacs and Croats as constituent peoples, along with Others, and,” as well as „in the exercise of their sovereign rights” of Article I(1)(1), as modified by Amendment III.

Constitution of the Republika Srpska

Paragraphs 1, 2, 3 and 5 of the Preamble

Referring to sovereignty, state independence, establishment of a state and versatile and close connection of the Republika Srpska with other states of the Serb people in paragraphs 1, 2, 3 and 5 of the Preamble of the Constitution of RS represents the violation of Article I(1) taken in conjunction with Articles I(3), III(2)(a) and 5 of the Constitution of BiH, which guarantee sovereignty, territorial integrity, political independence and international sovereignty of BiH.

Article 1, as supplemented by Amendment 44

The Preamble of the Constitution of BiH clearly designates Bosniacs, Croats and Serbs as constituent peoples, *i.e.* peoples.

The elements of a democratic state and society as well as underlying assumptions – pluralism, just procedures, peaceful relations that arise out of the Constitution – must serve as a guideline for further elaboration of the issue of the structure of BiH as a multi-national state.

The territorial division (of Entities) must not serve as an instrument of ethnic segregation – on the contrary – it must accommodate ethnic groups by preserving linguistic pluralism and peace in order to contribute to the integration of the state and society as such.

The constitutional principle of collective equality of constituent peoples, arising out of designation of Bosniacs, Croats and Serbs as constituent peoples, prohibits any special privileges for one or two constituent peoples, any domination in governmental structures and any ethnic homogenization by segregation based on territorial separation.

Despite the territorial division of BiH by establishment of two Entities, this territorial division cannot serve as a constitutional legitimacy for ethnic domination, national homogenization or the right to maintain results of ethnic cleansing.

Designation of Bosniacs, Croats and Serbs as constituent peoples in the Preamble of the Constitution of BiH must be understood as an all-inclusive principle of the Constitution of BiH to which the Entities must fully adhere, pursuant to Article III(3)(b) of the Constitution of BiH.

The Constitutional Court concludes that the provision of Article 1 of the Constitution of RS violates the constituent status of Bosniacs and Croats assigned by the last line of the Preamble of the Constitution of BiH, which, in addition to individual human rights and freedoms, contains positive obligations of the Entities to vouch for enjoyment of those rights and freedoms.

Constitution of the Federation of Bosnia and Herzegovina

Article I(1)(1)

Designation of Bosniacs and Croats as constituent peoples in Article 1(1)(1) of the Constitution of BiH has discriminatory consequences and violates the right to freedom of movement and residence and the right to property, guaranteed by Article II paragraphs 3 and 4 taken in conjunction with paragraph 5 of the Constitution of BiH. This provision also violates Article 5(c) of the Convention on the Elimination of All Forms of Racial Discrimination and the right to collective equality, which arise out of the Constitution of BiH.

Moreover, in addition to clear constitutional obligation not to violate individual rights in a discriminatory manner, arising out of Article II(3) and (4) of the Constitution of BiH, there is also a constitutional obligation of non-discrimination in the sense of rights of groups if, for instance, one or two constituent peoples enjoy preferential treatment through Entity legal systems.

Furthermore, all public authorities in BiH, in addition to having to refrain from any discrimination in the enjoyment of individual rights and freedoms, primarily those based on national origin, also have a positive obligation to protect individuals from being discriminated against. In terms of refugees and displaced persons, they are additionally obligated to create necessary political, social and economic conditions for their smooth reintegration.

U 5/98 Partial Decision IV dated 18 August 2000, published in the *Official Gazette of Bosnia and Herzegovina*, 36/00 - The Constitutional Court declares that the following provisions are unconstitutional: Article 68, paragraph 16 as amended by Amendment XXXII, Article 7, paragraph 1 and Article 28, paragraph 4 of the Constitution of Republika Srpska and Article I(6)(1) of the Constitution of Federation of BiH.

Constitution of the Republika Srpska

Article 68, paragraph 16

Article 68 Paragraph 16 of the Constitution of the RS, according to which „the RS regulates and ensures co-operation with the Serb people outside of the Republic”, creates a preference that cannot be legitimized pursuant to Article I paragraph 4 of the Convention on the Elimination of All Forms of Racial Discrimination. It also violates obligations imposed by Article 2 paragraph 1 item (c) of the Convention on the Elimination of All Forms of Racial Discrimination. The same obligation follows from Article 1, paragraph 3, sub-paragraph (a) and Article II, paragraph 1 of Annex VII, taken in conjunction with Article II, paragraph 2 and Article III, paragraph 2, sub-paragraph (c) of the Constitution of BiH.

Article 7, paragraph 1

A wide range of meaning of „official use” of the Serbian language and Cyrillic alphabet and territorial restriction of official use of other languages under Article 7 of the Constitution of the RS, however, reach far beyond *per se* legitimate goal of regulation of official language use in so far as these provisions have the effect of prevention of enjoyment of rights under Article II(3)(m) and 5 of the Constitution of BiH. They are also in contravention to Article I(4) of the Constitution of BiH.

Regulation of languages by Entities is a legitimate goal *per se*, but it might pose a violation of the rights of individuals and positive obligations provided for by the Constitution that serve as an institutional safeguard of „a pluralist society” and „market economy” according to the Preamble of Constitution of BiH. There is an implicit and yet necessary responsibility of the State of BiH to ensure minimum standards for language use through a framework legislation, given the clear presence of danger created by use of official language regulations without restrictions in Entities concerning these fundamental normative principles and institutional safeguards of the Constitution of BiH. In doing so, the legislation of BiH must account for an efficient possibility of equal use of Bosnian, Croatian and Serbian languages, not only in institutions of BiH but also at the level of Entities and their administrative authorities, in legislative, executive and judicial authorities as well as in public. The highest standards of Articles 8 through 13 of the European Charter for Regional or Minority Languages should be used as guidelines for the three languages. Lower standards provided in the European Charter might – taking into account appropriate conditions – be sufficient for other languages only.

Article 28, paragraph 4

The provision of Article 28, paragraph 4 of the Constitution of the RS gives the Orthodox Church an important influence over creation of a system of values and belief, and it must be considered as a constitutional norm that allows the authorities to „create a public atmosphere that prevents free exercise of religion”.

In view of the material support to the Orthodox Church, it acquired a privilege by this provision that cannot be legitimized in constitutional terms and is therefore of an inherent discriminatory character.

Constitution of the Federation of Bosnia and Herzegovina

Article I.6 (1)

The challenged provision presents a serious obstacle to the enjoyment of rights guaranteed under Article II(3)(n) and II(5) of the Constitution of BiH, and it violates positive obligations arising out of the Framework Convention for the Protection of National Minorities, the Convention on the Elimination of All Forms of Racial Discrimination, and Article II(4) of the Constitution of BiH. Accordingly, the Constitutional Court declared this provision unconstitutional, and it reads as follows: „The official languages of the Federation shall be the Bosnian and the Croatian language. The official script will be the Latin alphabet.

OTHER CASES ARISING UNDER ARTICLE VI(3)(a) OF THE CONSTITUTION OF BIH

Articles 3, 5, 6, 7, 9, 10, 11, 12, 13, 15, 19, 20, 21, paragraph 3, Articles 22, 24, 25, 26, 27, 28 and 29 of the Law on Council of Ministers of Bosnia and Herzegovina and Ministries of Bosnia and Herzegovina (*Official Gazette of Bosnia and Herzegovina*, 4/97) are not in conformity with the Constitution of Bosnia and Herzegovina. These provisions, which regulate establishment of the position of Co-Chairman and Deputy Chairman of the Council of Ministers, are not in conformity with the Constitution of Bosnia and Herzegovina for the reason that the Constitution has explicitly established the position of the mandatary who is authorized to appoint the ministers in accordance with Article V(4) of the Constitution.

- **Decision U 1/99 of 14 August 1999, published in the *Official Gazette of Bosnia and Herzegovina*, 16/99**

Law on State Border Service of Bosnia and Herzegovina (*Official Gazette of Bosnia and Herzegovina*, 2/00) is in conformity with the Constitution of Bosnia and Herzegovina. The fact that the Law on State Border Service was enacted by the High Representative and not by the Parliamentary Assembly does not change its legal status, either in form - since the Law was published as such in the *Official Gazette of Bosnia and Herzegovina* on 26 January 2000 (*Official Gazette*, 2/2000) - or in substance, since, whether or not it is in conformity with the Constitution of Bosnia and Herzegovina, it relates to the field falling within the legislative competence of the Parliamentary Assembly according to Article IV(4)(a) of the Constitution of Bosnia and Herzegovina. The Parliamentary Assembly is free to modify in the future the whole text or part of the text of the Law, provided that the appropriate procedure is followed.

- **Decision U 9/00 of 3 November 2000, published in the *Official Gazette of Bosnia and Herzegovina*, 1/01**

Article 8(a), paragraph 1 of the Law on Sale of Apartments with Occupancy Right (*Official Gazette of Federation of Bosnia and Herzegovina*, 27/97, 11/98, 22/99, 27/99 and 7/00) is in conformity with the Constitution of Bosnia and Herzegovina. As a part of the effort of the State to facilitate the return of refugees and displaced persons (Article II(5) Constitution) and to ensure adequate pricing, the State's requirement that a person, who was previously only a holder of occupancy right, stay in the apartment for two years prior to being allowed to acquire full ownership of that apartment, shall not represent a violation of the right to non-discrimination (Article II(4) of the Constitution, Article 14 of the European Convention), or the right to property (Article II(3)(k) of the Constitution, Article 1 of Protocol No. 1 to the European Convention).

- **Decision No. U 16/00 of 2 February 2001, published in the *Official Gazette of Bosnia and Herzegovina*, 13/01**

The Decision Amending the Law on Travel Documents of Bosnia and Herzegovina (*Official Gazette of Bosnia and Herzegovina*, 27/00) is declared to be in conformity with the Constitution of Bosnia and Herzegovina. The Constitutional not competent to review the powers vested in the High Representative under Annex 10 to the Dayton Peace Agreement or to review the exercise of those powers. However, the Court may review the constitutionality of laws or amendments thereto, proclaimed by the High Representative in the place of the Parliamentary Assembly of Bosnia and Herzegovina. The issues not explicitly listed in Article III(1) of the Constitution of BiH, referring to the competencies of the institutions of BiH, do not necessarily fall within the exclusive competence of the Entities. Under the Constitution, the Parliamentary Assembly of BiH is competent to decide on the sources and amounts of the funds necessary for the operation of the institutions of BiH. Ordinary laws do not serve as a standard of review for the Constitutional Court.

- **Decision No. U 25/00 of 23 March 2001, published in the *Official Gazette of Bosnia and Herzegovina*, 17/01**

The Agreement on the Establishment of Special Parallel Relations between the Federal Republic of Yugoslavia and the Republika Srpska of 5 March 2001 (*Official Gazette of the Republika Srpska*, 26/01) is in conformity with Article III(2)(a) of the Constitution of Bosnia and Herzegovina.

- **Decision on the Merits No. U 42/01 of 26 March 2004, published in the *Official Gazette of Bosnia and Herzegovina*, 22/04**

A part of Article 11 of the Law on Territorial Organization and Local Self-Government (*Official Gazette of Republika Srpska*, 11/94, 6/95, 26/95, 15/96, 17/96, 19/96 and 6/97), **the name and Articles 1 and 2 of the Law on City of Srpsko Sarajevo** (*Official Gazette of Republika Srpska*, 25/93, 8/96, 27/96 and 33/97), in relation to the following names: Grad Srpsko Sarajevo, Srpski Drvar, Srpski Sanski Most, Srpski Mostar, Srpsko Goražde, Srbinje, Srpski Ključ, Srpska Kostajnica, Srpski Brod, Srpska Ilidža, Srpsko Novo Sarajevo, Srpski Stari Grad and Srpsko Orašje, is not in conformity

with Article II(4) in conjunction with Articles II(3) and II(5) of the Constitution of Bosnia and Herzegovina. The challenged legal provisions are not in conformity with the constitutional principle on equality of constituent peoples in Bosnia and Herzegovina and are of discriminatory character within the meaning of Article II(4) in conjunction with Article II(5) of the Constitution of Bosnia and Herzegovina.

Article 11a of the Law on Territorial Organization and Local Self-Government is in conformity with the Constitution of Bosnia and Herzegovina.

- **Decision Merits No. U 44/01 of 27 February 2004, published in the *Official Gazette of Bosnia and Herzegovina*, 18/04**

Article 19.8, paragraph 3 of the Election Law of Bosnia and Herzegovina (*Official Gazette of Bosnia and Herzegovina*, 23/01, 7/02, 9/02, 20/02 and 25/02) is in conformity with the Constitution of Bosnia and Herzegovina. A legal provision linking the right to vote in elections, *i.e.* the place of elections with the status of the user of someone else's property has a legitimate aim and reasonable justification and there is no discrimination or violation of the right to liberty of movement and residence.

- **Decision Merits No. U 14/02 of 30 January 2004, published in the *Official Gazette of Bosnia and Herzegovina*, 18/04**

Decision on Amendments to the Constitution of Republika Srpska (*Official Gazette of Bosnia and Herzegovina*, 13/02 and *Official Gazette of Republika Srpska*, 31/02) is in conformity with Article II of the Constitution of Bosnia and Herzegovina. The Decision on Amendments regulates the issues related to the judicial system of the Republika Srpska including the establishment of the High Judicial and Prosecutorial Council of the Republika Srpska. Accordingly, those are the issues which fall within the competence of Entities, *i.e.* the competencies that have not been transferred from the Entities to Bosnia and Herzegovina by the Decision on Amendments. Thus, the amendments to the Constitution of the Republika Srpska on this issue, which were passed by the High Representative while substituting for the National Assembly of Republika Srpska, are not in violation of Article III(3)(a) of the Constitution of Bosnia and Herzegovina.

- **Decision on the Merits No. U 56/02 of 30 January 2004, published in the *Official Gazette of Bosnia and Herzegovina*, 19/04**

The Government of the Republic of Bosnia and Herzegovina, at the time when it was functioning according to Annex II, paragraph 4 of the Constitution of Bosnia and Herzegovina, was not competent to ratify international treaties for Bosnia and Herzegovina. Therefore, **the Decree on the Ratification of the Agreement on Customs Cooperation between the Government of the Republic of Bosnia and Herzegovina, the Government of the Federation of Bosnia and Herzegovina and the Government of the Republic of Croatia** (*Official Gazette of the Republic of Bosnia and Herzegovina*, 7/96) and **the Decree on the Ratification of the Agreement on Economic Cooperation between the Government of the Republic of Bosnia and Herzegovina, the Government of the Federation of Bosnia and Herzegovina and the Government of the Republic of Croatia** (*Official Gazette of the Republic of Bosnia and Herzegovina*, 10/96) are hereby declared to be inconsistent with the Constitution of

Bosnia and Herzegovina. These decrees shall cease to be valid *ex nunc* on the date of the adoption of this decision.

- **Decision No. U 12/98 of 7 June 1999, published in the *Official Gazette of Bosnia and Herzegovina*, 11/99**

The provisions of the **Law on Council of Ministers**, which provide for establishing of the position of Co-Chairman and Deputy Chairman of the Council of Ministers, are not in conformity with the Constitution of Bosnia and Herzegovina. The Constitution has explicitly established the position of the mandatary who is authorized to appoint the ministers in accordance with Article V(4) of the Constitution.

- **Decision No. U 1/99 of 14 August 1999 published in the *Official Gazette of Bosnia and Herzegovina*, 16/99**

The Law on State Border Service of Bosnia and Herzegovina is declared consistent with the Constitution of Bosnia and Herzegovina when the High Representative acts as authority of Bosnia and Herzegovina and such a law has the character of domestic law and it must be considered the law of Bosnia and Herzegovina whose consistence with the Constitution of Bosnia and Herzegovina is subject to control by the Constitutional Court based on Article VI(3)(a) of the Constitution of Bosnia and Herzegovina.

- **Decision No. U 9/00 of 3 November 2000 published in the *Official Gazette of Bosnia and Herzegovina*, 1/01**

As a part of the effort of the State to facilitate the return of refugees and displaced persons (Article II(5) of the Constitution) and to ensure adequate pricing, the State's requirement that a person, who was previously only a holder of occupancy right, stay in the apartment for two years prior to being allowed to acquire full ownership of that apartment, shall not represent a violation of the right to non-discrimination (Article II(4) of the Constitution, Article 14 of the European Convention), or the right to property (Article II(3)(k) of the Constitution, Article 1 of Protocol No. 1 to the European Convention).

- **Decision No. U 16/00 of 2 February 2001, published in the *Official Gazette of Bosnia and Herzegovina*, 13/01**

The Constitutional Court is not competent to review the powers vested in the High Representative under Annex 10 to the Dayton Peace Agreement or to review the exercise of those powers. However, the Court may review the constitutionality of laws or amendments thereto, proclaimed by the High Representative in the place of the Parliamentary Assembly of Bosnia and Herzegovina.

- **Decision No. U 25/00 of 23 March 2001, published in the *Official Gazette of Bosnia and Herzegovina*, 17/01**

The request for review of constitutionality of Article 5, paragraphs 2 and 6, Article 7, paragraph 2, Article 46, paragraph 3, Article 49, paragraph 3 and Article 51, paragraphs 2,4 and 5 of the **Law Establishing the Company for Transmission of Electric Power** (*Official Gazette of Bosnia and Herzegovina*, 35/04) is ill-founded considering the fact that it starts from the position that the contested provisions of the Law Establishing the Company for the Transmission of Electric Power in BiH are not in conformity with the

Agreement, whereby the Entities, *i.e.* the Government of the Federation of Bosnia and Herzegovina and the Republika Srpska, transferred the aforementioned responsibilities to Bosnia and Herzegovina and since the Agreement cannot represent grounds for an examination of the constitutionality of the law and it is undisputable that the Law Establishing the Company for the Transmission of Electric Power in BiH was passed after the Agreement had been reached for the purpose of Article III(5)(b) of the Constitution of Bosnia and Herzegovina.

- **Decision on the Merits No. U 17/05 of 26 May 2006, published in the *Official Gazette of Bosnia and Herzegovina*, 87/06**

Taking into account that the name Tomislavgrad has a historical meaning, the name itself is not in violation of the principles determined by the Constitution of Bosnia and Herzegovina. Furthermore, the mere fact that the contested law does not contain explicit provision on non-discrimination does not represent the discrimination itself, as long as the law is not discriminatory itself and as long as it can be applied without discrimination. Therefore the **Law on Change of Name of Inhabited Place Duvno and Municipality Duvno into Tomislavgrad** (*Official Gazette of SR Bosnia and Herzegovina*, 33/90 of 8 November 1990) is not in violation of the Constitution of Bosnia and Herzegovina).

- **Decision on Admissibility and Merits No. U 3/04 of 27 May 2005 published in the *Official Gazette of Bosnia and Herzegovina*, 58/05**

Articles 1 and 2 of the Law on the Coat of Arms and Flag of the Federation of Bosnia and Herzegovina (*Official Gazette of Federation of Bosnia and Herzegovina*, 21/96 and 26/96), and **Articles 2 and 3 of the Constitutional Law on the Flag, Coat of Arms and Anthem of the Republika Srpska** (*Official Gazette of the Republika Srpska*, 19/92), **Article 2 of the Law on Use of the Flag, Coat of Arms and the Anthem** (*Official Gazette of Republika Srpska*, 4/93) in the part in which it is provided that the flag, coat of arms and anthem of the Republika Srpska „**represent statehood of the Republika Srpska**” and **Article 3 of the Law on Use of the Flag, Coat of Arms and the Anthem** (*Official Gazette of Republika Srpska*, 4/93), in the part that provides that the symbols of the Republika Srpska are used „**in accordance with moral norms of the Serb people**”, are not in conformity with Article 1(1) and Article 2(a) and (c) of the International Convention on the Elimination of All Forms of Racial Discrimination referred to in Annex I to the Constitution of Bosnia and Herzegovina. *Inter alia*, the Constitutional Court concluded that taking into account the principles mentioned above and the principles in the Decision in Case no. *U 5/98* on the constituent status of the peoples, as well as the political and temporal context in which the challenged laws of the Federation of BiH and Republika Srpska were passed, challenged provisions have a discriminatory character and are not in conformity with the constitutional principle of equality of the constituent peoples, citizens and others. The conclusion was also made that it is the legitimate right of the Bosniac and Croat people in the Federation of BiH and the Serb people in the Republika Srpska to preserve their tradition, culture and identity through legislative mechanisms, but an equal right must be given to the Serb people in the Federation of BiH and Bosniac and Croat peoples in Republika Srpska and other citizens of Bosnia and Herzegovina.

- **Partial Decision on the Merits No. U 4/04 of 31 March 2006, published in the *Official Gazette of Bosnia and Herzegovina*, 47/06**

Articles 1 and 2 of the Law on the Family Patron-Saints' Days and Church Holidays (*Official Gazette of Republika Srpska*, 19/92) are not in conformity with Article II(4) of the Constitution of Bosnia and Herzegovina, in conjunction with Articles 1(1) and (2) (a) and (c) of the International Convention on the Elimination of All Forms of Racial Discrimination referred to in Annex I to the Constitution of Bosnia and Herzegovina and that **Article 1 of the Constitutional Law on the Flag, Coat of Arms and Anthem of Republika Srpska** (*Official Gazette of Republika Srpska*, 19/92) is in conformity with Article II(4) of the Constitution of Bosnia and Herzegovina, in conjunction with Articles 1(1) and (2)(a) and (c) of the International Convention on the Elimination of All Forms of Racial Discrimination referred to in Annex I to the Constitution of Bosnia and Herzegovina. The Constitutional Court holds that the holidays provided for in the challenged provisions of the law in question only exalt the history, tradition, customs and religious and national identity of the Serbs and that at the same time such values are imposed on the members of other constituent peoples, other citizens and Others on the territory of the Republika Srpska.

- **Partial Decision on the Merits U 4/04 of 18 November 2006, published in the *Official Gazette of Bosnia and Herzegovina*, 24/07**

Articles 1 and 2 of the Law on Amendments to the Law on Turnover Tax on Goods and Services (*Official Gazette of the Federation of Bosnia and Herzegovina*, 39/04) and **the provisions of Articles 1 and 2 of the Law on Amendments to the Law on Special Tax on Non-Alcoholic Drinks** (*Official Gazette of the Federation of Bosnia and Herzegovina*, 39/04) are not consistent with Articles I(4), III(3)(b) and III(5)(a) of the Constitution of Bosnia and Herzegovina. By passing the law the Federation of BiH *de facto* assumed competences that it, according to the Agreement of 5 December 2003, transferred to the State of Bosnia and Herzegovina, which is against Article III(3) (b) of the Constitution of BiH. By adopting the contested laws without the consent of the Governing Board of the Indirect Taxation Administration, the Parliament of the Federation of Bosnia and Herzegovina violated the provision of Article III(5)(a) of the Constitution of Bosnia and Herzegovina since it entered the scope of competences transferred to Bosnia and Herzegovina by the Federation of Bosnia and Herzegovina by means of an agreement.

- **Decision on Admissibility and Merits No. U 14/04 of 29 October 2004, published in the *Official Gazette of Bosnia and Herzegovina*, 23/05**

The provision of **Article 21, paragraph 3 of the Statute of the City of Sarajevo** (*Official Gazette of the Sarajevo Canton*, 12/98 and 14/98) is not in conformity with the last line of the Preamble of the Constitution of Bosnia and Herzegovina, Article I(2) and Article II(4) of the Constitution of Bosnia and Herzegovina in conjunction with Article 5, paragraph 1, item (c) of the Convention on Elimination of All Forms of Racial Discrimination and the Constitutional Court's Decision on Constituent Status of Peoples No. U 5/98 for the reason that the challenged provision fails to refer to the Serbs as

constituent people and for the reason that the same guarantees are not given to the Serbs like those given to the Bosniacs, Croats and Others that they will have a minimum of 20% posts in the City Council of Sarajevo regardless of the election results.

- **Decision on Admissibility and Merits No. U 4/05 of 22 April 2005 2004, published in the *Official Gazette of Bosnia and Herzegovina*, 32/05**

All laws of F BiH published in the *Official Gazette of the Federation of Bosnia and Herzegovina*, 19/03 to 78/04 are passed in conformity with Article II(1) in conjunction with Article II(2) and Article II(4) of the Constitution of Bosnia and Herzegovina. Apart from the conclusion which the applicant himself drew by interpreting the current situation in the House of Peoples in the light of the relevant constitutional provisions relating to the impossibility of protecting the vital national interest of the Serb people in the House of Peoples, the applicant failed to provide any argument in support of the allegation according to which the current number of Serb delegates, in any case or in any proceedings, are deprived of the right to establish the national caucus and to enjoy the rights deriving from, including the right to raise the vital national interest issue. Therefore, the conclusion has to be made that all Federal laws which have been challenged by the applicant are in conformity with the Constitution of BiH.

- **Decision on the Merits No. U 5/05 of 27 January 2006, published in the *Official Gazette of Bosnia and Herzegovina*, 45/06**

The Statute of the City of Istočno Sarajevo (*Official Gazette of the City of Istočno Sarajevo*, 10/00 and 1/02) and **the Statute of the City of Banja Luka** (*Official Gazette of the City of Banja Luka*, 4/00) are in conformity with the Constitution of Bosnia and Herzegovina. The failure to stipulate the provisions guaranteeing a minimum of representation of the constituent peoples did not lead to the discrimination against Bosniacs and Croats in their enjoyment of the rights laid down in Article 2, paragraph 1, item (c) and Article 5, paragraph 1 item (c) of the International Convention on the Elimination of All Forms of Racial Discrimination. Namely, Bosniacs and Croats as do Serbs, have the right to vote, to stand for election and the right to participate in elections, the exercise of power being dependent on the election results. The failure to stipulate the provisions guaranteeing a minimum of representation may possibly lead to a situation in which any of the constituent peoples has absolute majority at the level of the Town, which would always depend on the election results.

- **Decision on the Merits No. U 7/05 of 2 December 2006, published in the *Official Gazette of Bosnia and Herzegovina*, 45/06**

The Law on Establishment and Mode of Settlement of the Internal Obligations of the Federation of Bosnia and Herzegovina (*Official Gazette of the Federation of Bosnia and Herzegovina*, 66/04), **the Law on Establishment and Mode of Settlement of the Internal Obligations of the Republika Srpska** (*Official Gazette of the Republika Srpska*, 63/04) and **the Law on Settlement of Obligations on the Basis of Old Foreign Currency Savings of the Brcko District of Bosnia and Herzegovina** (*Official Gazette of the Brcko District of Bosnia and Herzegovina*, 27/04) are not in conformity with the Article III of the Constitution of Bosnia and Herzegovina. Bosnia and Herzegovina

cannot release itself from the obligation to guarantee the respect for the constituted property rights of the holders of foreign currency savings accounts without previously securing sufficient guarantees that this problem will be resolved in an appropriate manner by enacting a legislative framework for resolving the issue of old foreign currency savings in a unified manner for all citizens of Bosnia and Herzegovina in accordance with, *inter alia*, the standards provided for by Article 1 of Protocol No. 1 to the European Convention.

- **Decision on the Merits No. U 14/05 of 2 December 2005, published in the *Official Gazette of Bosnia and Herzegovina*, 2/06**

The provisions of **Articles 41 and 48 of the Law on Excise Tax and Turnover Tax** (*Official Gazette of the Republika Srpska*, 25/02, 60/03 and 96/03) are not consistent with Article I(4) of the Constitution of Bosnia and Herzegovina. Establishing the system of administrative barriers that impedes access to the market of Bosnia and Herzegovina because it does not create equal conditions for all those who appear on the market, which represents one of important conditions of a single market and is not in line with Article I(4) of the Constitution.

- **Decision on the Merits No. U 68/02 of 25 June 2004, published in the *Official Gazette of Bosnia and Herzegovina*, 38/04**

It is hereby established that **Articles 6, 7, 9, 43, 71 and 72 of the Law on the Basis of the Public Broadcasting System and on the Public Broadcasting Service of Bosnia and Herzegovina** (*Official Gazette of Bosnia and Herzegovina*, 29/02) are in conformity with the Constitution of Bosnia and Herzegovina. Bosnia and Herzegovina, operating as a democratic state, is authorized, within the scope of its powers that includes establishment and operation of common and international communications facilities (Article III(1), to establish mechanisms and additional institutions to those anticipated in the Constitution as necessary to carry out its responsibilities, including the Public Broadcast Service of Bosnia and Herzegovina, which, together with the Entity Radio-Television Broadcasters, represents the Public Broadcast System of Bosnia and Herzegovina; as well as a Joint corporation which shall be established by public broadcasters as a separate legal subject to operate the transmission network.

- **Decision on Admissibility and Merits No. U 42/03 of 17 December 2004, published in the *Official Gazette of Bosnia and Herzegovina*, 36/05**

Article 3a of the Law on the Cessation of Application of the Law on Abandoned Apartments (*Official Gazette of the Federation of Bosnia and Herzegovina*, 11/98, 38/98, 12/99, 27/99, 43/99, 31/01, 56/01, 15/02 and 29/03) is consistent with the Constitution of Bosnia and Herzegovina. Both paragraphs of the contested Article 3a, evaluated abstractly, can be said to pursue a legitimate aim and do not interfere with rights in the manner which is arbitrary or which imposes an excessive burden on individuals having regard to the rights and interests of other individuals and the general public interest. Article 3a interferes with the right of certain groups of people to peaceful enjoyment of their possessions, namely occupancy rights over apartments in Bosnia and Herzegovina, but the interference can be justified by the circumstances currently prevailing in Bosnia

and Herzegovina and is in accordance with the law and proportionate to the strong and legitimate public interests.

- **Decision on Admissibility and Merits No. U 83/03 of 22 September 2004, paragraph 73, published in the *Official Gazette of Bosnia and Herzegovina*, 60/04**

Article 6, paragraph 2, Article 7, paragraph 2 and Article 8 of the Law on Immunity of Bosnia and Herzegovina (*Official Gazette of Bosnia and Herzegovina*, 37/03) and **Article 6, paragraph 3, Article 7, paragraph 2 and Article 8 of the Law on Immunity of the Federation of Bosnia and Herzegovina** (*Official Gazette of the Federation of Bosnia and Herzegovina*, 19/03) are consistent with the Constitution of Bosnia and Herzegovina. Pursuant to the Law on Immunity of BiH and Law on Immunity of F BiH, individuals may claim immunity before a competent court. An appeal with the Constitutional Court of Bosnia and Herzegovina or a complaint to the Constitutional Court of the Federation of Bosnia and Herzegovina may be lodged against court's decisions on immunity, which means that the provisions of the stated laws render it possible for the Constitutional Court of Bosnia and Herzegovina and the Constitutional Court of the Federation of Bosnia and Herzegovina to examine the substance of relevant appeal against decisions on immunity. Therefore, the contested provisions of Article 6, paragraph 2 and Article 7, paragraph 2 of the BiH Immunity Law and Article 6, paragraph 3 and Article 7, paragraph 2 of the FBiH Immunity Law are consistent with the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility and Merits No. U 24/03 of 22 September 2004, paragraphs 44 and 45, published in the *Official Gazette of Bosnia and Herzegovina*, 5/05**

Bosnia and Herzegovina, functioning as a democratic state, was authorized to establish, in the areas under its responsibility, other mechanisms, besides those provided in the Constitution of Bosnia and Herzegovina, and additional institutions that were necessary for the exercise of its responsibilities, including the setting up of a court to strengthen the legal protection of its citizens and to ensure respect for the principles of the European Convention. The Constitutional Court refers in this respect to Article IV(4)(a) of the Constitution of Bosnia and Herzegovina which provides that the Parliamentary Assembly shall have responsibility for enacting legislation as necessary to implement decisions of the Presidency or to carry out the responsibilities of the Assembly under the Constitution of Bosnia and Herzegovina. Although it is not the task of the Constitutional Court to express an opinion on whether it is appropriate to enact a certain law, the Constitutional Court observes that in the context of Bosnia and Herzegovina, the establishment of the Court of Bosnia and Herzegovina can be expected to strengthen the rule of law which is one of the fundamental principles of any well-functioning democracy. The Constitutional Court concludes that the **Law on the Court of Bosnia and Herzegovina** (*Official Gazette of Bosnia and Herzegovina*, 29/00) is not in contravention of the Constitution of Bosnia and Herzegovina.

- **Decision No. U 26/01 of 28 September 2001, paragraphs 26 and 27, published in the *Official Gazette of Bosnia and Herzegovina*, 4/02**

Article 11, paragraph 6 of the Law on the Financing of Institutions of Bosnia and Herzegovina (*Official Gazette of Bosnia and Herzegovina*, 61/04), in its part reading as follows: *If the Budget is not adopted by 31 March, no expenditures shall be approved after that day for any purpose other than paying unsettled debt until the budget is properly adopted*, is inconsistent with Article VIII(2) of the Constitution of Bosnia and Herzegovina. The Constitutional Court concludes that the legislator has the authority, to specify a deadline, for the sake of efficient functioning of the state, within which a budget must be adopted, and during which temporary funding may be in place. In addition, measures prescribed by the legislator, in the event the deadline is not observed, must not entirely hinder the discharge of competencies of the state institutions, as that would prove contrary to the goal and spirit of the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility and Merits No. U 1/08 of 25 January 2008, paragraph 22, published in the *Official Gazette of Bosnia and Herzegovina*, 27/08**

As to the allegations about the incompatibility of **Article 4 of the Law on Settlement of Debts Arising from Old Foreign Currency Savings** (published in the *Official Gazette of Bosnia and Herzegovina*, 28/06, 76/06 and 72/07) with the right to property, the Constitutional Court concluded that the said provision, stipulating the write off of the interest, has satisfied the principle of lawfulness, it serves a legitimate aim and maintains a reasonable relationship of „proportionality” between the means employed and the aim sought to be achieved. Therefore, the mentioned provision is 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. Finally, the Constitutional Court found that **Article 28** of the challenged Law is in accordance with Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6, paragraph 1 of the European Convention because by restriction of the right of access to court, which is referred to in the challenged provision, the very essence of the applicants’ property rights was not impaired. In other words, a fair balance has been struck between the legitimate aim and the property rights of the holders of foreign currency savings accounts.

- **Decision on Admissibility and Merits No. U 13/06 of 28 March 2008, paragraph, published in the *Official Gazette of Bosnia and Herzegovina*, 46/08**

Articles 22 and 23 of the Law on Settlement of Debts Arising from Old Foreign Currency Savings (*Official Gazette of Bosnia and Herzegovina*, 28/06, 76/06 and 72/07) are consistent with the Constitution of Bosnia and Herzegovina as the Parliament of Bosnia and Herzegovina has the competence under Article VII of the Constitution of Bosnia and Herzegovina to determine, through the Law on Central Bank, that the Central Bank of Bosnia and Herzegovina has a role of the fiscal agent for Bosnia and Herzegovina with regard to bonds to be issued for the purpose of settling the debts arising from „old foreign currency savings”. **Articles 8, 9, 10, 11, 12, 13, 14 and 16 of the Law on Conditions and Manner of Settlement of Debts Arising from Old Foreign Currency Savings by Issuance of Bonds in the Republika Srpska** (*Official Gazette of Republika Srpska*, 1/08) are consistent with the Constitution of Bosnia and Herzegovina. The Constitutional Court established that as to the field of protection of human rights and freedoms, including the issue of „repayment of old foreign currency savings”, Bosnia

and Herzegovina and Entities are to be held responsible. Therefore, while foreseeing better conditions for repayment of „old foreign currency savings”, the Republika Srpska, did not violate the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility and Merits No. U 3/08 of 4 October 2008, paragraphs 78 and 79, published in the *Official Gazette of Bosnia and Herzegovina*, 99/08**

The Public Procurement Law of Bosnia and Herzegovina (*Official Gazette of Bosnia and Herzegovina*, 49/04, 19/05, 52/05, 8/06, 24/06 and 70/06) **is consistent with Article IV(4) of the Constitution of Bosnia and Herzegovina.** The Constitutional Court underlines that the responsibilities within the meaning of Article III(3)(a) of the Constitution of BiH include not only the exclusive responsibilities of the Institutions of Bosnia and Herzegovina enumerated in Article III(1) of the Constitution of BiH, as construed by the applicant, but also the responsibilities and powers stipulated in the Constitution of BiH as a whole. Given the authority of the Parliamentary Assembly to enact legislation as necessary to carry out its responsibilities, including the authority to decide upon the sources and amounts of revenues for the operations of the institutions of Bosnia and Herzegovina, the Constitutional Court holds that, in exercising this function, the Parliamentary Assembly is not limited only to deciding upon the sources and amounts of revenues for their operations but its function includes the control over the use of public funds, so that the public funds are used in an efficient, reliable and transparent manner. Given the fact that the challenged law was enacted with the aim of ensuring the fulfillment of the supervision function of the Parliamentary Assembly, the Constitutional Court concluded that it is in conformity with Article IV(4) of the Constitution of BiH.

- **Decision on Admissibility and Merits No. U 6/07 of 4 October 2008, published in the *Official Gazette of Bosnia and Herzegovina*, 91/08**

The Law on Statistics of Bosnia and Herzegovina (*Official Gazette of Bosnia and Herzegovina*, 26/04 and 42/04) is consistent with Article IV(4) of the Constitution of Bosnia and Herzegovina. The conclusion was made that the Parliamentary Assembly was authorized to pass the challenged law based on Article IV(4) (a) in conjunction with Article V(3)(a) of the Constitution of BiH in order to enforce decisions from the field of external politics which fall within the scope of responsibilities of the Presidency of Bosnia and Herzegovina and are related to the process of acquiring the membership in the Council of Europe and signing the Stabilization and Accession Agreement with the European Union.

- **Decision on Admissibility and Merits No. U 9/07 of 4 October 2008, paragraph 21, published in *Official Gazette of Bosnia and Herzegovina*, 20/09**

Determining a general interest for the area of municipality over which it exercises its function as a local self-governance unit, lies exclusively within its jurisdiction when it comes to exercising its constitutional competence in the area of planning and construction. This constitutional right has been upheld also by the Law on Construction Land as well as by the Law on Physical Planning. Pursuant to the said laws and the Law on Expropriation, the municipality shall determine and enforce a general interest through regulation planning documents or town-planning projects. Therefore, the allegations

of the applicants that the present case does not concern a general interest but a group interest are, in the opinion of the Constitutional Court, unfounded. The provision of Article 3, paragraph 2, Article 15, paragraph 2 and Articles 47, 48, 49, 50, 51 and 52 of the **Expropriation Law of the Republika Srpska** (*Official Gazette of the Republika Srpska*, 112/06 and 37/07) do not violate the constitutional rights to property and therefore are consistent with Article II(3)(k) of the Constitution of Bosnia and Herzegovina and Article 1 of Protocol No.1 to the European Convention.

- **Decision on Admissibility and Merits No. U 15/07 of 4 October 2008, paragraph 40, published in the *Official Gazette of Bosnia and Herzegovina*, 99/08**

The provision of **Article 13(2) of the Law on Court of BiH** is consistent with Articles (III)(3)(a) and III(5)(a) of the Constitution of Bosnia and Herzegovina, as the issue of division of the subject matter competence within the domestic legal system, as well as the issue related to the offences that would fall within the subject matter competence of a court within the established judicial scheme, does not raise an issue as to whether the challenged provision is consistent with Articles (III)(3)(a) and III(5)(a) of the Constitution of Bosnia and Herzegovina. Also, in its earlier decision the Constitutional Court has concluded that Bosnia and Herzegovina has jurisdiction to enact the Law on Court of BiH. Also, the Constitutional Court concludes that the challenged provision is consistent with Article III(1)(g) of the Constitution of Bosnia and Herzegovina being that this provision stipulates conditions for full implementation of obligations the state arising under Article III(1)(g) of the Constitution of Bosnia and Herzegovina and under which its institutions have jurisdiction.

- **Decision on Admissibility and Merits No. U 16/08 of 28 March 2009, paragraph 46, published in the *Official Gazette of Bosnia and Herzegovina*, 50/09**

The provision of **Article 13(2) of the Law on the Court of BiH** is consistent with the principle of the rule of law under Article I(2) of the Constitution of Bosnia and Herzegovina and that it does not dispute legal certainty or equality before the law of the individual. Namely, the Constitutional Court concludes that item (a) of this provision allows meeting of the constitutionality stipulated obligation of the state to protect sovereignty, territorial integrity, political independences, national security and international personality of Bosnia and Herzegovina and meeting of these constitutional obligations is one of the requirements of the rule of law in the democratic states. Further, the Constitutional Court concludes that this principle is not disputed in item (b) of the challenged provision, being that it generally stipulates situations in which the Court of BiH shall have jurisdiction under certain conditions. In addition, this provision gives authority but also creates obligation of the Court of BiH when applying this principle, to carefully consider each individual case while complying with the principle of „legal certainty” and „equality before the law” as indivisible element of the principle of the rule of law.

- **Decision on Admissibility and Merits No. U 16/08 of 28 March 2009, paragraph 47, published in the *Official Gazette of Bosnia and Herzegovina*, 50/09**

It is considered that the request of Mr. Ivo Miro Jović, at the time Chair of the Presidency of Bosnia and Herzegovina, for **review of the constitutionality of Article 1 paragraph**

1, Article 2, the last sentence, Article 6 paragraph 3, Article 10 paragraph 4, Article 12 paragraphs 1, 2 and 3, Article 13 paragraph 2 item f) and Article 18 paragraph 2 – the part referring to three public broadcasting services; Article 3, Article 7 paragraph 2, Article 8 paragraph 3, Article 9 paragraph 1, the third and fourth sentence where it is stated that there shall be two TV and two radio stations in the territory of an Entity, Article 12 paragraph 4 and Article 42, paragraphs 1, 2 and 3 and Article 19 paragraph 2 of the Law on Public Broadcasting System of Bosnia and Herzegovina (*Official Gazette of Bosnia and Herzegovina*, 78/05) is dismissed since not a single decision proposal received the affirmative vote of at least five judges.

- **Decision on Admissibility and Merits No. U 5/06 of 29 May 2009, paragraph 63, published in the *Official Gazette of Bosnia and Herzegovina*, 66/09**

The Constitutional Court of BiH holds that the activities undertaken by the Republika Srpska and aimed at lobbying abroad for its own interest, as well as the formal acts passed by the Republika Srpska as the basis for any such activities, contain nothing that relates to the sole responsibility of Bosnia and Herzegovina.

- **Decision on Admissibility and Merits No. U 15/08 of 3 July 2009, paragraph 36, published in the *Official Gazette of Bosnia and Herzegovina*, 73/09**

The Law on the Protection of the Domestic Production under the CEFTA is inconsistent with Article III(3)(b) of the Constitution of Bosnia and Herzegovina.

There is a violation of Article III(3)(b) of the Constitution of Bosnia and Herzegovina in case where the domestic law is not in conformity with the general rule of international law *pacta sunt servanda* according to which *every treaty in force is binding upon the parties to it and must be performed by them in good faith*, as well as where it is not in conformity with the provisions of international treaty joined by Bosnia and Herzegovina.

- **Decision on Admissibility and Merits No. U 5/09 of 25 September 2009, paragraph 38, published in the *Official Gazette of Bosnia and Herzegovina*, 18/10**

Article 16 paragraph 1 of the Law on Conflict of Interest of Governmental Institutions of the Federation of Bosnia and Herzegovina is consistent with Article II(2) of the Constitution of Bosnia and Herzegovina in conjunction with Article 3 of Protocol No. 1 to the European Convention as the stipulated limitations serve a legitimate aim. The legitimate aim being pursued is seeking to ensure that those officials that are elected to the legislature are independent, with a view to promoting the general interest of the community as a whole and preventing the abuse of public duties for personal gain, as the interest of the community in terms of the lawfulness, transparency, objectivity and impartiality of elected officials exercising the important functions has primacy over an individual's interest to be elected to the legislature, while exercising important functions in public or private enterprises. **Article 16 paragraph 1 of the Law on Conflict of Interest of Governmental Institutions of the Federation of Bosnia and Herzegovina** is consistent with Article IX(1) of the Constitution of Bosnia and Herzegovina as the mentioned constitutional provision refers to the specific categories of persons whose right to stand for election is thus restricted while, at the same time, the provision does not stipulate any limitation on the right to stand for elections for other categories of persons.

- **Decision on Admissibility and Merits No. U 14/09 of 30 January 2010, paragraph 29, published in the *Official Gazette of Bosnia and Herzegovina*, 39/10**

The Constitutional Court holds that the **provisions of Article 9.1 paragraphs 2 and 3, Article 10.1 paragraph 3 and Article 11.1 paragraph 2 of the Election Law** are not inconsistent with lines 3, 8 and 9 of the Preamble of the Constitution of Bosnia and Herzegovina and Article I(2) of the Constitution of Bosnia and Herzegovina for failing to provide mechanisms securing proportional representation of constituent peoples of BiH, as per the 1991 census, during direct election by citizens – voters of the representatives to the House of Representatives of BiH, the House of Representatives of the Federation of BiH and the RS National Assembly.

- **Decision on Admissibility and Merits No. U 13/09 of 30 January 2010, paragraph 37, published in the *Official Gazette of Bosnia and Herzegovina*, 51/10**

The request for review of the constitutionality of the provision of Article 5, paragraphs 1, 3, 4 5, 7, 8 and 9 of the **Law Establishing the Company for the Transmission of Electric Power in Bosnia and Herzegovina** is ill-founded and this provision is not in violation of the Entities' 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, as the challenged Law was enacted in the public interest. In addition, it is concluded that the provision of Article 5, paragraphs 1, 3, 4 5, 7, 8 and 9 is not disproportionate to „the means employed and the aim sought to be realized”.

- **Decision No. U 16/09 of 27 March 2010, paragraph 37, published in the *Official Gazette of Bosnia and Herzegovina*, 69/10**

Article 6 of the Law on Insurance Agency in Bosnia and Herzegovina is consistent with Article IV(4)(a) of the Constitution of Bosnia and Herzegovina. It is concluded that the Parliamentary Assembly of Bosnia and Herzegovina has the power to adopt the challenged legal provisions on the basis of Article IV(4)(a) of the Constitution of Bosnia and Herzegovina in conjunction with Article III(1)(a) and (b) of the Constitution of Bosnia and Herzegovina, as their aim is harmonisation of the Entities' legislation in the area of insurance, as well as their harmonisation with the relevant legislation regulating this matter within the European Union, whereby Bosnia and Herzegovina is meeting its obligations undertaken under the Stabilisation and Association Agreement.

- **Decision No. U 17/09 of 27 March 2010, published in the *Official Gazette of Bosnia and Herzegovina*, 41/10**

The Constitutional Court considers that the acts and activities taken by one of the Entities may raise an issue as to the existence of a dispute between the Entity and Bosnia and Herzegovina over a matter under the Constitution of Bosnia and Herzegovina, which only the Constitutional Court is competent to resolve. However, in the instant case, the Constitutional Court has concluded that the preparation and submission of **the Second Report of the Republika Srpska to the United Nations Security Council on the Situation in Bosnia and Herzegovina**, as referred to by the appellant, does not constitute an interference with or assumption of foreign policy, and it is not inconsistent

with Articles I(1), III(1)(a), III(1)(b), V(3)(a) and (c) and V(4)(a) of the Constitution of Bosnia and Herzegovina.

- **Decision No. U 15/09 of 27 March 2010, published in the *Official Gazette of Bosnia and Herzegovina*, 84/10**

The Constitutional Court holds that the challenged provision of Article 35 of the **Law on Salaries and Remunerations in the Institutions of Bosnia and Herzegovina** is inconsistent with Article II(4) of the Constitution of Bosnia and Herzegovina in conjunction with Article 1 of Protocol No. 12 to the European Convention, Articles 1, 2 and 11 of the UN Convention on the Elimination of All Forms of Discrimination Against Women as well as Article 26 of the International Covenant on Civil and Political Rights and Article 10 of the International Covenant on Economic, Social and Cultural Rights since it leads to a differential treatment of women employees in the institutions of Bosnia and Herzegovina and the Constitutional Court finds no objective and reasonable justification for such differential treatment. As a result of the aforementioned, the Constitutional Court concludes that the legal grounds for taking the challenged decision of the Council of Ministers ceased to exist as it was adopted on the basis of the challenged provision of the Law on Salaries and Remunerations in the Institutions of Bosnia and Herzegovina.

- **Decision No. U 12/09 of 28 May 2010, published in the *Official Gazette of Bosnia and Herzegovina*, 80/10**

The provisions of **Article 19.4 paragraphs 1 and 9 of the Election Law and Article 16 of the Statute**, which stipulate a lower limit and an upper limit on the number of representatives from each constituent people within the City Council, do not discriminate against the Croat People in the enjoyment of their rights under Article II(4) of the Constitution of Bosnia and Herzegovina taken together with Article 25.b) of the International Covenant on Civil and Political Rights.

The Constitutional Court grants the applicant's requests in respect of (a) the allegation that **Article 19.2 paragraphs 1 and 3, and Article 19.4 paragraph 1**, as a result of which there are widely varying numbers of electors in constituencies based on former city areas in Mostar, violate Article 25.b) of the International Covenant on Civil and Political Rights, and (b) the allegation that Article 19.2, paragraph 1 and Article 19.4, paragraphs 2 to 8 making it impossible for voters in the Central Zone of Mostar to vote for councillors to represent that Zone, in addition to councillors to represent the city-wide constituency, violate Article II(4) of the Constitution of Bosnia and Herzegovina taken together with Article 25.b) of the International Covenant on Civil and Political Rights.

Article 7 paragraphs 1 and 3, Article 15 paragraph 2, Article 17 paragraph 1, and Article 38 paragraph 1 of the Statute of the City of Mostar, which make it impossible for voters in the Central Zone of Mostar to vote for councillors to represent that Zone, in addition to councillors to represent the city-wide constituency, violate Article II(4) of the Constitution of Bosnia and Herzegovina taken together with Article 25.b) of the International Covenant on Civil and Political Rights. The Constitutional Court adjourns

further proceedings on this part of the request *sine die* pending the amendment of the Law on Elections of Bosnia and Herzegovina in accordance with this decision. The Constitutional Court orders the Council of the City of Mostar, within three months following the publication of an amended version of the Law on Elections made by the Parliamentary Assembly in the Election Law of BiH and published in the *Official Gazette of Bosnia and Herzegovina*, to inform the Constitutional Court of the steps the Council will have taken to bring the Statute of the City of Mostar into line with the Constitution of Bosnia and Herzegovina.

The provisions of Article 19.7 of the Election Law, Article VI.C paragraph 7 of the Amendment to the FBiH Constitution and Articles 44 and 45 of the Statute, according to which the citizens of the City of Mostar elect their mayor in a manner which is different from the one in which the citizens of the City of Banja Luka elect their mayor, are consistent with the rights of the citizens of the City of Mostar safeguarded under Article 25.b) of the International Covenant on Civil and Political Rights, and do not discriminate against the citizens of the City of Mostar in the enjoyment of that right contrary to Article II(4) of the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility and Merits No. U 9/09 of 26 November 2010 published in the *Official Gazette of Bosnia and Herzegovina*, 48/11**

Articles 9(3) and 20(13)(3) of the Election Law are not consistent with Article I(2) of the Constitution of Bosnia and Herzegovina due to the fact that they contain the names of municipalities in the Republika Srpska which are not in accordance with their names as established by the positive Entity Law on Territorial Organization of the Republika Srpska.

Articles 9(3) and 20(13)(3) of the Election Law are consistent with Articles I(1), I(3), III(1) and III(3)(a) of the Constitution of Bosnia and Herzegovina because those provisions did not determine but only took over the names of individual municipalities from the Entity laws which were in force at the time of the enactment of the challenged law. There has, therefore, been no interference with the Entity constitutional jurisdiction to determine the names of municipalities on its territory.

- **Decision on Admissibility and Merits No. U 4/11 of 27 May 2011 published in the *Official Gazette of Bosnia and Herzegovina*, 63/11**

The Constitutional Court concludes that the **Law Amending the Law on Service in the Armed Forces of Bosnia and Herzegovina** (*Official Gazette of Bosnia and Herzegovina*, 74/10), whereby only certain provisions of the Law on Service in Armed Forces of Bosnia and Herzegovina (*Official Gazette of Bosnia and Herzegovina*, 88/05, 53/07 and 59/09) are amended with regard to the exceptions applicable to the area of pension and disability insurance, which is governed by the Law on Service in Armed Forces of Bosnia and Herzegovina, is not in contravention of Articles III(1), III(3)(a) and IV(4) of the Constitution of Bosnia and Herzegovina. Also, the Constitutional Court concludes that the allegations of violations of the right guaranteed under Article II(4) of the Constitution of Bosnia and Herzegovina are ill-founded as, in the present case, the applicant has failed to make that discrimination seems probable and, in this regard, there

is nothing that could bring the constitutionality of the challenged Law into question in respect of Article III(3)(b) of the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility and Merits No. U 5/11 of 27 May 2011 published in the *Official Gazette of Bosnia and Herzegovina*, 63/11**

By passing the **Law on Execution of the RS Budget for 2011** and the **Decision on Adoption of the RS Budget RS for 2011** the provisions of Articles III(3)(b), III(5)(a) and VIII(3) of the Constitution of Bosnia and Herzegovina have not been violated in the case at hand.

- **Decision on Admissibility and Merits No. U 2/11 of 27 May 2011 published in the *Official Gazette of Bosnia and Herzegovina*, 99/11**

The Constitutional Court concludes that **Article 5 the Law on Personal Identification Number** is not consistent with Article I(2) of the Constitution of Bosnia and Herzegovina due to the fact that it contains the names of municipalities in the Republika Srpska which are not in accordance with their names as established by the positive Entity Law on Territorial Organization of the Republika Srpska, which was passed within the scope of the constitutional competence of the Entity.

The Constitutional Court also concludes that the provisions of **Article 5 the Law on Personal Identification Number** are consistent with Articles I(1), I(3), III(1) and III(3) (a) of the Constitution of Bosnia and Herzegovina because those provisions did not determine but only took over the names of individual municipalities from the Entity laws which were in force at the time of the enactment of the challenged law. Therefore, there is no interference with the Entity constitutional jurisdiction to determine the names of municipalities on its territory.

- **Decision on Admissibility and Merits No. U 3/11 of 27 May 2011 published in the *Official Gazette of Bosnia and Herzegovina*, 63/11**

The provisions of **Article 17 and Article 39(1) of the Law on Citizenship** are not consistent with Article I(7)(b) and (d) of the Constitution of Bosnia and Herzegovina because those constitutional provisions have not established that the citizens of Bosnia and Herzegovina will be deprived of their citizenship if they hold the citizenship of another state and have not renounced it until the date set by the challenged law, *i.e.* if Bosnia and Herzegovina has not concluded a bilateral agreement on dual citizenship with that State.

- **Decision on Admissibility and Merits No. U 9/11 of 23 September 2011 published in the *Official Gazette of Bosnia and Herzegovina*, 99/11**

The Constitutional Court concludes that the provisions of Article 4(1)(1) and Article 6(1)(3) of the **Law Amending the Election Law of the Republika Srpska** (*Official Gazette of the Republika Srpska*, 24/12) are not consistent with Articles I(2) and III(3)(b) of the Constitution of Bosnia and Herzegovina as these provisions have been violating the constitutional principle that the Entities and other administrative units in Bosnia and Herzegovina are obliged to adhere, amongst other things, to the „decisions of the Institutions of Bosnia and Herzegovina”, and in the particular case, to the principles of

corresponding provisions of the Election Law of Bosnia and Herzegovina, by which the principle of the rule of law under Article I(2) of the Constitution of Bosnia and Herzegovina has been violated as well.

The Constitutional Court concludes that Articles 3(2)(4) and 11 of the **Law Amending the Election Law of the Republika Srpska** (*Official Gazette of the Republika Srpska*, 24/12) are consistent with Articles I(2) and III(3)(b) of the Constitution of Bosnia and Herzegovina since the content of these provisions follows the general principles established by the Election Law of Bosnia and Herzegovina as a „decision of the Institutions of Bosnia and Herzegovina”, which does not bring to doubt the principle of the rule of law.

- **Decision on Admissibility and Merits No. U 4/12 of 26 May 2012 published in the *Official Gazette of Bosnia and Herzegovina*, 63/12**

The Constitutional Court concludes that, in exercising the rights under Article II(4) of the Constitution of Bosnia and Herzegovina in conjunction with Article 6 of the International Covenant on Economic, Social and Cultural Rights, the persons who acquired the right to personal pension are not discriminated against by **Article 7(e) of the challenged Law on Amendments to the Law on Civil Services in the Institutions of Bosnia and Herzegovina** (*Official Gazette of Bosnia and Herzegovina*, 43/98).

- **Decision on Admissibility and Merits No. U 3/12 of 13 July 2012 published in the *Official Gazette of Bosnia and Herzegovina*, 37/13**

The Constitutional Court of BiH concludes that the Republika Srpska enacted the challenged **Law on Status of State Property** located in the territory of Republika Srpska and is under the Disposal Ban is contrary to Article I(1), Article III(3)(b) and Article IV(4)(e) of the Constitution of BiH, as the matter falls under the exclusive responsibility of BiH to regulate the issue of property referred to in disputable Article 2 of the challenged Law. For these reasons, the challenged Law is unconstitutional. The whole law cannot remain in effect.

- **Decision on Admissibility and Merits No. U 1/11 of 13 July 2012 published in the *Official Gazette of Bosnia and Herzegovina*, 73/12**

The Constitutional Court concludes that the provisions of **Articles 4, 7, 10, 11, 40, 45, 46, 56, 62, 71 and 105 of the Law on Survey and Cadastre of the Republika Srpska** (*Official Gazette of Republika Srpska*, 6/12) are in conformity with the right to a fair trial referred to in Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention, the right to property referred to in Article II(3)(k) of the Constitution of Bosnia and Herzegovina and Article 1 of Protocol No. 1 to the European Convention, the right to an effective legal remedy referred to in Article 13 of the European Convention, and with the principle of legal certainty referred to in Article I(2) of the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility and Merits No. U 5/12 of 28 September 2012 published in the *Official Gazette of Bosnia and Herzegovina*, 94/12**

The Constitutional Court concludes that the **Law on Salaries and Other Compensations in Judicial and Prosecutorial Institutions at the Level of Bosnia and Herzegovina**

(*Official Gazette of Bosnia and Herzegovina*, 90/05 and 32/07) is incompatible with the provisions of Article I(2) of the Constitution of Bosnia and Herzegovina as it violates the principle of independence of the judiciary as the fundamental guarantee of the rule of law.

The Constitutional Court concludes that the **Law on Salaries and Other Compensations in Judicial and Prosecutorial Institutions at the Level of Bosnia and Herzegovina** (*Official Gazette of Bosnia and Herzegovina*, 90/05 and 32/07) is incompatible with the provisions of Article II(4) of the Constitution of Bosnia and Herzegovina in conjunction with Article 14 of the European Convention, Article 1 of Protocol No. 12 to the European Convention and Article 26 of the International Covenant on Civil and Political Rights.

- **Decision on Admissibility and Merits No. U 7/12 of 30 January 2013 published in the *Official Gazette of Bosnia and Herzegovina*, 17/13**

The Constitutional Court concludes that the provision of **Article 18(d)(4) of the Law on Amendments to the Law on the Fundamentals of Social Protection, Protection of Civilian Victims of War and Protection of Families with Children** (*Official Gazette of the Federation of Bosnia and Herzegovina*, 14/09) is in contravention of Article II(2) of the Constitution of Bosnia and Herzegovina in conjunction with Article 1 of Protocol No. 12 to the European Convention, as it itself points to a differential treatment of persons with disabilities for which no reasonable and objective justification exists.

- **Decision on Admissibility and Merits No. U 9/12 of 30 January 2013 published in the *Official Gazette of Bosnia and Herzegovina*, 14/13**

The Constitutional Court concludes that the challenged Law on Pension and Disability Insurance (*Official Gazette of the Federation of Bosnia and Herzegovina*, 29/98, 49/00, 32/01, 61/02, 73/05, 59/06, 4/09 and 55/12), in respect of the allegations stated in the request, is consistent with Article I(2), Article II(3)(k) and Article II(4) of the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility and Merits No. U 2/13 of 24 May 2013 published in the *Official Gazette of Bosnia and Herzegovina*, 21/14**

The Constitutional Court concludes that the challenged **Law on the Rights of Returnees to their Pre-War Place of Permanent Residence in the Republika Srpska and the Brčko District of Bosnia and Herzegovina** (*Official Gazette of the Federation of Bosnia and Herzegovina*, 35/14) is not in conformity with Articles III(2)(c) and III(3)(b) of the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility and Merits No. U 13/14 of 4 July 2014 published in the *Official Gazette of Bosnia and Herzegovina*, 62/14**

The Constitutional Court concludes that the **Decision on Verification of the Accuracy and Authenticity of Data during the Registration of Permanent Residence in the Territory of the Republika Srpska** (*Official Gazette of the Republika Srpska*, 31/14) is in contravention of Article III(3)(b) of the Constitution of Bosnia and Herzegovina, in conjunction with Article I(2) of the Constitution of Bosnia and Herzegovina, since the issue of permanent residence is regulated by the State law, wherefrom it follows that this

issue is within the exclusive responsibility of the institutions of Bosnia and Herzegovina, and not of any of the bodies of the entity of the Republika Srpska.

- **Decision on Admissibility and Merits No. U 10/14 of 4 July 2014 published in the *Official Gazette of Bosnia and Herzegovina*, 61/14**

The Constitutional Court concludes that **Article 3 of the Law on Favorable Early Retirement of War Veterans** (*Official Gazette of Federation of Bosnia and Herzegovina*, 41/13) is in conformity with provisions of Article I(2) and Article II(4) of the Constitution of Bosnia and Herzegovina and Article 14 of the European Convention in conjunction with Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 of the European Convention, Article II(3)(k) of the Constitution of Bosnia and Herzegovina and Article 1 of Protocol No. 12 to the European Convention and Article 1 of Protocol No. 12 to the European Convention.

- **Decision on Admissibility and Merits No. U 17/14 of 24 September 2014 published in the *Official Gazette of Bosnia and Herzegovina*, 99/14**

The Constitutional Court concludes that Article 6 (1), items a), b) and e) and Article 13 and Article 16 of the **Law on Cemetery and Funeral Services** (*Official Gazette of Republika Srpska*, 31/13 and 6/14) are in conformity with Article II (3)(g), Article II (3) (k), and Article II (3)(e) of the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility and Merits No. U 19/14 of 24 September 2014 published in the *Official Gazette of Bosnia and Herzegovina*, 89/14**

The Constitutional Court concludes that the provisions of Article 80(2)(4) (Item 1(2) of the Amendment LXXXIII) and Article 83(4) (item 5 of the Amendment XL as amended by item 4 of the Amendment LXXXIII) of the Constitution of the Republika Srpska, Article IV.B.1, Article 1(2) (amended by the Amendment XLI) and Article IV.B.1, Article 2(1) and (2) (amended by the Amendment XLII) of the Constitution of the Federation of Bosnia and Herzegovina, and Articles 9.13, 9.14, 9.16 and 12.3 of **the Election Law** are in contravention of Article II(4) of the Constitution of BiH and Article 1 of Protocol No. 12 to the European Convention.

The Constitutional Court concludes that the challenged provisions of **Articles 9.15, 12.1 and 12.2 of the Election Law** are in conformity with Article II(4) of the Constitution of BiH and Article 1 of Protocol No. 12 to the European Convention.

- **Decision on Admissibility and Merits No. U 14/12 of 26 March 2015 published in the *Official Gazette of Bosnia and Herzegovina*, 38/15**

The Constitutional Court concludes that **Law on Law on Primary Education and Upbringing of the Republika Srpska** (*Official Gazette of the Republika Srpska*, 74/08 and 71/09); **Law on Secondary Education and Upbringing of the Republika Srpska** (*Official Gazette of the Republika Srpska*, 74/08, 106/09 and 104/11); **Laws on Primary Education and Upbringing, Laws on Secondary Education and Upbringing of all ten cantons in the Federation of Bosnia and Herzegovina (Unsko-Sanski Canton, Posavina Canton, Tuzla Canton, Zenica-Doboj Canton, Central Bosnia, Herzegovina-Neretvanski, Western-Herzegovina, Bosnian-Podrinje Canton,**

Canton Sarajevo, Canton 10, in the context of the Request in question are not in contravention of the provisions of Article II(1), Article II(4) and Article II(3)(b) of the Constitution of Bosnia and Herzegovina and Article 14 of the European Convention in conjunction with the provisions of Article 2 of Protocol No.1 to the European Convention and Article 1 of Protocol No. 12 to the European Convention.

- **Decision on Admissibility and Merits No. U 26/13 of 26 March 2015 published in the *Official Gazette of Bosnia and Herzegovina*, 33/15**

The Constitutional Court concludes that prescribing a mandatory collective management of copyrights and related rights in specific cases in the challenged **Law on Collective Management of Copyright and Related Rights** (Article 4), legal basis for the collective rights management (Article 9(1)) and presumption of collective management of rights (Article 18(1)), does not constitute such a restriction of copyrights and related rights as to be contrary to the right to property under Article II(3)(k) and Article 1 of Protocol No. 1 to the European Convention. Also, the Constitutional Court concludes that the implicit request to the authors in the challenged Law to enter into a contract in order to become members of a collective organization and, among other things, to participate in the distribution of funds, is not a measure that is disproportionate to the legitimate goal sought to be achieved, which is the reason why there is no discrimination under Article II(4) of the Constitution of Bosnia and Herzegovina and Article 14 of the European Convention and in conjunction with Article 1 of Protocol No. 1 to the European Convention.

The Constitutional Court concludes that prescribing the monopoly position of a collective organization for managing copyrights and related rights in the challenged Law has a legitimate goal – the effective exercise of rights and the protection of an author and a user, and that such a solution is proportionate to the goal sought to be achieved. The reason particularly being that reasonable oversight mechanisms of the work of a collective organization were secured and measures prescribed for preventing the abuse of the monopoly position. In addition, the challenged Law carries nothing suggesting that such a solution, limiting the number of collective organizations for the collective management of the same type of rights on the same type of works, constitutes a restriction on the freedom of assembly, and especially not such a restriction that would go against Article 11(2) of the European Convention, or Article II(3)(i) of the Constitution of Bosnia and Herzegovina. In view of this conclusion, the Constitutional Court holds that there is no likelihood of discrimination in this case, thus it did not consider separately the respective allegations.

- **Decision on Admissibility and Merits No. U 18/14 of 9 July 2015 published in the *Official Gazette of Bosnia and Herzegovina*, 71/15**

The Constitutional Court concludes that the provisions of **Articles 22(3)(a) and 24(2) of the Competition Act** are not inconsistent with Article II(4) of the Constitution of Bosnia and Herzegovina and Article 1 Protocol No. 12 to the European Convention, as the members of Others and/or citizens are neither limited nor prevented from being appointed as members of the Competition Council under equal conditions as members of the constituent peoples, and they are neither limited nor prevented from voting on decisions of the Competition Council under equal conditions as members of the constituent peoples.

- **Decision on Admissibility and Merits No. U 25/14 of 9 July 2015 published in the *Official Gazette of Bosnia and Herzegovina*, 72/15**

The Constitutional Court concludes that Articles 7(2) and 11(4) of the Law on the System of State Aid in Bosnia and Herzegovina are not inconsistent with Article II(4) of the Constitution of Bosnia and Herzegovina and Article 1 of Protocol No. 12 to the European Convention, because the members of Others and/or citizens were neither thwarted in getting appointed as members of the Council under equal conditions as members of the constituent peoples, nor were they thwarted in voting for the decisions of the Council under equal conditions as members of the constituent peoples. The Constitutional Court concludes that the Parliamentary Assembly of BiH, by prescribing a combined funding model for the Council (State and Entities), did not act inconsistent with the provision of Article III(1)(e) of the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility and Merits No. U 26/14 of 9 July 2015 published in the *Official Gazette of Bosnia and Herzegovina*, 72/15**

The Constitutional Court concludes that the impugned provisions of the **Law Amending the Law on Permanent and Temporary Residence of Citizens of BiH (Article 2, part amending Article 8, paragraphs 2, 3, 4, 5 and 6) and Article 3, part amending Article 8a, paragraph 1)**, which prescribe the procedure for checking the fulfilment of the requirements to be met by returnees as well as by all other citizens of Bosnia and Herzegovina who register their place of residence, are not in violation of the returnees' right to liberty of movement and residence under Article II(3)(m) of the Constitution of BiH. In addition, the impugned provisions of the Law Amending the Law on Permanent and Temporary Residence of Citizens of BiH are not in violation of the right not to be discriminated against under Article II(4) of the Constitution of BiH in conjunction with Article II(3)(m) and Article II(5) of the Constitution of BiH, as the legislator, by regulating the right to permanent residence and by checking the registered permanent residence addresses in such a manner, does not call into question the right of any citizen of Bosnia and Herzegovina freely to choose his/her place of residence nor does it restrict his/her right to freedom of movement and return to his/her pre-war property in BiH.

- **Decision on Admissibility and Merits No. U 5/15 of 26 November 2015 published in the *Official Gazette of Bosnia and Herzegovina*, 100/15**

The Constitutional Court concludes that Article 3(b) of the Law on Holidays of the Republika Srpska (*Official Gazette of the Republika Srpska*, 43/07) is inconsistent with Article I(2) of the Constitution of Bosnia and Herzegovina, Article II(4) of the Constitution of Bosnia and Herzegovina in conjunction with Article 1(1) and Article 2(a) and (c) of the ICERD and Article 1 of Protocol No. 12 to the European Convention.

- **Decision on Admissibility and Merits No. U 3/13 of 26 November 2015 published in the *Official Gazette of Bosnia and Herzegovina*, 100/15**

The Constitutional Court concludes that the impugned provisions (Article 10) of the **Rulebook Amending the Rulebook on Criteria, Procedure and Method of Allocation of International Permits for Cargo Transport to Domestic Carriers** (*Official*

Gazette of Bosnia and Herzegovina, 79/09) are inconsistent with Article II(3)(k) of the Constitution of BiH and Article 1 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, where the executive branch, by establishing the criteria to be met by a carrier to operate as an international carrier, exceeded the bounds of its legal authority and the bounds of international rules.

- **Decision on Admissibility and Merits No. U 28/14 of 26 November 2015 published in the *Official Gazette of Bosnia and Herzegovina*, 100/15**

JURISDICTION UNDER ARTICLE VI(3)(c) OF THE CONSTITUTION OF BIH

Article 54 of the Law on Amendments to the Labour Law (*Official Gazette of the Federation of Bosnia and Herzegovina*, 32/00) is in conformity with the Constitution of Bosnia and Herzegovina. The considerable reduction of the severance pay in case when the laid-off employees are dismissed shall not represent a violation of the right to a peaceful enjoyment of the possessions or the right not to be discriminated against if the legislator was constrained to do so due to extreme economic conditions.

- **Decision No. U 26/00 of 21 December 2001, published in the *Official Gazette of Bosnia and Herzegovina*, 8/02**

The Constitutional Court may not give its opinion about an issue referred to it by a lower court if that issue does not fall within the scope of Article VI(3)(c) of the Constitution of Bosnia and Herzegovina, even if it raises issues under the Constitution of Bosnia and Herzegovina.

- **Ruling No. U 10/01 of 4 May 2001**

Article 20 of the Law on Housing Relations – Amended Text (*Official Gazette of the SR Bosnia and Herzegovina*, 14/84, 12/87 and 36/89 and *Official Gazette of the Republika Srpska*, 19/93 and 22/93) is in conformity with Article II(3)(f) and (k) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 1 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms. This provision regulates the occupancy right over the apartment after divorce.

- **Decision No. U 55/02 of 26 September 2003 published in the *Official Gazette of Bosnia and Herzegovina*, 3/04**

Article 37 of the Law on Amendments to the Law on Insurance of Property and Persons of the Federation of Bosnia and Herzegovina (*Official Gazette of the Federation of Bosnia and Herzegovina*, 6/98) is 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. It is a fact that the legislator – in the instant case, the Parliament of the Federation of Bosnia and Herzegovina – failed to advance arguments that would justify the adoption of Article 37 that obviously encroached upon individual property rights for it is stipulated that: *No interest shall be computed on the amounts of loss compensation (principal amount)*

prescribed by an executive order (court decision and court settlement) and out-of-court settlement for the period of imminent threat of war in Bosnia and Herzegovina. Given the fact that there was no legitimate aim that would justify interference, the violation of the right to property is established.

- **Decision on Merits No. U 50/01 of 30 January 2004 published in the *Official Gazette of Bosnia and Herzegovina*, 24/04**

The Constitutional Court concluded that **Articles from 152 to 157 of the Law on Minor Offences violating Federation Regulations** (*Official Gazette of the Federation of Bosnia and Herzegovina*, 9/96 and 29/00) are inconsistent with Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention since they only provide for a formal possibility of using an extraordinary remedy - a request for the judicial protection. However, these provisions do not provide for the effective court proceedings to be conducted as regards this remedy. Thus, there is an infringement of the principle of legal certainty and the right of access to court, as one of the basic rights under Article 6(1) of the European Convention, has been denied as well given that in the proceeding conducted in accordance with the challenged law „the determination of criminal charges” is made possible only after submitting the request for judicial protection within the meaning of Article 6(1) of the European Convention.

- **Decision on Admissibility and Merits No. U 17/06 of 29 September 2006 published in the *Official Gazette of Bosnia and Herzegovina*, 14/07**

The Constitutional Court concludes that the provisions of **Articles 137.a and 137.b of the Law Amending the Law on Enforcement Proceedings** are not compatible with the provisions of Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention. Namely, as to the institutions which are entirely or partially funded from the budgeted resources, if it occurs that their funds are subject to enforcement on the basis of legally binding court decision, they may seek that all monetary funds at their disposal be exempted from the enforcement, claiming that those funds are used for the performance of the activity in public interest and ensuring the exercise of the rights under Article 79a of the Law on Enforcement Proceedings. In that case the competent courts have no clear criteria on the basis of which they could reliably establish the facts as to whether those funds are really used by the mentioned institution for the performance of the activity in public interest and ensuring the exercise of rights under Article 79a of the Law on Enforcement Proceedings, whereby, in the case at hand, the enforcement proceeding on the basis of the legally binding court decision has become an ineffective legal remedy. In this manner, according to the opinion of the Constitutional Court, the essence of the right under Article 6 (1) of the European Convention was brought into question as regards the creditors possessing legally binding court decision against the mentioned institutions. In other words, the creditors have been deprived of their right to forcible enforcement of the legally binding court decision, which, indisputably, constitutes a part and essence of the mentioned article of the European Convention.

- **Decision on Admissibility and Merits No. U 5/10 of 26 November 2010 published in the *Official Gazette of Bosnia and Herzegovina*, 37/11; as for filing the request within the meaning of Article VI(3)(c) of the Constitution of BiH, the Judge of the**

Panel of an ordinary court is in charge of the relevant case (according to the previous case-law, it was unclear whether such request should be filed solely by president of an ordinary court

Review of constitutionality of **Article 2, 7 and 24 of the Law on Personal Income Tax of Federation of BiH**. The Constitutional Court concludes that given the complex constitutional organization in Bosnia and Herzegovina and division of competencies, the field of direct taxes is within the competence of Entities and Brčko District of BiH and that competent legislator has a wide margin of appreciation in selecting a tax system and tax instruments required for the achievement of goals of its tax policy. Moreover, the Constitutional Court concluded that by definition of terms „resident” and „non-resident” in the challenged law the citizens of Bosnia and Herzegovina are not discriminated against and it follows that the provisions of Article 2, Article 7 and Article 24 of the challenged Law are not in contravention of Article I(7), Article II(1), Article II(2), Article II(3)(e) (k)(m), Article II(4) and Article II(6) of the Constitution of Bosnia and Herzegovina and Article 14 of the European Convention in conjunction with Article 6 of the European Convention and Article 1 of Protocol No. 1 to the European Convention and Article 1 of Protocol No. 12 to the European Convention.

- **Decision on Admissibility and Merits No. U 17/11 of 30 March 2012 published in the *Official Gazette of Bosnia and Herzegovina*, 36/12**

The Constitutional Court concludes that the provision of **Article 39e paragraphs 3 and 4 of the Law on Sale of Apartments with Occupancy Right** in part relating to the determination of compensation is not in conformity with Article II(3)(k) of the Constitution of Bosnia and Herzegovina and Article 1 of Protocol No. 1 to the European Convention as it does not strike a fair balance between the interests of the right holders and public interest for the reason that the right holders have to bear a particular and excessive burden. Furthermore, the Constitutional Court concludes that the provision of Article 39a of the Law on Sale of Apartments with Occupancy Right is in conformity with Article II(3)(k) the Constitution of Bosnia and Herzegovina and Article 1 of Protocol No. 1 to the European Convention as this provision of the law strikes a fair balance between the interests of the right holders and the public interest.

- **Decision on Admissibility and Merits No. U 15/11 of 30 March 2012 published in the *Official Gazette of Bosnia and Herzegovina*, 37/12**

The Constitutional Court concludes that the Civil Procedure Code before the Court of BiH (*Official Gazette of Bosnia and Herzegovina* nos. 36/04 and 84/07) is not compatible with Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention. The fact that the Law at issue does not provide for the provision on the „necessary” transfer of jurisdiction of the Court of BiH constitutes a legal gap amounting to the violation of the right to a fair trial.

- **Decision on Admissibility and Merits No. U 6/12 of 13 July 2012 published in the *Official Gazette of Bosnia and Herzegovina*, 75/12**

The Constitutional Court concludes that the **Law on the Implementation of Annex „G” of the Agreement on Succession Issues in the Territory of the Republika Srpska** is

not in compliance with the provisions of Article III(1)(e), Article III(3)(b), Article IV(4) (b) and Article V(4)(a) of the Constitution of Bosnia and Herzegovina.

In accordance with the established standards and norms of international law as well as the Succession Agreement and the relevant Annexes thereto, the competent authorities in Bosnia and Herzegovina including regular courts may use those instruments which, depending on the conduct of other States parties to the Succession Agreement, will effectively protect the acquired rights or secure the exercise of the rights which are the subject of the Succession Agreement and Annexes thereto. This involves an active role and necessary coordination and/or subordination in accordance with the distribution of responsibilities among the authorities and institutions in Bosnia and Herzegovina.

- **Decision on Admissibility and Merits No. U 16/11 of 13 July 2012 published in the *Official Gazette of Bosnia and Herzegovina*, 105/12**

The Constitutional Court concludes that the provision of **Article 4 of the Law on the Court Fees** is in contravention of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention, because rendering it impossible for a court to conduct a proceeding, if no court fee has been paid beforehand on a submission, including a lawsuit, does not constitute an instrument which is reasonably proportional to the achievement of a legitimate goal, as that completely restricts the right of access to court and a possibility to conduct such a court proceeding, which can lead to irreparable detrimental consequences for a party to the proceeding, which is contrary to the very essence of the right to a fair trial under Article 6(1) of the European Convention. The Constitutional Court concludes that the provision of **Article 384 of the Law on Civil Procedure** is in conformity with the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention, since that provision does not thwart the conduct of a proceeding, rather it prescribes a general principle in relation to the costs of a civil procedure.

- **Decision on Admissibility and Merits No. U 8/12 of 23 November 2012 published in the *Official Gazette of Bosnia and Herzegovina*, 10/13**

The Constitutional Court of BiH concludes that the provisions of Articles 86(1) and (2) and 88 of the Law on Protection and Rescue of People and Material Goods in Case of Natural or other Disasters (*Official Gazette of the Federation of Bosnia and Herzegovina*, 39/03, 22/06 and 43/10) are compatible with the provisions of Articles 1, 2 and 42 of the Law on Demining in BiH (*Official Gazette of Bosnia and Herzegovina*, 5/02).

- **Decision on Admissibility and Merits No. U 5/13 of 5 July 2013 published in the *Official Gazette of Bosnia and Herzegovina*, 62/13**

The Constitutional Court concludes that the request for review of the compatibility of Article 3 of the Law on Amendments with the laws of Bosnia and Herzegovina, or concerning the existence of or the scope of general rules of public international law, or with the European Convention is ill-founded.

- **Decision on Admissibility and Merits No. U 12/13 of 5 July 2013 published in the *Official Gazette of Bosnia and Herzegovina*, 62/13**

The Constitutional Court concludes that **Article 8 of the Law on Exercising the Right to Old Age Pension by Professional Military Personnel** (*Official Gazette of Republika Srpska*, 26/13) is not in contravention of Articles II(1), II(4), III(3)(b) and III(5)(a) of the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility and Merits No. U 25/13 of 23 January 2014 published in the *Official Gazette of Bosnia and Herzegovina*, 11/14**

The Constitutional Court of BiH concludes that **the Law on Salaries and Other Compensations in Judicial and Prosecutorial Institutions at the Level of Bosnia and Herzegovina** (*Official Gazette of Bosnia and Herzegovina*, 90/05 and 32/07), in respect of the allegations in the request of the Court of BiH, Judge Mediha Pašić, is incompatible with the provisions of Article I(2) of the Constitution of Bosnia and Herzegovina, for violating the principle of judicial independence as a fundamental guarantee of the rule of law.

The Constitutional Court of BiH concludes that the Law on Salaries and Other Compensations in Judicial and Prosecutorial Institutions at the Level of Bosnia and Herzegovina (*Official Gazette of Bosnia and Herzegovina*, 90/05 and 32/07), in respect of the allegations in the request of the Court of BiH, Judge Mediha Pašić, is incompatible with the provisions of Article II(4) of the Constitution of Bosnia and Herzegovina in conjunction with Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 1 of Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 26 of the International Covenant on Civil and Political Rights.

The Constitutional Court concludes that the Law on Salaries and Other Compensations in Judicial and Prosecutorial Institutions at the Level of Bosnia and Herzegovina (*Official Gazette of Bosnia and Herzegovina*, 90/05 and 32/07), in respect of the allegations in the request of the Court of BiH, Judge Halil Lagumdžija, is compatible with the provisions of Article II(4) of the Constitution of Bosnia and Herzegovina in conjunction with Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 1 of Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 26 of the International Covenant on Civil and Political Rights.

- **Decision on Admissibility and Merits No. U 29/13 of 28 March 2014 published in the *Official Gazette of Bosnia and Herzegovina*, 40/14**

The Constitutional Court concludes that the provision of **Article 4 of the Law on the Court Fees and Tariff** is in contravention of the right to a fair trial under Article II(3) (e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention, because rendering it impossible for a court to conduct proceeding, if no court fee has been paid beforehand on a submission, including a lawsuit, does not constitute an instrument which is reasonably proportional to the achievement of a legitimate goal, as that completely restricts the right of access to a court and a possibility to conduct such a court proceeding, which can lead to irreparable detrimental consequences for a party to the proceeding, which is contrary to the very essence of the right to a fair trial under Article 6(1) of the European Convention.

- **Decision on Admissibility and Merits No. U 16/14 of 24 September 2014 published in the *Official Gazette of Bosnia and Herzegovina*, 99/14**

The Constitutional Court concludes that the provision of **Article 330 (1)(b) of the Criminal Procedure Code of F BiH** are in conformity with Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention because giving the authorities to the court of the appeal, in the procedure of exhaustion of the relevant legal remedy, to remit the case to the court of first instance with instruction to remove the noticed deficiencies does not constitute a violation of the principle of impartiality and independence within the meaning of the right to a fair trial.

- **Decision on Admissibility and Merits No. U 22/14 of 4 December 2014 published in the *Official Gazette of Bosnia and Herzegovina*, 101/14**

The Constitutional Court concludes that **Article 11 of the Law on Salaries and Other Remunerations in Judicial and Prosecutorial Institutions at the Level of Bosnia and Herzegovina** (*Official Gazette of Bosnia and Herzegovina*, 90/05 and 32/07), which prescribes the right to retirement severance pay of judges and prosecutors in the amount of one basic salary, is consistent with the provisions of Articles I(2) and II(4) of the Constitution of Bosnia and Herzegovina, Article 1 of Protocol No. 12 to the European Convention and Article 26 of the International Covenant on Civil and Political Rights.

- **Decision on Admissibility and Merits No. U 20/14 of 26 March 2015 published in the *Official Gazette of Bosnia and Herzegovina*, 48/15**

The Constitutional Court concludes that **Article 17(4) of the Law on Enforcement Procedure** (*Official Gazette of the Federation of BiH*, 32/03, 52/03, 33/06, 39/09 and 35/12) is in conformity with Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention as the mentioned provision is not aimed at procrastination of the enforcement procedure. To the contrary, it is aimed at forcing the judgment debtor to fulfil his obligation as soon as possible.

- **Decision on Admissibility and Merits No. U 4/15 of 30 September 2015 published in the *Official Gazette of Bosnia and Herzegovina*, 83/15**

JURISDICTION UNDER ARTICLE IV(3)(f) OF THE CONSTITUTION OF BIH

It is hereby established that **the Draft Law on Amendments to the Law on Refugees and Displaced Persons of Bosnia and Herzegovina** is destructive to the vital interest of Bosniac people.

- **Decision on Admissibility and Merits No. U 2/04 of 28 May 2004 published in the *Official Gazette of Bosnia and Herzegovina*, 38/04**

The Draft Framework Law on Higher Education in Bosnia and Herzegovina, wherein the possibility of using one or more languages of the constituent peoples and the manner of enactment of the statutes of the higher education institutions is envisaged, is destructive to the vital interest of the Croat people. The Constitutional Court finds that

the manner in which the Framework Law, in Articles 13, 18 and 35, provides for the use of only one or two official languages in the higher education institutions and the statute-making process of the higher education institution, is destructive to the vital interest of the constituent peoples, *i.e.* Croat people in this case, since it does not provide for the possibility of equal use of the official languages of all three constituent peoples in Bosnia and Herzegovina.

- **Decision on Admissibility and Merits No. U 8/04 of 25 June 2004 published in the *Official Gazette of Bosnia and Herzegovina*, 40/04**

The Declaration of the Croat Caucus in the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina on the destructiveness **of the Draft Law on the Public Broadcasting System of Bosnia and Herzegovina** to the vital interest of the Croat people does not meet the requirements of procedural regularity, as the Draft Law on the Public Broadcasting System of Bosnia and Herzegovina is not destructive to the vital interest of the Croat people in Bosnia and Herzegovina. There are no grounds for concluding that by the Draft Law the Croat people in Bosnia and Herzegovina are discriminated against when compared with two other constituent peoples, and therefore the proposed Draft Law is not destructive to the vital interest of Croats in BiH with regards to the alleged discrimination against the representation of their language, culture and traditional heritage in the programs of the public broadcasters. It was not necessary to define in the Law the composition of the Board with respect to representation of the constituent peoples and Others.

- **Decision on Admissibility and Merits No. U 10/05 of 22 July 2005, published in the *Official Gazette of Bosnia and Herzegovina*, 64/05**

The Declaration of the Bosniac People Caucus in the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina declaring item 3 of the Draft Conclusion submitted by Ilija Filipović, the Second Deputy Chairman of the House of Peoples of the Parliamentary Assembly of BiH, No. 01,02-50-1-18-8/08 of 23 April 2008, to be destructive of vital interests of the Bosniac people in Bosnia and Herzegovina, does not meet a procedural regularity requirement, as the proposed Conclusion does not constitute a decision which review would fall within the competence of the Constitutional Court within the meaning of Article IV(3)(f) of the Constitution of Bosnia and Herzegovina.

- **Decision No. U 9/08 of 8 July 2005 published in the *Official Gazette of Bosnia and Herzegovina*, 91/08**

The Constitutional Court concludes that the Statement of the Bosniac Caucus to the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina on the destructiveness to a vital national interest of the Bosniac people in Bosnia and Herzegovina failed to meet the requirements of procedural regularity under Article IV(3)(f) of the Constitution of Bosnia and Herzegovina, since the Agreement on Cooperation between Bosnia and Herzegovina and the Republic of Croatia regarding the Rights of Victims of War in Bosnia and Herzegovina, relating to the previous members of the Croat Defense Council and their families is not destructive to the vital national interest of the Bosniac people in Bosnia and Herzegovina and the procedure for adoption should be carried out in compliance with Article IV(3)(d) of the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility and Merits No. U 7/06 of 31 March 2006 published in the *Official Gazette of Bosnia and Herzegovina*, 34/06**

The Constitutional Court concludes that the Statement of the Bosniac Caucus to the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina on the destructiveness to vital national interests of the Bosniac people in Bosnia and Herzegovina does not satisfy the requirements of procedural regularity under Article IV(3)(f) of the Constitution of Bosnia and Herzegovina, since **the Decision on the Approval of the Decision of the Chairman of the Council of Ministers of Bosnia and Herzegovina on the Dismissal of the Minister of Security of Bosnia and Herzegovina, the Minister of Defense of Bosnia and Herzegovina and the Deputy Minister of Finances and Treasury of Bosnia and Herzegovina** is not destructive to the vital national interest of the Bosniac people in Bosnia and Herzegovina. The procedure for adopting the above decision should be carried in accordance with Article IV(3)(d) of the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility and Merits No. U 12/12 of 24 August 2012 published in the *Official Gazette of Bosnia and Herzegovina*, 79/12**

The Constitutional Court concludes that the **Draft Legislation Amending the Law on Conflict of Interest in Governmental Institutions of Bosnia and Herzegovina number 01.02-02-1-23/13 of 20 May 2013**, insofar as the part providing for the establishment and composition of the Commission to decide on conflicts of interest at the State level is concerned, does not provide for any provision placing any of the constituent peoples in a more favourable or unfavourable position, in the instant case the Bosniac people. Finally, not only that the Draft Legislation does not provide for any provision placing any of the constituent peoples in a more favourable or unfavourable position but it provides that at least two members from each of the constituent peoples must vote for it. Taking into account the aforesaid, the Constitutional Court finds as unfounded the allegations of the Statement Makers that the Draft Legislation Amending the Law on Conflict of Interest in Governmental Institutions of Bosnia and Herzegovina number 01.02-02-1-23/13 of 20 May 2013 violates the vital interests of the Bosniac People with regards to the part providing for the establishment and composition of the Commission in charge of deciding the conflict of interest.

- **Decision on Admissibility and Merits No. U 18/13 of 27 September 2013 published in the *Official Gazette of Bosnia and Herzegovina*, 85/13**

The Constitutional Court concludes that the Statements of the Bosniac Caucus to the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina on the destructiveness of the proposed Decisions on Consideration of the Draft Legislation Amending the Law on Public Procurement, Law on Personal Identification Number, Law on Permanent and Temporary Residence of Citizens of Bosnia and Herzegovina and Law on Citizenship of BiH in an expedited procedure to the vital national interests of the Bosniac people do not meet the requirements of procedural regularity as the proposed Decisions do not constitute a „decision”, the review of which would be the responsibility of the Constitutional Court within the meaning of Article IV(3)(f) of the Constitutional Court of Bosnia and Herzegovina.

- **Decision on Admissibility No. U 19/13 of 27 September 2013 published in the *Official Gazette of Bosnia and Herzegovina*, 84/13**

The Constitutional Court concludes that the **Draft Legislation Amending the Law on Permanent and Temporary Residence of Citizens of Bosnia and Herzegovina** contains not a single provision whatsoever placing in a more favorable or unfavorable position any of the constituent peoples, the Bosniac people in the particular case, neither does it affect the constitutional right to return of refugees and displaced persons, which is why the vital interest of the Bosniac in Bosnia and Herzegovina people has not been violated.

- **Decision on Admissibility and Merits No. U 27/13 of 29 November 2013 published in the *Official Gazette of Bosnia and Herzegovina*, 2/14**

It is hereby established that the draft **Law Amending the Law Establishing the Company for the Transmission of Electric Power in Bosnia and Herzegovina number 01.02-02-1-58/13 of 10 December 2013** is not destructive of the vital national interest of the Bosniak People.

- **Decision on Admissibility and Merits No. U 31/13 of 23 January 2014 published in the *Official Gazette of Bosnia and Herzegovina*, 9/14**

The Constitutional Court concludes that the draft **Law regulating the composition and the number of councillors to the Mostar City Council and the method of their election, as well as the quotas for a minimum representation of the constituent peoples and national minorities** is not in violation of the vital interest of the Bosniak people.

- **Decision on Admissibility and Merits No. U 32/13 of 23 January 2014 published in the *Official Gazette of Bosnia and Herzegovina*, 16/14**

ADMISSIBILITY (ABSTRACT JURISDICTION)

Lack of jurisdiction to take decisions

The Constitutional Court has no jurisdiction to review the constitutionality of the Dayton Peace Agreement in relation to the Constitution of Bosnia and Herzegovina for the reason that the Constitutional Court established according to the Constitution of Bosnia and Herzegovina with an exclusive task to uphold this Constitution.

- **Decision No. U 1/03 of 25 July, paragraph 10, published in the *Official Gazette of Bosnia and Herzegovina*, 38/03**

Given that that the right to immunity is not arising from the provisions of the Constitution of Bosnia and Herzegovina, the issue of immunity of public office holders in the legislative and executive Entities' bodies and on their administrative units is not an issue falling within the scope of the Constitution of Bosnia and Herzegovina or within the jurisdiction of the Constitutional Court.

- **Decision No. U 2/03 of 26 September 2003, paragraph 7, published in the *Official Gazette of Bosnia and Herzegovina*, 39/03**

Given the fact that the Constitutional Court has no jurisdiction to take a decision on the issue whether the provisions of the Constitution of the West Herzegovina Canton are compatible with the provisions of the Constitution of the Federation of Bosnia and Herzegovina, it is purposeless to consider the issue concerning the authorization of the President of the Municipal Assembly of the West Herzegovina Canton to submit such a request.

- **Decision on Admissibility No. U 5/03 of 25 July 2003, paragraph 7, published in the *Official Gazette of Bosnia and Herzegovina*, 38/03**

The Constitutional Court has no jurisdiction to take a decision on the issue whether the provisions of the Cantonal Constitution are compatible with the Constitution of the Federation of Bosnia and Herzegovina.

- **Decision No. U 5/03 of 25 July 2003, paragraph 6, published in the *Official Gazette of Bosnia and Herzegovina*, 38/03**

The Constitutional Court asserts that the enforcement of the judgment of *Karanović vs. Bosnia and Herzegovina* (Application No. 39462/03 of 20 December 2007) is international legal obligation of Bosnia and Herzegovina. System of the supervision of enforcement of judgments of the European Court for Human Rights, also including possible adoption of the measures in the event of failure to enforce those judgments is under full discretion of the Council of Europe. For that reason, the Constitutional Court has no jurisdiction to establish whether the judgment was enforced or order certain public legal subject in Bosnia and Herzegovina to enforce obligations referred to in this judgment.

- **Decision on Admissibility No. U 12/08 of 28 March 2009, paragraph 9**

The Constitutional Court is not in charge of review of **the constitutionality of the Resolution on Non-Recognition of Unilateral Declaration of Independence of Kosovo and Metohija and position of the Republika Srpska** as this issue involves an act which represents a type of political proclamation that is not legally binding.

- **Decision on Admissibility No. U 6/08 of 30 January 2009, paragraph 10**

Decision granting consent to the payment schedule for debt settlement by issuing bonds for verified old foreign currency savings accounts), and the Decision on cash payments of verified claims arising from the old foreign currency savings accounts by issuing bonds planned for 2008 and Decree Amending the Decree on Procedure for Verification of the Claims and Cash Payables Arising from the Old Foreign Currency Savings Deposits in the Federation of Bosnia and Herzegovina.

The Constitutional Court finds that the challenged by-laws of the FBiH Government are the enforcement regulations facilitating the implementation of the Law on Settlement of Debts and the Decisions of the BiH Council of Ministers by which the schedule for payment of liabilities and cash payments for 2008 are established as well as a new

time limit for verification of the claims. The Constitutional Court concludes that the present case does not relate to the general acts which, pursuant to Article VI(3)(a) of the Constitution of BiH, may be subject to review by the Constitutional Court of BiH. Furthermore, the Constitutional Court does not see any reason for which the challenged acts would give rise to the issue of violation of human rights and freedoms. Therefore, the Constitutional Court, taking into account the aforementioned circumstances, concludes that it is not competent to review the constitutionality of the challenged acts within the meaning of Article VI(3)(a) of the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility No. U 1/09 of 29 May 2009, paragraph 15, published in the *Official Gazette of Bosnia and Herzegovina*, 73/09**

The Constitutional Court considers that, in the present case, the Rules of Procedure of the Constitutional Court of RS is not an act, whose review of compatibility with the Constitution of Bosnia and Herzegovina falls under jurisdiction of the Constitutional Court pursuant to the provisions of Article VI(3)(a) of the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility No. U 7/10 of 26 November 2010, paragraph 26, published in the *Official Gazette of Bosnia and Herzegovina*, 24/11**

In the present case the Constitutional Court holds that this is obviously not the case of the request for review of consistency of any of the laws on the validity of which depends the decision of an ordinary court but of the request for evaluation of the actions of the ordinary court's judge in the conduct and application of the rules of the judicial proceedings. The Constitutional Court concludes that in this kind of proceedings, it is not competent to take a decision.

- **Decision on Admissibility No. U 8/11 of 15 July 2011, paragraph 6**

Having regard to the aforesaid, the Constitutional Court holds that the Rules of the Constitutional Court which are provided for by the Constitution of Bosnia and Herzegovina as an act the issuance of which is in the exclusive competence of the Constitutional Court, have a specific constitutional nature which is the result of need and intention to fully preserve and protect the autonomy and independence of the Constitutional Court. Having regard to such constitutional nature of this act, and the fact that that act has its source directly in the Constitution of Bosnia and Herzegovina, the Constitutional Court holds that the *rules of court* could be considered a *sui generis* law in terms of Article VI(3)(a) of the Constitution of Bosnia and Herzegovina. However, having regard to the clearly prescribed exclusive competence of the Constitutional Court to pass the *rules of court*, the Constitutional Court holds that in respect to that issue no „dispute” could arise between the two Entities or Bosnia and Herzegovina and one or both of its entities and between the Institutions of Bosnia and Herzegovina the constitutionality of which the Constitutional Court would have the jurisdiction to evaluate in terms of Article VI(3)(a) of the Constitution of Bosnia and Herzegovina.

- **Decision on Admissibility No. U 7/13 of 27 September 2013, paragraph 11, published in the *Official Gazette of Bosnia and Herzegovina*, 84/13**

Request for review of the constitutionality of Article 1 and Article 2 of the Amendments to the Constitution of the Posavina Canton; Article 9 of the Statute of the Municipality of Cazin; Article 9 of the Statute of the Municipality of Ključ; Article 8 of the Statute of the Municipality of Zenica; Article 9 of the Statute of the Municipality of Posusje; Articles 2 and 3 of the Decision on the Coat of Arms and Flag of the Municipality of Bosanska Krupa; Article 1 of the Decision to Adopt a Logo of the Municipality of Čelić, No. 01-101/95 of 28 October 1995; Article 2 of the Decision on the Coat of Arms of the Municipality of Breza; Article 2 of the Decision on Coat of Arms and Flag of the Municipality of Visoko; Article 3 of the Decision on Coat of Arms and Flag of the Municipality of Vogošća, No. 01-02-2387/02 of 24 September 2002; Article 1 of the Decision on Adoption of the Coat of Arms and Flag of the Municipality of Kupres.

The Constitutional Court considers that the compliance with the principle of the constituent peoples and principle of non-discrimination with regards to the manner of stipulation of symbols of the administrative and local units, as a matter which is under exclusive of jurisdiction of the Entities, primarily raises the issue of conformity of the acts containing the provisions about this matter with the Entity constitution and final authority regarding this matter is the Entity constitutional court. Also, bearing in mind the relevant case-law of the Entity courts regarding the same factual and legal issue, more precisely the case-law of the Constitutional Court of BiH, the Constitutional Court considers that there are no circumstances indicating that the Entity constitutional courts, more precisely the Constitutional Court of FBiH, interprets and applies the Entity constitutions contrary to the Constitution of BiH. Therefore, the Constitutional Court concluded that it has no jurisdiction to take a decision within the meaning of Article VI(3)(a) of the Constitution of BiH.

- **Decision on Admissibility No. U 28/13 of 26 March 2015, paragraph 11, published in the *Official Gazette of Bosnia and Herzegovina*, 33/15**

Unauthorized applicant

Only authorized persons that are referred to under Article VI(3)(a) may initiate a dispute before the Constitutional Court. It follows from the text of the mentioned provisions that the Federal Ministry is not an authorized person who may initiate a dispute before the Constitutional Court in accordance with Article VI(3)(a).

- **Decision on Admissibility No. U 66/02 of 30 January 2004, paragraph 9, published in the *Official Gazette of Bosnia and Herzegovina*, 11/04**

It follows from the provisions of Article VI(3)(a) of the Constitution of Bosnia and Herzegovina that the association is not an authorized person who may initiate a dispute for review of constitutionality of law before the Constitutional Court.

- **Decision No. U 67/02 of 27 June 2003, paragraph 4, published in the *Official Gazette of Bosnia and Herzegovina*, 30/03;**
- **Decision No. U 69/02 of 25 July 2003, paragraph 5, published in the *Official Gazette of Bosnia and Herzegovina*, 39/03;**

- **Decision No. U 71/02 of 27 June 2003, paragraph 4, published in the *Official Gazette of Bosnia and Herzegovina*, 25/03;**
- **Decision No. U 6/03 of 24 October 2003, paragraph 9, published in the *Official Gazette of Bosnia and Herzegovina*, 8/04**

CIP - Katalogizacija u publikaciji

Nacionalna i univerzitetska biblioteka Bosne i Hercegovine, Sarajevo

342.565.2(497.6)(094.5.07)

USTAVNI sud Bosne i Hercegovine

Digest of the case-law of the Constitutional Court of Bosnia and Herzegovina. - 2. revised and supplemented ed. - Sarajevo : Constitutional Court of Bosnia and Herzegovina, 2016. - 371 str. ; 25 cm

Izv. stv. nas.: Pregled prakse Ustavnog suda Bosne i Hercegovine

ISBN 978-9958-0389-3-8

I. Constitutional Court of Bosnia and Herzegovina Ustavni sud Bosne i Hercegovine

COBISS.BH-ID 23487238