

The Constitutional Court of Bosnia and Herzegovina, sitting, in accordance with Article VI(3)(b) of the Constitution of Bosnia and Herzegovina, Article 16(2) and (4)(9) and Article 59(2)(1) of the Rules of the Constitutional Court of Bosnia and Herzegovina (*Official Gazette of Bosnia and Herzegovina* nos. 60/05, 64/08 and 51/09), in the plenary and composed of the following judges: Mr. Miodrag Simović, President, Ms. Valerija Galić, Ms. Constance Grewe and Ms. Seada Palavrić, Vice-Presidents, and Judges Mr. Tudor Pantiru, Mr. Mato Tadić, Mr. Mirsad Ćeman, Ms. Margarita Tsatsa-Nikolovska and Mr. Zlatko M. Knežević, having deliberated on the appeals of **Mr. Sejfudin Zahirović** and **Mr. Šemso Saković** in case no. **AP 2090/11**, at its session held on 18 January 2012, adopted the following

DECISION ON ADMISSIBILITY

The appeal lodged by **Mr. Sejfudin Zahirović** against the Decisions of the Court of Bosnia and Herzegovina, no. Iz-49/11 of 28 April 2011 and no. Siž-3/11 of 10 March 2011, the Decision of the Central Election Commission of Bosnia and Herzegovina no. 06-1-07-1-259/11 of 7 April 2011 and the Ruling of the Central Election Commission of Bosnia and Herzegovina no. 05-2-07-8-487/10 of 27 January 2011, and the appeal lodged by **Mr. Šemso Saković** against the Decisions of the Court of Bosnia and Herzegovina, no. Iz-51/11 of 26 April 2011 and no. SIZ-6/11 of 17 March 2011, Decision of the Central Election Commission, no. 06-01-07-1-258/11 of 7 April 2011 and Ruling of the Central Election Commission, no. 05-2-07-8-486/10 of 27 January 2011 in relation to Article 3 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 1 of Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms,

are rejected as inadmissible for being manifestly (*prima facie*) ill-founded.

The appeal lodged by **Mr. Sejfudin Zahirović** against the Decisions of the Court of Bosnia and Herzegovina, no. Iz-49/11 of 28 April 2011 and no. Siž-3/11 of 10 March 2011, the Decision of the Central Election Commission of Bosnia and Herzegovina no. 06-1-07-1-259/11 of 7 April 2011 and the Ruling of the Central Election Commission of Bosnia and Herzegovina no. 05-2-07-8-487/10 of 27 January 2011, and the appeal lodged by **Mr. Šemso Saković** against the Decisions of the Court of Bosnia and Herzegovina, no. Iz-51/11 of 26 April 2011 and no. SIŽ-6/11 of 17 March 2011, Decision of the Central Election Commission, no. 06-01-07-1-258/11 of 7 April 2011 and Ruling of the Central Election Commission, no. 05-2-07-8-486/10 of 27 January 2011 in relation to Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, are rejected as inadmissible for being *ratione materiae* incompatible with the Constitution of Bosnia and Herzegovina.

REASONING

1. On 16 May 2011, Mr. Sejfudin Zahirović ("the first appellant) from Brčko, represented by Mr. Asim Crnalić, a lawyer practicing in Sarajevo, lodged an appeal with the Constitutional Court of Bosnia and Herzegovina ("the Constitutional Court") against the Decision of the Court of Bosnia and Herzegovina ("the Court of BiH") no. Iz-49/11 of 28 April 2011 and the Decision of the Court

of BiH no. SiŽ-3/11 of 10 March 2011, the Decision of the Central Election Commission of Bosnia and Herzegovina (“the Central Election Commission of BiH”) on the Termination and Assignment of Term of Office to the Next Qualified Candidate no. 06-1-07-1-259/11 of 7 April 2011 and the Ruling of the Central Election Commission of BiH no. 05-2-07-8-487/10 of 27 January 2011. At the same time, the appellant filed a request for adoption of an interim measure by way of which the Constitutional Court would prohibit the enforcement of the mentioned decisions of the Court of BiH and the Central Election Commission of BiH, pending a decision on the appeal. The case has been registered as number AP 2090/11.

2. On 17 May 2001 Mr. Šemso Saković (“the second appellant”) from Brčko, represented by Mr. Asim Crnalić, a lawyer practicing in Sarajevo, filed an appeal with the Constitutional Court against the Decision of the Court of BiH, no. IZ-51/11 of 26 April 2001 and no. SIŽ-6/11 of 17 March 2011, Decision of the Central Election Commission 06-01-07-1-258/11 of 7 April 2011 and ruling of the Central Election Commission, no. 05-2-07-8-486/10 of 27 January 2011. The second appellant requested the Constitutional Court to file a request for adoption of an interim measure by way of which the Constitutional Court would prohibit the enforcement of the mentioned decisions and ruling of the Court of BiH and the Central Election Commission of BiH, pending a decision on the appeal. The case has been registered as number AP 2108/11.

3. Taking into account the fact that the Constitutional Court received several requests within its competence and that appeals no. AP 2090/11 and AP 2108/11 relate to the same matter, the Constitutional Court, in accordance with Article 31(1) of the Rules of the Constitutional Court, decide to join these cases in which it would conduct one set of proceedings and take a single decision no. AP 2090/11.

Case no. AP 2090/11

4. By the Ruling of the Central Election Commission of BiH no. 05-2-07-8-487/10 of 27 January 2011 it was established that the first appellant had held simultaneously, in the period from 19 November 2008 to the date of adoption of the ruling, the office of a Councilor in the Assembly of the Brčko District of BiH and the office of a member of the Assembly of a private company “Ecoinvest” d.o.o. Tuzla, which had engaged in business with the District in 2009 and 2010 in the value exceeding KM 5,000.00 per annum, thereby committing illicit activities under Article 6(2) and (3) of the Law on the Conflict of Interest in the Institutions of the Brčko District of Bosnia and Herzegovina (*Official Gazette of the Brčko District of BiH* nos. 43/08 and 47/08, “the Law on Conflict of Interest”). Pursuant to the mentioned legal regulations, and by applying Article 17(1)

and (2) of the mentioned law, the mentioned ruling imposed on the first appellant a sanction of: 1) ineligibility to stand for any office of elected official, executive office holder or advisor for a period of 4 years following the committed violation, that is from 31 December 2010, and 2) a fine in the amount of KM 3,500.00, which he is obliged to pay, within 30 days from the day the ruling became legally binding, to the deposit account of the Treasury of the Brčko District of BiH and submit a proof of the payment made out to the Central Election Commission of BiH.

5. In the reasoning of the ruling, the Central Election Commission of BiH stated that, on the basis of the conducted evidentiary proceedings, by analyzing the presented evidence, each piece individually and in mutual correlation, it established undoubtedly that the first appellant had exercised the office of a Councilor in the Assembly of the Brčko District of BiH in the period from 19 November 2008, and, in accordance with Article 2(1)(f) of the Law on Conflict of Interest, the appellant had a status of “an elected official”. Also it was established that the first appellant had simultaneously exercised the mentioned office and the office of a member of the Assembly of the Company “Ecoinvest” d.o.o. Tuzla, and that the present case concerns a private company as prescribed by Article 3(1)(1) of the Law on Conflict of Interest. It was further established that the Company “Ecoinvest” d.o.o. Tuzla had engaged in business with the District in 2009 in the total amount of KM 93,814.15, and in 2010 in the total amount of KM 117,598.69. It was further reasoned that the present proceedings were conducted due to a violation of the provisions of Article 6(2) and (3) of the Law on Conflict of Interest. Article 6(2) of the mentioned law stipulates that elected officials, executive office holders and advisors cannot serve as members of assembly, steering board, supervisory board, administration or management or act in the capacity of an authorized person for private company: a) into which the District invested capital in the period of 4 years prior to assuming office and in the course of holding office as an elected official, executive office holder or advisor, and b) concluding contracts or having business with the District in other way. Paragraph 3 of the mentioned article provides that the restriction referred to in paragraph 2(b) of the same Article shall apply to private companies that have concluded contract or have business with the District when elected official, executive office holder and advisor held office provided that the value of the contract or business with the District exceeds KM 5,000.00 per year. Since all requirements have been cumulatively met for the application of Article 6(2) and (3) of the Law on Conflict of Interest, the Central Election Commission established that the first appellant had a conflict of interest, because while he had exercised the office of an elected official (namely of a Councilor in the Assembly of the Brčko District of BiH) he had simultaneously exercised the office

of a member of the Assembly in a private company “Ecoinvest” d.o.o. Tuzla, which had concluded contracts with the District in 2009 and 2010 exceeding the legally prescribed maximum of KM 5,000.00 per annum. The fact which the appellant stated in his statement that he is not a member of the Assembly of the mentioned company, because he resigned from the position of a member of the Assembly, which was confirmed by the company in its acts, according to the conclusion of the Central Election Commission of BiH, is not correct. Namely, the Law on Business Companies, in Article 343, stipulates that a limited liability company shall have an assembly composed of all the company members. Article 342 of the mentioned law prescribes that withdrawal or expulsion from company membership shall terminate rights arising therefrom. Also, Article 34 of the Statute of the mentioned company prescribes that the Assembly is composed of the founders, that is company members. On the basis of the aforementioned, as further established, it follows that the first appellant’s membership in the Assembly of the company may have been terminated solely by way of withdrawal or expulsion from the company, and not by way of resignation from the position of a member in the Assembly of the company. In the course of the proceedings, as concluded by the Central Election Commission of BiH, the first appellant failed to prove that he had withdrawn from the company in accordance with Article 342 of the Law on Business Companies, by way of selling or transferring the ownership share to a third person or that he had been expelled from the company, and that the rights arising from that membership had been terminated on the aforementioned basis.

6. The first appellant appealed against the mentioned ruling before the Court of BiH, which, by the Decision no. Siž-3/11 of 10 March 2011, dismissed the first appellant’s appeal as ill-founded.

7. In the reasoning of its decision, the Court of BiH stated that the allegations stated in the first appellant’s appeal are ill-founded, namely that he had resolved the issue of conflict of interest by resigning from the position of a member in the Assembly of the company, as well as the allegation that the Central Election Commission of BiH had not considered Article 34 of the Statute of the company. The Court of BiH stated that the Central Election Commission of BiH had correctly considered the provision of Article 34 of the Statute of the company and the provisions of Articles 343 and 342 of the Law on Business Companies. The Court of BiH established as correct the conclusion that only upon withdrawing from company membership, can the rights arising from that membership be terminated. In the notarized Power of Attorney, dated 21 December 2009, the first appellant authorized Mr. Damir Bećirović to act on his behalf and in his name, as the founder owning 33.3% of the original capital in the Company “Ecoinvest”, and to undertake the specified legal and factual actions. By granting the mentioned power of attorney to another person, as the

Court of BiH established, the appellant did not withdraw from the company, *i.e.* he was not expelled from the company within the meaning of Article 342 of the Law on Business Companies. Taking into account the relevant case-file and evidence, the Court of BiH concluded that at the time of the first appellant's nomination to the position of an elected official in the Assembly of the Brčko District of BiH, the Statute of the Company "Ecoinvest" has already been in force since 20 February 2003. According to Article 34 of the Statute, the company shall have an assembly composed of its founders, *i.e.* the members of the Company. Only following amendments to the Statute of 20 December 2009, Article 34 prescribed that the Company shall have an assembly composed of its founders - members of the Company or their appointed representatives, while Article 33 of the Statute prescribed that the tasks from within the competence of the Assembly shall be performed by the founders or their representatives up until such time the company has more than two members. Even if one accepts an argument that the Assembly is composed of the founders' representatives on the basis of a notarized power of attorney, the Court of BiH concluded, while taking into account the contents of the power of attorney of 20 December 2009, that the representatives shall take all actions at the Assembly sessions in the name and for the account of the founder, or the member of the company. Taking into account the time of the contract agreement between the Brčko District of BiH and the Company "Ecoinvest", which founder is the first appellant, *i.e.* 4 May 2009, one may deduce that the contract was concluded at the time of the application of the 2003 Statute, according to which the first appellant, in his capacity as a founder member, was also the member of the Company's Assembly. In the opinion of the Court of BiH, the following first appellant's allegations are ill-founded: that the Central Election Commission of BiH did not find that there was a private interest of the first appellant that affected or could affect legality, transparency, objectivity and impartiality in the exercise of public office for the reasons that the company's founder had founded the company for the purpose of gaining profit, *i.e.* he had done so for financial and personal interest. Given that the first appellant concluded the contract with the institutions of the Brčko District of BiH where he holds office of an elected official, this, as inferred by the Court of BiH, unambiguously and clearly points to financial and personal goal and interest of the first appellant, which is inconsistent with the provisions of the Law on Conflict of Interest. The basic goal and meaning of the mentioned law is for the elected officials, executive office holders and advisors to act conscientiously and responsibly so as not to jeopardize the trust of citizens in the exercise of public offices. The mentioned law prohibits the creation of situations in which the private interest may affect legality, transparency, objectivity and impartiality in the exercise of public office.

8. By the Decision of the Central Election Commission of BiH, no. 06-1-07-1-259/11 of 7 April 2011, it was established that the term of office shall be terminated to the first appellant, a Councilor in the Assembly of the Brčko District of BiH, elected at the 2008 Local Elections from the list of the Party for Bosnia and Herzegovina, effective as of the day of the adoption of the mentioned Decision. The Decision of the Central Election Commission of BiH also established that, upon the entry into force of this Decision, the vacated term of office shall be assigned to the next qualified candidate from the list of the Party for Bosnia and Herzegovina, namely Ms. Sabira-Rumenka Mujkić.

9. The reasoning of the Decision of the Central Election Commission of BiH reads that at the session, held on 27 January 2011, the Central Election Commission of BiH adopted a Decision no. 05-2-07-8-487/10, imposing on the first appellant a sanction of ineligibility to stand for any office of elected official, executive office holder or advisor for a period of 4 years following the committed violation, that is from 31 December 2010. Further it was stated that the first appellant was registered in the Record of the persons with the prohibition to run for any office of elected official, executive office holder or advisor for a period of 4 years following the committed violation, i.e. from 31 December 2010. The provisions of Article 1.10 paragraph 1 item 8 of the Election Law of BiH prescribe that the term of office of an elected member of a body of authority at all levels shall be terminated before the expiration of the term of office for which he or she was elected if he or she loses the right to be elected for reasons stipulated by law. In this respect, and pursuant to Article 13.6 paragraph 1 of the Election Law of BiH, and upon the entry into force of the Decision of the Central Election Commission of BiH, the term of office of a Councilor in the Assembly of the Brčko District of BiH was assigned to the next qualified candidate from the list of the Party for Bosnia and Herzegovina.

10. The first appellant appealed against the Decision of the Central Election Commission BiH before the Court of BiH, which dismissed the first appellant's appeal by the Decision no. Iz-49/11 of 28 April 2011. In the reasoning of the decision, the Court of BiH stated that the first appellant's allegations are unfounded as they read that the Law on the Conflict of Interest is *lex specialis* and that it does not prescribe subsidiary application of the Law on Business Companies of the Federation of BiH which, in the first appellant's opinion, was the basis for the adoption of the ruling and decision of the Central Election Commission of BiH as well as the decision of the Court of BiH dated 10 March 2011. By inspecting the case-files the Court of BiH established that the Central Election Commission of BiH, in adopting the challenged decision, had correctly established that in

this case there is a conflict of interest on the part of the first appellant and that he committed a violation of the provision of Article 6(2) and (3) of the Law on the Conflict of Interest. The Court of BiH established that the Central Election Commission of BiH had correctly, completely and lawfully applied the relevant provisions of the Election Law of BiH, as well as the Law on the Conflict of Interest. As to the rest of the appellant's complaints relating to the application of the Law on the Conflict of Interest as well as interpretations thereof by the first appellant, the Court of BiH held that they were not relevant in legal terms as the reasons for challenging the decision on the termination of the first appellant's term of office in the Assembly of the Brčko District of BiH. Furthermore, the Court of BiH alleged that the main objective and purpose of the aforementioned Law are for the elected officials, executive office holders and advisors to exercise office conscientiously and responsibly so as not to jeopardize the trust of citizens in exercising public offices.

11. The first appellant holds that the challenged decisions violated his 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 for the Protection of Human Rights and Fundamental Freedoms ("the European Convention"), right to non-discrimination under Article II(4) of the Constitution of Bosnia and Herzegovina and Article 14 of the European Convention, right to free elections under Article 3 of Protocol No. 1 to the European Convention and right to general prohibition of discrimination under Article 1 of Protocol No. 12 to the European Convention. The first appellant alleges that the challenged decisions violated his right to a fair trial because the Court of BiH and the Central Election Commission of BiH had arbitrarily applied the laws, which could not have been applied, in the procedure determining the conflict of interest and the termination of the term of office of the appellant and because they had established the facts arbitrarily. The first appellant holds that the Court of BiH based its decisions on manifestly arbitrary, erroneous and unacceptable assessment of the presented evidence, i.e. that it arbitrarily failed to assess the presented evidence. The first appellant notes that he resigned from the position of a member of the Assembly of the Company in accordance with the act of the Central Election Commission of BiH, dated 5 November 2008, which he received from the President of the Central Election Commission of BiH and in accordance with Article 6(2) and (3) of the Law on Conflict of Interest and thus resolved the issue of conflict of interest. Furthermore, he notes that the Court of BiH and the Central Election Commission of BiH, in their decisions, referred to the Law on Business Companies of the Federation of BiH as a subsidiary legal source and that laws of the Entities cannot be applied in the Brčko District of BiH,

except in certain cases only. Furthermore, he alleges that Article 34 of the Statute of the Company in question was not correctly interpreted. Moreover, he alleges that in the procedure determining the conflict of interest the first appellant was discriminated against on the ground of property, which amounted to the violation of the provisions of Article 14 of the European Convention and Article 1 of Protocol No. 12 to the European Convention. He alleges that a sanction was imposed on him in the procedure determining the conflict of interest for being the owner of a share in a private company which had engaged in business with the District in 2009 and 2010 in the amount exceeding KM 5,000.00. It was not established during the proceedings that the appellant had taken any action to effectuate the private interest in the business relation between the company in which he had the founders' share and the Brčko District. He notes that every citizen of BiH has the right, in accordance with Article 25 of the International Covenant on Civil and Political Rights, to vote and to be elected into the governmental authorities of BiH and that any restriction on that right, particularly if based on discrimination, constitutes a violation of the Constitution of BiH. The first appellant requested the Constitutional Court to adopt a decision on admissibility and merits whereby it would find a *violation of the right under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and a violation of the right under Article II(4) of the Constitution of Bosnia and Herzegovina and Article 14 of the European Convention, in conjunction with Article 3 of Protocol No. 1 to the European Convention and Article 1 of Protocol No. 12 to the European Convention.*

12. As to the request for an interim measure, the first appellant alleges that the enforcement of the legally valid court decisions and those of the Central Election Commission of BiH would bring into question the purpose of this appeal due to the nature of this constitutional dispute. He alleges that the first appellant could suffer an irreparable damage, which is the reason why he holds that requirements for adoption of an interim measure have been met.

Case no. AP 2108/11

13. The Central Election Commission of BiH issued Ruling no. 05-2-07-8-486/10 of 27 January 2011, wherein it was established that the second appellant, in the period from 19 November 2008 to the day on which the ruling was issued, had simultaneously held the office of councilor of the Assembly of the Brčko District of Bosnia and Herzegovina and had been the member of the Assembly of the Private Company "Ecoinvest" d.o.o. Tuzla, which had been engaged in business in the amount exceeding KM 5,000.00 with the District in 2009 and 2010 and thereby had taken forbidden actions referred to Article 6(2) and (3) of the Law on Conflict of Interest. Therefore, in accordance with Article 17(1) and (2) of the aforementioned Law, the sanction of ineligibility to

stand for any office of elected official, executive officeholder or advisor for a period of four (4) years following the committed violation, i.e. as of 31 December 2010 and a fine in the amount of KM 3,500.00 was imposed on him.

14. As stated in the reasons for the ruling of the Central Election Commission of BiH, the proceedings in question were conducted for violation of the provisions of Articles 6(2) and (3) of the Law on Conflict of Interest. In that case, the Central Election Commission of BiH, having presented the evidence (examination of the official database of the Central Election Commission, the appellant's Statement and Supplement to the Statement, dated 17 and 27 December, form indicating personal data, act of the Municipal Court of Tuzla, act of the Company "Ecoinvest" d.o.o. Tuzla and act of the Directorate for Finances of the Brčko District, found that the second appellant held the office of Councilor in the Assembly of the Brčko District of Bosnia and Herzegovina had the status as "elected official". Furthermore, it found that at the same time he was the member of the Assembly of Company "Ecoinvest" d.o.o. Tuzla (Limited Liability Company), that the case related to a private company as provided for in Article 3(1)(1) of the Law on Conflict of Interest, which was engaged in business with the Brčko District in the amount of KM 93,814.15 in 2009 and KM 117,598.69 in 2010.

15. The Central Election Commission referred to the relevant provisions of the Law on Conflict of Interest and concluded that all requirements were cumulatively met to find the second appellant liable for violation of Article 6(2) and (3) of the Law on Conflict of Interest as he had conflict of interest, since he had simultaneously held the office of elected official and member of the Private Company "Ecoinvest" d.o.o. Tuzla which concluded contracts with the District exceeding the prescribed maximum amount (KM 5,000).

16. In the reasons for its ruling the Central Election Commission indicated the Statement of the of the second appellant who claimed that he did not have a conflict of interest as he had resigned from an "incompatible office" (the office of member of the Assembly of the Company) and had transferred his management rights to another person. The Central Election Commission of BiH stated that the second appellant indicated in his Statement that the "ownership rights" should be differentiated from the "management rights". In this connection, the appellant stated that the fact that someone had the "ownership rights" was not enough for having a conflict of interest but what was necessary was that someone had the "management rights". In the proceedings before the Central Election Commission of BiH, the appellant stated that based on a notarized power of

attorney he had transferred his management rights to a third person and resigned from the office of member of the Assembly of the Company “Ecoinvest” d.o.o. Tuzla.

17. The Central Election Commission of BiH stated that the Statement of the second appellant and Private Company “Econinvest” d.o.o. Tuzla that the second appellant had not been the member of the Assembly of the Company was not correct. In this connection, the Central Election Commission referred to the provision of Article 343 of the Law on Business Companies of the Federation of BiH, which provides that a limited liability company shall have an Assembly composed of all members of the Company. Furthermore, the Central Election Commission of BiH stated that Article 342 of the Law on Business Companies provides that the withdrawal or exclusion from the company membership terminates the rights arising from it. The Central Election Commission of BiH referred to the provision of Article 34 of the Statute of the Company “Ecoinvest” d.o.o. Tuzla, which provides that the Assembly shall be composed of the founders, i.e. members of the Company. Based on the aforementioned, the Central Election Commission of BiH concluded that the membership of the appellant in the Assembly of the Company could have only ceased by withdrawal or exclusion, not by resignation from the membership in the assembly of the company. The Central Election Commission of BiH stated that the second appellant did not prove during the proceedings that he had withdrawn from the company membership, in accordance with Article 342 of the Law on Business Companies, by selling or transferring the ownership rights to a third person, or that he had been excluded from the company and that based on this his rights deriving from that membership ceased to exist. Furthermore, the Central Election Commission of BiH stated that the Law on Business Companies does not make distinction between the ownership and management rights but it is sufficient for a person to be the member of the company, i.e. to have the ownership share in a limited liability company to be a member of the Assembly.

18. The Central Election Commission of BiH stated that it imposed a sanction (ineligibility to stand for any office of elected official) and a fine in accordance with Articles 22 and 23 of the Rules to Conduct the Procedure in the Area of Application of the Law on Conflict of Interest. The Central Election Commission of BiH took into account the mitigating circumstance that the second appellant “attempted to resolve the conflict of interest” within a time limit of three days as of the date of taking up a public office.

19. By its Decision no. SIŽ-6/11 of 17 March 2011, the Court of BiH dismissed as ill-founded the second appellant’s appeal against the ruling of the Central Election Commission of BiH, dated 27 January 2011.

20. In the reasons for its decision the Court of BiH stated that the Central Election Commission established all the relevant facts which indicated a violation of the provisions of Article 6(2) and (3) of the Law on Conflict of Interest. The Court of BiH stated that it was an undisputed fact that the second appellant had performed an official duty as an elected official and had held office of the Member of the Assembly of the Private Company “Ecoinvest” d.o.o. Tuzla (as it follows from the act of the Municipal Court in Tuzla) and was entered into the register as a founder of that company which was engaged in business with the Brčko District, the value of which exceeded 5,000 KM.

21. The Court of BiH stated that the second appellant’s allegations were unfounded where he asserted that he had resolved the issue of conflict of interest by resigning from the position of member of the Assembly of Company and that the Central Election Commission of BiH had failed to take into consideration Article 34 of the Statute of the Company. The Court of BiH referred to Article 6(2) and (3) of the Law on Conflict of Interest and concluded that the Central Election Commission of BiH had correctly considered the provisions of the Law on Conflict of Interest and Article 34 of the Statute of the Company. The Court of BiH held that the fact that the second appellant had resigned his membership in the Assembly had no effect on the application of the provision of Article 6(2) of the Law on Conflict of Interest given that the second appellant - who was one of the founders of the mentioned business company - was a member of the Assembly of that Company (as prescribed by the provision of Article 343 of the Law on Business Companies and Article 34 of the Statute of the Company). The Court of BiH stated that the Central Election Commission of BiH had correctly concluded that only after a member’s withdrawal of membership, the rights of that membership would cease.

22. Furthermore, having examined the power of attorney which the second appellant granted to Mr. Damir Bradarić (the content of the power of attorney which was stated in detail), the Court of BiH concluded that the second appellant did not withdraw from the company, *i.e.* he was not excluded from the company, which means that his membership in the Company Assembly was not terminated within the meaning of Article 342 of the Law on Business Companies. Furthermore, the Court of BiH established that at the time of the second appellant’s nomination to the position of an elected official in the Assembly of the Brčko District, the Statute of the Private Company “Ecoinvest” d.o.o. Tuzla had already been in force since 2003, according to which, the company shall have an assembly composed of its founders, *i.e.* the members of the company. The Court of BiH stated that only after entry into force of the amendments to the Statute on 20 December 2009, these provisions were modified. In addition to this, the Court of BiH stated that even if one accepted

the argument that the Assembly was composed of the founders' representatives (on the basis of a notarized power of attorney), while taking into account the content of the power of attorney which the second appellant granted to Mr. Damir Bradarić on 20 December 2009 (authorizing him to act on his behalf and in his name as the founder owing 66.7% of the original capital in the Private Company "ECOINVEST" d.o.o. Tuzla to take all legal and factual actions aimed at harmonizing the company's activities, signing the Statute, registration), the Court of BiH concluded that the representatives took all actions in the name and for the account of the founder or the member of the company. Therefore, the Court of BiH held that by appointing a representative the second appellant did not cease to be the member of the company's Assembly given that he transferred the authorities to his representative to perform certain tasks, while the founder's failure to attend the Assembly sessions was of no relevance when it comes to rendering the challenged decision. The Court of BiH held that by appointing a representative the founder did not cease to be the member of the company's Assembly as he just transferred the powers to his representative to perform certain tasks. Furthermore, having considered the contract agreement between the Brčko District of BiH and the Private Company "ECOINVEST" d.o.o. Tuzla (dated 4 May 2009), the Court of BiH stated that one could make a conclusion that at the time of application of the 2003 Statute, the second appellant, in his capacity as a founder member, was also the member of the company's Assembly.

23. Furthermore, the Court of BiH considered as unfounded the second appellant's allegation that the Central Election Commission of BiH did not find that there was a private interest of the second appellant that affected or could affect legality, transparency, objectivity and impartiality to the exercise of public office for the reasons that the company's founder established the company for the purpose of gaining profit, and given that the second appellant concluded the contractor agreement with the institutions of the Brčko District where he held office of an elected official, it was completely clear that the second appellant had his own financial and personal goal and interest, which was in contravention of the provisions of the Law on Conflict of Interest. The Court of BiH noted that the basic goal of the Law on Conflict of Interest is that the elected officials, executive office holders and advisors holding public office shall act responsibly and with due-diligence without jeopardizing trust and confidence of the citizens. In the opinion of the Court of BiH, the aforementioned Law prohibits the creation of situations in which elected officials, executive office holders and advisors have private interest that affects or may affect legality, transparency, objectivity and impartiality to the exercise of public office. Taking into account all the aforesaid, the

Court of BiH concluded that the Decision of the Central Election Commission was lawful and correct.

24. The Central Election Commission of BiH rendered a decision on the termination of mandate and assignment of mandate to the next qualified candidate (Mr. Osman Mulahalilović) no. 06-1-07-1-258/11 of 7 April 2011.

25. The Central Election Commission of BiH alleged in the reasons for its decision, taking into account the ruling of the Central Election Commission, no. 05-2-07-8-486/10 of 27 January 2001, that the second appellant was registered as a person on whom a sanction of ineligibility to stand for any office of elected official, executive office holder or advisor for a period of four (4) years following the committed violation (that is from 31 December 2010) was imposed. The Central Election Commission referred to the provisions of Article 1.10 paragraph (1) item 8 of the Election Law of BiH (*Official Gazette of BiH* no. 23/01 through 32/10), which prescribes that the term of office of an elected member of a body of authority at all levels shall be terminated before the expiration of the mandate for which he or she was elected if he or she loses the right to be elected for reasons stipulated by law. In this connection, the Central Election Commission of BiH stated that in accordance with Article 13.6 paragraph 1 of the Election Law of Bosnia and Herzegovina and upon the entry into force of this Decision, the term of office of a Councilor in the Assembly of the Brčko District of BiH would be assigned to the next qualified candidate from the list of the Party for Bosnia and Herzegovina.

26. The second appellant filed an appeal against the Decision of the Central Election Commission of BiH, dated 26 April 2011. Having considered the appeal, the Court of BiH issued Decision no. IŽ-51/11 of 26 April 2011 wherein it dismissed the appeal.

27. In the reasons for the Decision, the Court of BiH stated that the second appellant filed an appeal due to erroneously and incompletely established facts of the case and erroneous application of the substantive law (particularly due to the fact that the Central Election Commission applied the provisions of the federal law, Law on Business Companies on the Territory of the Brčko District). The Court of BiH found that the appeal of the second appellant was not founded.

28. The Court of BiH stated that the Central Election Commission of Bosnia and Herzegovina decided in its challenged decision that the mandate of the appellant was terminated and that it was assigned to the next qualified candidate in accordance with Article 2.9 paragraph 1 item 14, in conjunction with Article 1.10 paragraph 1 item 8 and paragraph 2 and Article 13.6 paragraph 1 of the Election Law of Bosnia and Herzegovina and Article 14 paragraph 1 item h and Article 18 of the

Instruction on the Assignment and Termination of Mandate (*Official Gazette of BiH* no. 31/10). The Court of BiH stated that the Election Commission of BiH had correctly acted when it adopted the challenged decision on the basis of the previously adopted ruling of the Central Election Commission, no. 05-2-07-8-486/10 of 27 January 2011, imposing on the appellant the sanction for violation of the provision of Article 6(2) and (3) of the Law on the Conflict of Interest. The Court of BiH stated that the ruling of the Election Commission of BiH, dated 27 January 2011, became legally binding on 17 March 2011, after the Court of BiH dismissed the appeal of the second appellant in case no. SIŽ-6/11. Based on the aforesaid, the Court of BiH concluded that the Central Election Commission of BiH had correctly applied the substantive and procedural law when it adopted decision dated 27 April 2011, i.e. when it enforced the ruling of 27 January 2011.

29. The Court of BiH is of the opinion that the allegations of the second appellant relating to the application of the Law on Business Companies of the FBiH are not of relevance to the correctness and lawfulness of the challenged decision as the decision was made in the procedure for enforcement of a legally binding decision, wherein the existence of conflict of interest was found, so that this was to indicate in those proceedings. Given the aforesaid, and having referred to Article 81(1) of the Law on Administrative Procedures, the Court of BiH dismissed the appeal.

30. The second appellant holds that the challenged decisions violated his right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 of the European Convention, right to non-discrimination under Article II(4) of the Constitution of Bosnia and Herzegovina and Article 14 of the European Convention, right to free elections under Article 3 of Protocol No. 1 to the European Convention and right to general prohibition of discrimination under Article 1 of Protocol No. 12 to the European Convention. The second appellant holds that the reasons for the challenged decisions are arbitrary as it is stated that the second appellant is the member of the Assembly of the Company and this has a conflict of interest. He holds that they are also contradictory as it is stated that the “second appellant resigned from the membership to the Assembly of the Company”. The appellant challenged the way in which the Law on Business Companies of the Federation of BiH on the territory of the Brčko District. The second appellant alleges that that following the election he resigned from the membership to the Assembly of the Company and he was never requested to do anything else in order to avoiding having a conflict of interest. The second appellant alleges that neither the notarized power of attorney nor the act “Appointment of Representatives of Shares in the Assembly of the Company “Ecoinvest d.o.o. Tuzla” were assessed during the proceedings. The second appellant alleges that it clearly follows

from the notarized power of attorney that Mr. Damir Bradarić from Sarajevo was appointed representative of ownership rights based on the registered share of the Company and that he performed the office as member of the Assembly not the appellant. Furthermore, the second appellant alleges that the Law on Business Companies was used as a subsidiary legal source on the territory of the Brčko District. In this regard, the second appellant outlines that neither the Law on Conflict of Interest nor the Rules to conduct the proceedings in the area of the Law on Conflict of Interest prescribe that a member of the Assembly of the Brčko District is obliged or should do anything else but resign from the office of the member of the Assembly of a Company, what the second appellant did. The second appellant alleges that the “legal gap” in the law cannot be filled by the legal provisions of the Entities. In this connection, the second appellant concludes that the Law on Business Companies of the FBiH and Statute of the Company were erroneously applied. The second appellant alleges that the legislation in Bosnia and Herzegovina does not impose any obligation on the elected officials with respect to handling to their property in business companies. The second appellant alleges that he has been discriminated against, since in the procedure for determination of conflict of interest in which the appellant’s office of Councilor was revoked, on the ground of the fact that he was owner of a share in the company which was engaged in business with the Brčko District in the amount exceeding the amount allowed by the law. The second appellant is of the opinion that it was not established during the proceedings that he had taken any action in order to achieve the private interest. In the reasons for the appeal the second appellant outlined that there is a prohibition of discrimination and that the laws in Bosnia and Herzegovina must be in accordance with the Constitution, European Convention and its Protocols. The second appellant referred to the right under Article 25 of the International Covenant on Civil and Political Rights according to which every citizen shall have the right to vote and to be elected and alleges that any limitation on that right, particularly if it is based on the discrimination, constitutes violation. The second-appellant requested the Court to make a Decision on Admissibility and Merits to find a *violation of the right under Article II(3)(e) of the Constitution of Bosnia and Herzegovina right to non-discrimination under Article II(4) of the Constitution of Bosnia and Herzegovina and Article 14 of the European Convention, in conjunction with Article 3 of Protocol No. 1 and Article 1 of Protocol No. 12 to the European Convention.* The second appellant also requested the Constitutional Court to impose an interim measure whereby it would prohibit the enforcement of the decisions of the Central Election Commission of BiH and decisions of the Court of BiH, SIŽ-6/11 as the enforcement would cause detrimental consequences to the appellant.

Relevant Laws

31. The **Law on Conflict of Interest in the Institutions of the Brčko District of Bosnia and Herzegovina** (*Official Gazette of the Brčko District of Bosnia and Herzegovina*, nos. 43/08 and 47/08), in its relevant part, reads as follows.

Article 1

Subject Matter

(1) In order to prevent the conflict of interest this Law shall regulate special obligations of elected officials, executive office holders and advisors in the institutions of the Brčko District of Bosnia and Herzegovina (hereinafter: the District) in the exercise of public office.

Article 3

Conflict of Interest

A conflict of interest shall exist in situations in which elected officials, executive office holders and advisors have private interest that affects or may affect lawfulness, transparency, objectivity and impartiality in the exercise of public office;

Article 6(2)(b) and (3)

Incompatibility Regarding Private Companies

[...]

(2) Elected officials, executive office holders and advisors cannot serve as members of assembly, steering board, supervisory board, administration or management or act in the capacity of an authorized person for private company:

[...]

(b) Concluding contracts or having business with the District in other way.

(3) Restriction referred to in paragraph 2 of this Article shall apply to private companies that have concluded contract or have business with the District when elected official, executive office holder and advisor held office provided that the value of the contract or business with the District exceeds KM 5,000 per year.

Article 17(1) and (2)

(Sanctions)

(1) An elected official, executive office holder or advisor shall be fined in the amount ranging from BAM 1,000 to BAM 10,000 if found not to act in line with provisions:

a) of Articles 5, 6, 8 and 9 of this Law;

b) of Articles 7, 10 and 11 of this Law.

(2) *In the case referred to in Paragraph 1, Item a) of this Article, an elected official, executive office holder or advisor shall be deemed ineligible to stand for any office of an elected official, executive office holder or advisor for a period of four years following committing of violation.*

As to Admissibility

32. In examining the admissibility of the appeal, the Constitutional Court invoked the provisions of Article VI(3)(b) and Article 16(2)(4)(9) of the Rules of the Constitutional Court.

Article VI(3)(b) of the Constitution of Bosnia and Herzegovina reads:

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.

Article 16(2) of the Rules of the Constitutional Court reads:

The Constitutional Court shall reject an appeal as being manifestly (prima facie) ill-founded when it establishes that the request of the party to the proceedings is not justified or when the presented facts do not in any way justify the allegation of a violation of the constitutional rights and/or when the Constitutional Court establishes that the party to the proceedings is not a "victim" of a violation of the constitutional rights, so that the examination of the merits of the appeal is superfluous.

Article 16(4)(9) of the Rules of the Constitutional Court reads as follows:

(4) An appeal shall also be inadmissible in any of the following cases:

9. the appeal is ratione materiae incompatible with the Constitution;

As to prima facie admissibility

33. In examining the admissibility of the present case, the Constitutional Court must first establish whether the requirements enumerated in Article 16(2) of the Rules of the Constitutional Court are met for making a decision on the merits of a case. In this regard, the Constitutional Court outlines that according to its jurisprudence and the case-law of the European Court of Human Rights ("the European Court") the appellant must assert the violation of her/his rights safeguarded by the Constitution of Bosnia and Herzegovina and these violations must be deemed probable. Pursuant to Article 16(2) of the Rules of the Constitutional Court, the appeal shall be manifestly ill-founded if there is no *prima facie* evidence, which would, with sufficient clarity, indicate that the mentioned violation of human rights and freedoms is possible (see ECHR, the *Vanek vs. Slovakia* judgment of 31 May 2005, Application no. 53363/99 and Constitutional Court, *Decision no. AP-156/05* of 18 May 2005), and if the facts in which regard the appeal has been submitted

manifestly do not constitute the violation of rights that the appellant has stated, *i.e.* if the appellant has no “arguable claim” (see ECHR, the *Mezőtúr-Tiszazugi Vizgazdálkodási Társulat vs. Hungary* judgment of 26 July 2005, Application no. 5503/02), as well as when it is established that the party to the proceedings is not a “victim” of a violation of the rights safeguarded by the Constitution of Bosnia and Herzegovina.

a) As to the right to free elections under Article 3 of Protocol No. 1 to the European Convention

34. As to the appellants’ allegations relating to the violation of his right to free elections under Article 3 of Protocol No. 1 to the European Convention, the Constitutional Court notes that the appellants see the violation of the aforementioned right in the allegedly incorrect establishment of the facts and the erroneous application of the relevant legal provisions, as a result of which a sanction was imposed on them. In this regard, the Constitutional Court notes that the Court of BiH and the Central Election Commission of BiH, in the reasoning of their decisions, gave clear and unambiguous reasons for their decisions in which they concluded that the appellants violated Article 6(2) and (3) of the Law on Conflict of Interest, as a result of which the sanction was imposed on the appellants. The Constitutional Court does not consider the mentioned reasoning to be arbitrary. In addition, the Constitutional Court underlines that the Court of BiH and the Central Election Commission of BiH considered that the appellants’ assertion was unfounded where they maintained that they had resolved the issue of conflict of interest by resigning from the position of member of the Assembly of the Company. Namely, the Constitutional Court notes that the Court of BiH and the Central Election Commission of BiH, referring to the act of the Company and the relevant provisions of the Law on Business Companies of the Federation of BiH (which relate to the company “Ecoinvest” d.o.o. Tuzla), unequivocally stated that the appellants, as a founders of the Company, were also members of the Assembly of the Company. In addition, the Court of BiH and the Central Election Commission of BiH established that the appellants, as founders of the Company, had transferred certain powers to their attorneys, as specifically enumerated in the powers of attorney, to be exercised “in the name and in the interest” of the appellants. According to the aforementioned, the Court of BiH and the Central Election Commission of BiH concluded that, despite the fact that the appellants had resigned from the position of member of the Assembly of the Company, they, as founders of the Company and in accordance with the legal provisions and the act of the Company, remained members thereof. Furthermore, contrary to the appellants’ allegations, the reasoning of the decision of the Court of BiH states what “the appellants’ private interest”

amounts to. In the view of the Constitutional Court, the appellants' allegations do not call in question the established facts, which are elaborated in great detail in the challenged decisions, and the application of the substantive law. The Constitutional Court notes that the appellants, in the appeal, apart from arbitrary allegations relating to the violation of his right to free elections, failed to submit to the Constitutional Court any evidence that show with sufficient clarity that the mentioned violation of human rights and freedom is plausible.

35. In addition, the Constitutional Court recalls that in its decision no. *U 14/09* of 30 January 2010, in the proceedings of review of constitutionality, it considered the constitutionality of Article 16 of the Law on Conflict of Interest of Governmental Institutions of the Federation of Bosnia and Herzegovina and stated "that Article 3 of Protocol No.1 to the European Convention implies the subjective rights to vote and to stand for election, and since Article 3 of Protocol No. 1 to the European Convention recognizes these rights without setting them forth in express terms, let alone defining them, there is room for *implied limitations* (see e.g. *Labita vs. Italy*, Judgment of 6 April 2000, application no. 26772/95, paragraph 201), but any limitations should not curtail the very essence of these rights and deprive them of their effectiveness, and have to be imposed in pursuit of a legitimate aim and must be proportionate. The Constitutional Court has concluded in the aforementioned decision that the challenged provisions are "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 limitations on passive electoral rights serve a legitimate aim, ensuring 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" (paragraphs 14 and 29) and that therefore the challenged provisions are 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. Taking into account that the provisions of the Law on Conflict of Interest in Institutions of the Brčko District of BiH have almost exactly the same content as the provisions of the Law on Conflict of Interest in Governmental Institutions of the Federation of Bosnia and Herzegovina, the Constitutional Court holds that the aforementioned positions are also fully applicable to the present case.

36. The Constitutional Court outlines that the hitherto case-law of the European Court of Human Rights has clearly established that the State may impose limitations on the right to stand for election, provided that the limitation pursues a legitimate aim and that the means employed in the contested legislation/law/rule to achieve that aim are not disproportionate (ECHR, *Mathieu-Mohn and Clerfayt vs. Belgium*, judgment of 2 March 1987, paragraph 52 and *Gitonas and Others vs. Greece*, judgment of 1 July 1997, paragraph 39). In the *Gitonas* case, where the applicants challenged the Greek rules prohibiting public officials from standing for election within a period of 33 months of holding public office, it was held that the aim pursued by the legislature in enacting the relevant statute, namely to ensure the independence of members of parliament, was a legitimate one (*op. cit. Gitonas and Others vs. Greece*, §§39, 40). Likewise in the case of *Ahmed and Others vs. The United Kingdom* restrictions on the capacity of certain local government officials to stand in local government elections were considered to pursue the legitimate aim of securing political impartiality (ECHR, *Ahmed and Others vs. The United Kingdom*, judgment of 2 September 1998, paragraphs 73-76). Having analyzed the relevant cases in the context of the aforementioned, the Constitutional Court finds that preventing a conflict of interest between public duty and private, commercial activities on the part of an elected holder of public office is a legitimate aim in democratic society, in that it seeks to ensure that elected office-holders perform their duties in full independence and impartiality, with the risk or appearance of corruption or influence, even indirect, in favor of their own private or commercial interests to the detriment of the interests of the community which they have been elected to serve being removed. The Constitutional Court holds that there must exist, in all properly functioning political democracies, effective safeguards to eliminate the risk of elected office-holders abusing their public power so as to obtain a private or commercial benefit for themselves. The Constitutional Court concludes that considerations of this nature constitute a legitimate reason to regulate the relationship between participation in a private company and the holding of public office.

37. As to the principle of proportionality in pursuing the legitimate aim, the European Court, in the *Gitonas and Others vs. Greece* stressed the “considerable latitude” that the Contracting States enjoy to establish rules governing the criteria for disqualification of parliamentarians (*op. cit. Gitonas and Others vs. Greece*, paragraph 39). The Constitutional Court further notes that the means employed in the Law on Conflict of Interest in the instant case cannot be regarded either as inappropriate for achieving the legitimate aim or as excessive in their effects on the individual(s), i.e. on the appellants in the present case. The Constitutional Court further notes that according to the

aforementioned Law, the participation in a private company is not deemed to be a conflict of interest, but only participation where there is a contract or business relationship between the private company concerned and the District authority during the period of the individual's term of elective office and where the value of that contract or business exceeds KM 5,000. Combining commercial activities outside that narrowly defined range and occupation of elected public office is thus possible. The Constitutional Court holds that it is necessary that in any healthy democracy persons doing substantial business with some elected authority (or persons involved in the ownership or running of the company doing the business) should not be allowed to be elected members of that authority. The Constitutional Court underlines that in the instant case the ineligibility for election is for a limited – and reasonable – period (Article 17(2) of the Law on Conflict of Interest). In addition to this, the Constitutional Court notes that the fine imposed in the instant case does not go beyond what could be regarded as acceptable in the case of someone found to have held elective office when in a situation of conflict of interest. The Constitutional Court holds that the criteria laid down appear objective, reasonable and even necessary if the impartiality of elected holders of public office is to be preserved. The law in question does not require proof of actual influence: in using (in Article 3 of the Law on Conflict of Interest) the word “may”, it accepts that the potential for or risk of undue influence is sufficient to constitute a conflict of interest. In terms of proportionality, the aforementioned criteria are in accordance with the achievement of legitimate aim. Elected holders of public office must be above all suspicion if they are to merit having the confidence of voters. What is more, the law would be largely ineffective if actual influence in the specific circumstances of the case had to be proved. Such proof is almost impossible to adduce, save in manifest cases (*cf.* what is said in *Gitonas*, §41 *in fine*, where the Court refers to the practical difficulties involved in proving influence in the particular circumstances). As to the political and any other impartiality required of elected officeholders, the Constitutional Court notes that impartiality required may be considered as a requirement under Article 6 European Convention for judges in judicial proceedings which has long been held to have an “objective” as well as “subjective” facet (justice must not only be done but must also be seen to be done, the theory of “appearances”, see case-law in the case of *Piersack vs. Belgium* (1982), Series A no. 53).

38. Taking into account the aforementioned, the Constitutional Court holds that the appellants' dissatisfaction by the challenged judgment, by itself, does not invoke issues relating to the rights safeguarded by the Constitution and concludes that the appellants' allegations of violation of the

right referred to in Article 3 of Protocol No. 1 to the European Convention are manifestly (*prima facie*) ill-founded.

b) As to the general prohibition of discrimination under Article 1 of Protocol 12 to the European Convention

39. As to the appellants' allegations of violation of the right to a general prohibition of discrimination under Article 1 of Protocol No. 12 to the European Convention, the Constitutional Court recalls that this Article affords a wider scope of principle of non-discrimination. The provisions of this Protocol guarantee the enjoyment of all the rights foreseen by law without discrimination and, *inter alia*, specify that no one shall be discriminated against by any State or public authority on any ground. Therefore, the general principle of non-discrimination is extended to domestic laws and thereby affords a scope of protection which extends beyond the rights and freedoms set forth in the European Convention. The Constitutional Court notes that the appellants allege that they have been discriminated against "on the grounds of property", *i.e.* because of the fact that they are shareowners in the Company "Ecoinvest" d.o.o. Tuzla, although it has not been established that "they have taken any action in pursuit of his private interest". However, in the allegations stated in the appeals and documentation attached thereto, the Constitutional Court cannot find any evidence of discrimination, *i.e.* what is the basis of the appellants' allegations of discrimination. Namely, apart from the appellants' arbitrary allegation that they have been discriminated against by the challenged decisions, which, according to the appellants' allegations, are based on the incorrectly established facts and erroneous application of the substantive law (on the grounds of "property" and through the application of the Law on Conflict of Interest), which the allegations have already been elaborated by the Constitutional Court in the preceding paragraphs of the present decision, the appellants have failed to state clearly what does discrimination consist of. In addition, based on the documents submitted to it, or as a consequence of the application of the aforementioned law, the Constitutional Court has not established that discrimination occurred. All the more so taking into account that the provisions of the Law on Conflict of Interest are of a general nature and that they apply to all elected officials, executive office holders and advisors, and that the appellants have failed to provide any evidence indicating that they have been treated differently from other persons, in exactly the same situation, to which the relevant law apply.

40. As to the difference in treatment, the Constitutional Court notes that in the instant case people in business, or who own a business, are not prevented from standing in elections or from continuing in business after being elected. On the other hand, all citizens are expected to conduct

themselves in elected office in a way that does not entail raising legitimate, objective doubts as to their impartiality (eg., by reason of links between their private, commercial activities and the activities of the elected authority). This obligation is inherent in the right to stand for election and to be elected. One could therefore have doubts as to whether there is at all any question of treating differently persons in comparable situations. In any event, however, even if there could be said to be differential treatment on the basis of the possession of property, there existed a legitimate, objective and reasonable justification for the treatment complained of. For the reasons given above in relation to Article 3 of Protocol No. 1 to the European Convention, the aim pursued by the limitation imposed on the exercise of the right to stand for election was legitimate and the principle of proportionality was respected. In the circumstances of the case at hand, the legal and factual issues raised are in substance the same, such that necessarily the same conclusion must be reached under Article 14 of the European Convention and Article 1 Protocol No. 12 as under Article 3 Protocol No. 1. The Constitutional Court notes that basically the same legal and factual issues haven been raised, just seen from different angles.

41. For the aforementioned reasons, the Constitutional Court holds that the allegations relating to the violation of Article 1 of Protocol No. 12 to the European Convention are manifestly (*prima facie*) ill-founded.

As to the *ratione materiae* admissibility

42. With regard to the appellant's allegations that the challenged decisions are in violation of the right to a fair trial for the incorrectly established facts and misapplication of the substantive law, the Constitutional Court recalls that, according to the jurisprudence of the Convention organs and the Constitutional Court, in order to apply the guarantees of the right to a fair trial, as a general rule, it is necessary that there has been a dispute over civil rights and obligations and that they are civil in nature, *i.e.* that it relates to the proceedings determining a criminal charge. As to election disputes relating to elected officials, the European Court of Human Rights explicitly emphasizes that these disputes fall outside the civil and criminal sphere of Article 6(1) of the European Convention (see ECHR, *Pierre-Bloch vs. France*, Judgment of 21 October 1997, Reports 1997-VI).

43. In view of the above, the Constitutional Court concludes that the present case concerns the dispute which falls outside the scope of Article 6(1) of the European Convention, and, in the present case, Article II(3)(e) of the Constitution of Bosnia and Herzegovina does not offer a wider scope of protection than Article 6 of the European Convention. Therefore, the appellants' allegations of violation of the right to a fair trial are *ratione materiae* incompatible with the Constitution of Bosnia

and Herzegovina. In addition, the Constitutional Court recalls that the same legal issue has already been considered by the Constitutional Court in its Decision on Admissibility no. *AP 2418/06* of 18 December 2008 (available at www.ustavnisud.ba). In view of the aforementioned, the Constitutional Court concludes that Article 6 paragraph 1 of the European Convention is not applicable in the instant case, as the relevant proceedings, which were concluded with the final decision, did not include the determination of civil rights and obligations within the meaning of Article 6 of the European Convention. Therefore, it follows that the appellants' allegations of violation of the right to a fair trial are *ratione materiae* incompatible with the Constitution of Bosnia and Herzegovina.

Other allegations

44. The Constitutional Court notes that the appellants, in their appeal, "come to a conclusion" that the right guaranteed by Article 25 of the International Covenant on Civil and Political Rights is also one of the protected rights and that any limitation on that right constitutes a violation, particularly if based on discrimination. However, taking into account the "request finally specified" by the appellants before the Constitutional Court, the Constitutional Court holds that it is not necessary to examine separately the appellant's allegation of violation of Article 25 of the International Covenant on Civil and Political Rights.

45. Furthermore, the Constitutional Court notes that the appellants have correlated their allegation of violation of the right not to be discriminated against under Article II(4) of the Constitution of Bosnia and Herzegovina and Article 14 of the European Convention *with the right under Article 3 of Protocol No. 1 to the European Convention and Article 1 of Protocol No. 12 to the European Convention*. However, in view of the above conclusions relating to the right to a general prohibition of discrimination and the right to free elections, the Constitutional Court holds it irrelevant to analyze the aforementioned allegations of the appellants.

46. In view of the above and having regard to the provision of Article 16(2) and (4)(9) of the Rules of the Constitutional Court, which stipulates that an appeal shall be rejected as inadmissible if manifestly (*prima facie*) ill-founded or *ratione materiae* incompatible with the Constitution of Bosnia and Herzegovina, the Constitutional Court decided as stated in the enacting clause of the present decision.

47. Taking into account the decision on admissibility in the present case, the Constitutional Court concludes that there are no grounds to consider the appellants' motion for an interim measure.

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

Prof Dr Miodrag Simović
President
Constitutional Court of Bosnia and Herzegovina