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 Article 59(2)(1) of the Rules of the Constitutional Court of Bosnia and Herzegovina (*Official Gazette of Bosnia and Herzegovina n*os. 60/05, 64/08 and 51/09), in Plenary and composed of the following judges: Mr. Miodrag Simović, the President, Ms. Valerija Galić, Ms. Constance Grewe and Ms. Seada Palavrić, the Vice-Presidents, Mr. Tudor Pantiru, Mr. David Feldman, Mr. Mato Tadić and Mirsad Ćeman, having deliberated on the appeal of Ms. **Mersida Došlo** and Mr. **Suad Došlo,** in case no. **AP 3100/07**, at its session held on 25 September 2010, adopted the following

DECISION ON ADMISSIBILITY

The appeal lodged by Ms. **Mersida Došlo** and Mr. **Suad Došlo** against the Judgment of the Cantonal Court in Goražde no. 5 0 Mal 000356 07 Gž of 19 September 2007 is hereby rejected as inadmissible for being manifestly (*prima facie)* ill-founded.

REASONING

1. On 19 November 2007, Ms. Mersida Došlo and Mr. Suad Došlo ("the appellants") from Goražde lodged an appeal with the Constitutional Court of Bosnia and Herzegovina ("the Constitutional Court") against the Judgment of the Cantonal Court in Goražde ("the Cantonal Court") no. 50 Mal 000356 07 Gž of 19 September 2007.

2. By the judgment of the Municipal Court in Goražde ("the Municipal Court") no. 45 0 Mal 000356 07 Mal of 10 August 2007, an action filed by "Goraždestan" LLC. Goražde ("the plaintiff"), seeking that the appellants be obliged to pay the amount of KM 254.40 as a fee for the maintenance and management of the common areas of the building, including the statutory default interest and the costs of proceedings, was dismissed. By the same judgment, the appellants' counterclaim was granted and the contract for the maintenance and management of the common parts of the building no. 165-13/04 of 14 December 2004 was declared null and void and the plaintiff was ordered to pay the appellants' costs of proceedings in the amount of KM 7.60. In the reasoning of its judgment, the Municipal Court stated that based on the evidence examined by the court it was undisputedly established that the appellants were the condominium owners of an apartment of 106m² and the co-owners of the common areas of the building in Goražde, Murisa Dučića Street no. 1 ("the building at issue") and that the plaintiff, as a contractor, was regularly maintaining and managing

the common areas of the building at issue. In addition, the Municipal Court mentioned that the parties did not dispute that the appellants had failed to pay to the plaintiff a fee of KM 254.40 for 2006 relating to the maintenance and management of the common areas of the building at issue. Furthermore, the Municipal Court stated that the plaintiff based the legal basis of the claim and defendant's obligation on a contract for the maintenance and management of the common parts of the building no. 165-13/04 of 14 December 2004 ("the challenged contract"), which the plaintiff, as a contractor, had entered into with the president of the housing council representing the apartment building in which the appellants have their apartment.

3. The Municipal Court stated that in the course of proceedings the appellants challenged the validity of the challenged contract claiming that H.H., who had not been the president of the housing council nor had he been authorised to sign the mentioned contract, entered into the mentioned contract, and that the appellants underlined that the condominium owners of the apartments located in the building at issue had not selected the plaintiff as a contractor of the building at issue. In this regard, the Municipal Court stated that the appellants had filed a counterclaim seeking that the challenged contract be declared null and void within the meaning of the provisions of Article 103 of the Law on Obligations. Besides, the Municipal Court reasoned that following the examination of the evidence (the challenged contract and other written documents as well as the statement of witness H.H.) it was established that the challenged contract had not been entered into in accordance with the provisions of Articles 12 through 32 of the Law on the Maintenance and Management of the Common Areas of Buildings (*Official Gazette of Bosnian Podrinje Canton - Goražde*, no. 15/01) and that H.H. had not been authorised to enter into the challenged contract, as he had not been the president of the housing council of the building at issue. In view of the above, the Municipal Court concluded that the challenged contract was null and void within the meaning of the provision of Article 103 of the Law on Obligations. Furthermore, by assessing that the challenged contract was null and void, the Municipal Court concluded that there was no legal basis for payment of the maintenance fee, as required from the appellant, and it dismissed the plaintiff's claim as ill-founded.

4. By its judgment No. 5 0 Mal 000356 07 Gž of 19 September 2007, the Cantonal Court granted the plaintiff's appeal and modified the first instance judgment obliging the appellants, in paragraph I of the enacting clause of the judgment, to pay to the plaintiff the amount of KM 254.40 for the maintenance and management of the common parts of the building at issue, including the statutory default interest and the costs of proceedings. In paragraph II of the enacting clause of the judgment,

the appellant's counterclaim seeking that the challenged contract be declared null and void was dismissed. In the reasoning of the judgment, the Cantonal Court stated that the First Instance Court's conclusion was incorrect where it stated that the challenged contract was null and void within the meaning of the provision of Article 103 of the Law on Obligations as being signed by an unauthorised person. In this regard, by assessing the undisputed fact that H.H., the signer of the challenged contract, had not been authorised by the condominium owners of the building at issue to enter into the challenged contract and given that a signer of such a contract has the capacity of a representative (an authorised person) within the meaning of the provisions of Article 84 of the Law on Obligations, the Cantonal Court stated that the aforementioned makes the contract relatively void in terms of the provision of Article 111 of the Law on Obligations but not void in terms of the provision of Article 103 of the same Law. In addition, the Cantonal Court stated that the provision of Article 117 of the Law on Obligations stipulates the time limits for requesting invalidation of relatively void contracts (the subjective time limit of 1 year and the objective time limit of 3 years). In view of the aforementioned and taking into account that it follows from the established facts that the appellants were aware that the challenged contract had been concluded on 14 December 2004 and that only on 9 April 2007 they filed their counterclaim for invalidation of the challenged contract, the Cantonal Court concluded that the one year time limit, *i.e.* the subjective time limit within the meaning of the provision of Article 117(1) of the Law on Obligations within which the appellants could file a request for invalidation of the challenged contract within the meaning of the provision of Article 111 of the Law on Obligations, had expired. Consequently, the Cantonal Court dismissed the appellants' counterclaim as ill-founded.

5. Furthermore, the Cantonal Court underlined that the established facts showed that in the course of proceedings it was disputed whether there had been the appellants' obligation to pay the fee for maintenance and management of the common areas of the building as well as the legal basis for it. It is underlined that the appellants' obligation to pay the aforementioned fee is established by the provision of Article 18 of the Maintenance Law. Therefore, the Cantonal Court concluded that the obligation of condominium owners to pay the maintenance fee followed from the aforementioned provision. In addition, the Cantonal Court stated that as to the aforementioned obligation it was irrelevant whether or not condominium owners entered into a contract on the maintenance and management of the common areas of the building in terms of Article 15 of the mentioned Law. Namely, the Cantonal Court stated that according to the provision of Article 15 of the Maintenance Law condominium owners have the obligation and right to select a contractor, and

if they fail to avail themselves of the mentioned right, the aforementioned law prescribes that a contractor shall be automatically designated and that condominium owners shall have an obligation to pay the fee in such a situation to the designated contractor. Underlining that the obligation of the appellants, as the condominium owners, to pay the maintenance fee follows from the Maintenance Law, the Cantonal Court concluded that the plaintiff's claim was well-founded and obliged the appellants to pay the fee as determined.

6. The appellants hold that the challenged judgment is in violation of their right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) the European Convention for the Protection of Human Rights and Fundamental freedoms ("the European Convention") and their 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. The appellants complain about a violation of the aforementioned rights as they hold that the challenged judgment is based on an arbitrary application of the Maintenance Law as, in their opinion, Article 18 of the aforementioned law stipulates that "the Government of the Canton, by its decision, shall determine the costs of maintenance and management of the common areas of buildings without consulting the owners of apartments, who shall pay the costs determined by the Government of the Canton". Taking into account that they are the condominium owners of the apartment at issue, the appellants hold that "no one is entitled to determine the costs payable by an owner for maintenance of his/her property and, particularly, to determine what private company the owner will enter into a maintenance contract with." Given the aforementioned fact, the appellants hold that the Maintenance Law is "unconstitutional" and that the Cantonal Court, by applying the provisions of the aforementioned Law, could not oblige them to pay the fee for maintenance of the building at issue. Finally, the appellants challenge the application of the substantive law by the Cantonal Court and hold that the challenged contract is null and void within the meaning of the provisions of Article 103 of the Law on Obligations and not relatively void within the meaning of the provision of Article 111 of the same Law.

7. In examining the admissibility of the present appeal, the Constitutional Court invokes the provisions of VI(3)(b) of the Constitution of Bosnia and Herzegovina and Article 16(2) of its Rules.

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

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 as follows:

*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 nay 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.*

8. 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 appellant must point to 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 plausible (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 Vízgazdálkodási 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.

9. As to the appellants' allegation that their right to a fair trial and their right to property has been violated as a result of the erroneous application of the substantive law by the Cantonal Court, the Constitutional Court recalls the consistent practice of the European Court of Human Rights and the Constitutional Court according to which it is not these Courts' task to review ordinary court's findings of facts and application of the substantive law (see European Court of Human Rights, *Pronina vs. Russia*, Decision on Admissibility of 30 June 2005, Application no. 65167/01). Namely, the Constitutional Court cannot generally substitute its own appraisal of the facts or evidence for that of the regular courts but it is the regular courts' task to appraise the presented facts and evidence (see European Court of Human Rights, *Thomas vs. United Kingdom*, Judgment of 10 May 2005, Application no. 19354/02). It is the Constitutional Court's task to ascertain whether the constitutional rights (fair trial, access to court, effective remedies, *etc*.) have been violated or

disregarded and whether the application of a law was obviously arbitrary or discriminatory. Therefore, within its appellate jurisdiction, the Constitutional Court deals solely with the issue of a possible violation of the constitutional rights or the rights safeguarded by the European Convention in proceedings before the ordinary courts. In the case at hand, the Constitutional Court will examine whether the proceedings in their entirety were fair as required by Article 6(1) of the European Convention (see Constitutional Court, Decision no. *AP 20/05* of 18 May 2005, published in the *Official Gazette of BiH*, no. 58/05).

10. In the case at hand, the Constitutional Court holds that the Cantonal Court, in the reasoning of its decision, gave clear and specific reasons for its decision and that it therefore cannot be concluded that the relevant regulations were applied in an arbitrary or unfair manner. In addition, the Constitutional Court notes that the appellants failed to offer any argument corroborating their claim that the right to a fair trial or the right to property were in any manner violated, apart from their dissatisfaction with the outcome of the proceedings concerned. Furthermore, the Constitutional Court holds that the appellants failed to substantiate their claim that the Maintenance Law is "unconstitutional", *i.e.* that it is the low quality Law with regard to their case, as they did not offer any valid evidence indicating that the issue should be examined on the merits. In view of the aforementioned and, particularly, of the position of the European Court of Human Rights and the Constitutional Court stated in the present decision, the Constitutional Court holds that the appellants have no "arguable claim" to raise the issue of the right to a fair trial or the right to property under the Constitution of Bosnia and Herzegovina or the European Convention, which should be examined on the merits. For these reasons, the Constitutional Court holds that the appellants' allegations of violation of the rights safeguarded by Article II(3)(e) of the Constitution of Bosnia and Herzegovina, Article 6(1) the European Convention, Article II(3)(k) of the Constitution of Bosnia and Herzegovina and Article 1 of Protocol No. 1 to the European Convention are manifestly (*prima facie*) ill-founded.

11. Having regard to the provision of Article 16(2) of the Rules of the Constitutional Court, which stipulates that an appeal shall be rejected as inadmissible if manifestly (*prima facie*) ill-founded, the Constitutional Court decided as stated in the enacting clause of the present decision.

12. 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