

The Constitutional Court of Bosnia and Herzegovina, sitting, in accordance with Article VI(3)(b) of the Constitution of Bosnia and Herzegovina, Article 59(2) line 2, Article 61(1) and (2) and Article 76(2) 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 Plenary and composed of the following judges:

Mr. Miodrag Simović, President

Ms. Valerija Galić, Vice-President

Ms. Constance Grewe, Vice-President

Ms. Seada Palavrić, Vice-President

Mr. Tudor Pantiru,

Mr. Mato Tadić,

Mr. David Feldman,

Mr. Krstan Simić,

Mr. Mirsad Ćeman,

Having deliberated on the appeal of Mr. **Halid Dedić** in Case No. **AP-575/07** at its session held on 30 January 2010, adopted the following

DECISION ON ADMISSIBILITY AND MERITS

The appeal of **Halid Dedić** is hereby granted.

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 for the Protection of Human Rights and Fundamental Freedoms is hereby established in relation to the right to a decision within a reasonable time in the proceedings conducted before the Municipal Court in Bihać upon the lawsuit of 14 February 1994 in Case No. P-2139/07.

The Municipal Court in Bihać is hereby ordered to urgently conclude the proceedings in Case No. P-2139/07 in accordance with Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6, paragraph 1 of the

European Convention for the Protection of Human Rights and Fundamental Freedoms.

The Una-Sana Canton is hereby ordered to pay the amount of 3,900.00 KM to **Halid Dedić** as a compensation for non-pecuniary damage sustained due to the failure to adopt a decision within a reasonable time, in accordance with Article 76, paragraph 2 of the Rules of the Constitutional Court of Bosnia and Herzegovina. The payment is to be made within 90 days from the day of delivery of this decision.

The Municipal Court in Bihać and the Government of the Una-Sana Canton are hereby ordered to inform the Constitutional Court of Bosnia and Herzegovina, within 90 days as from the date of delivery of this Decision, about the measures taken to enforce this Decision in accordance with Article 74 paragraph 5 of the Rules of the Constitutional Court of Bosnia and Herzegovina.

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

REASONING

I. Introduction

1. On 12 February 2007, Mr. Halid Dedić (“the appellant”) from Bihać lodged an appeal with the Constitutional Court of Bosnia and Herzegovina (“the Constitutional Court”) for failure to adopt a decision in the judicial proceedings which he instituted before the Municipal Court in Bihać (“the Municipal Court”) for the purpose of his reinstatement to the work and reinstatement of other employment rights. At the time of filing the appeal with the Constitutional Court, the appellant’s claim was partially successful (in the part where the court established that his employment had been terminated unlawfully and the order was issued to reinstate the appellant to work) while the proceedings were still pending before the Cantonal Court in Bihać (“the Cantonal Court”) which was to decide the appeal against the judgment of the Municipal Court, No. 407/02 of 6 February 2004. The appellant supplemented his appeal on 8 February 2008.

II. Procedure before the Constitutional Court

2. Pursuant to Article 22, paragraph 1 of the Rules of the Constitutional Court, on 20 February and then on 20 August 2007 respectively the Cantonal Court in Bihać (“the Cantonal Court”) was requested to submit its reply to the appeal. On 27 August 2007, the Cantonal Court submitted its reply to the appeal.

3. The Constitutional Court requested the Municipal Court to submit its reply to the appeal and the entire case-file. On 27 July 2008, the Municipal Court informed the Constitutional Court that upon filing a revision appeal the case-file had been forwarded to the Supreme Court of the Federation of Bosnia and Herzegovina (“the Supreme Court”).

4. On 29 September 2009, the Constitutional Court requested the Supreme Court to submit its reply to the appeal as well as the entire case-file. The Supreme Court sent a part of the case-file relating to the decision-making procedure following the revision appeal.

5. Upon the repeated request of the Constitutional Court of 14 October 2009, the Municipal Court submitted the entire case-file on 23 October 2009.

6. Pursuant to Article 26, paragraph 2 of the Rules of the Constitutional Court, the Cantonal Court's reply to the appeal was submitted to the appellant on 29 January 2008.

III. Facts of the case

7. The facts of the case, drawn from the appellant's statements and the documents submitted to the Constitutional Court, may be summarised as follows.

8. The appellant initiated judicial proceedings on 3 February 1994 against the Republic of Bosnia and Herzegovina, the County Prison of Bihać ("the defendant") for the purpose of determining unlawfulness of the termination of the appellant's employment and reinstating the appellant to work. On 30 March 1994 the Basic Court in Bihać rendered judgment No. Pr-5/94 of 30 March 1994 whereby the appellant's claim was partially granted and the defendant's ruling was partially quashed. Furthermore, by this judgment the defendant was ordered to reinstate the appellant to work. The remainder of the appellant's claim was dismissed. The appellant lodged an appeal against the judgment of the first instance court. The Higher Court in Bihać rendered judgment Gž-52/94 of 31 May 1995 whereby the appeal was partially granted and, consequently, the part of the first instance judgment granting the appellant's claim was quashed. The remainder of the appeal (the dismissing part of the first instance judgment) was dismissed as ill-founded and the first instance judgment was upheld.

9. The Basic Court in Bihać adopted ruling No. Pr-11/95 of 1 December 1995, whereby the proceedings were put on hold as of 30 November 1995. In his submission of 31 January 1996 the appellant sought the resumption of the proceedings. The Court scheduled hearings for 14 April and 15 May 1996. None of the hearings were held due to the failure of the defendant's lawyer to attend and due to the fact that the court did not have a panel. The next hearing was scheduled for 24 May 1996 but the defendant's lawyer informed the court, in his submission, that he was not to appear in the court and that he was supportive of his statements and proposals so far presented in the proceedings. The next hearing scheduled by the court was to take place on 14 May 1997 with

regards to the appellant's case which was given a new number Pr-17/05 and that hearing was held in the absence of the defendant who notified the court that he was not going to attend the hearing. The court scheduled and held hearings on 29 May, 18 June and 25 June 1997 and on 4 February 1998.

10. The Municipal Court rendered judgment No. PR-17/97 of 4 February 1998, whereby it was established that the defendant's order terminating the appellant's employment was unlawful, and this order was annulled as such. The defendant was obliged to reinstate the appellant to work. The defendant was also obliged to compensate the appellant for the costs of the civil proceedings.

11. Both the appellant and the defendant filed appeals against the judgment of the Municipal Court of 4 February 1998. Upon the appellant's proposal from his reply to the appeal, the Supreme Court adopted a ruling No.112/99 of 20 October 1999, whereby the appellant's proposal to determine another territorially competent court was dismissed. The Cantonal Court rendered a judgment No. Gž-447/99 of 8 May 2000 whereby the appeal was granted, the first instance judgment quashed and the case was referred back for renewed proceedings.

12. As to the case which was given a new number PR-856/00, the hearing was scheduled for 27 September 2000, which was postponed at the request of the defendant. The new hearing was scheduled for 25 December 2000, but it was not held since the court failed to ensure a panel in charge of taking a decision. A new hearing was scheduled for 8 January 2001. At the hearing of 8 January 2001, upon the proposal of the defendant the court joined Case No. PR-856/00 with Case No. PR-45/98 (in his lawsuit of 13 April 1998 the appellant initiated proceedings against the defendant for the purpose of being compensated for the damage he sustained) and therefore the court decided to conduct further proceedings under number 45/98. The appellant stood by his statements and the court decided to seek additional information. The hearing was postponed for 19 February 2001, but it was not held at that time due to the fact that there was no panel of the court. The court scheduled the hearings which were held on 7 and 27 March 2001 respectively.

13. The Municipal Court rendered a judgment No. PR-45/98 of 27 March 2001 whereby it was established that the defendant's order terminating the appellant's employment was unlawful and that it was annulled as such. The defendant was ordered to reinstate the appellant to work. The defendant was also ordered to pay the appellant, as a compensation for pecuniary damage (unpaid salaries), the amount of KM 4,818.50, including the statutory default interest and the compensation for the costs of the civil proceedings, while the remainder of the claim was dismissed. Furthermore, the

Municipal Court dismissed the appellant's claim in which he sought to be awarded the compensation for damage caused by the loss of meal allowance and annual leave allowance, as well as the appellant's claim in which he sought his pension and disability insurance contributions to be paid, and the reason for the court's dismissal was the appellant's lack of standing to sue in this matter.

14. Both the appellant and defendant lodged their respective appeals against the judgment of the Municipal Court of 27 March 2001. The Cantonal Court rendered a judgment RSŽ-143/2001 of 25 January 2002, whereby the appeals of the appellant and defendant were partially granted. Furthermore, the court quashed the first instance judgment in part in which the defendant was ordered to pay the appellant the compensation for pecuniary damages and in part in which the remainder of the appellant's claim was dismissed. Then, the Cantonal Court referred the case back to the court of first instance to conduct renewed proceedings. As to the remaining part, the Cantonal Court dismissed the appeals and upheld the first instance judgment.

15. In the course of the renewed proceedings in Case No. Rs-407/02, the Municipal Court held a hearing on 30 April 2002. The defendant filed a counter-lawsuit on 8 May 2002 in which he sought the court orders the appellant to pay the defendant the amount of KM 13,263. The next hearing was held on 19 June 2002. The Municipal Court postponed the hearing for unlimited period of time for the purpose of obtaining additional documents. The Municipal Court adopted a ruling Rs: 407/02 of 28 August 2002, whereby it was decided that an expert examination would be conducted in Case No. PR-407/02. This examination was to be conducted by financial expert Mr. Jasminko Dervišević. At the hearing of 17 February 2003, the Court concluded that the expert had refused to conduct the examination and the court appointed another expert. The Municipal Court held the hearings on 25 August and 30 September 2003 respectively, while the hearing scheduled for 23 October 2003 was postponed due to the justified absence of the defendant while the hearing scheduled for 11 November 2003 was cancelled. On 8 December 2003, the Municipal Court scheduled and held the preliminary hearing and the main hearing was scheduled for 23 December 2003, but it was cancelled. The main hearing was scheduled and held on 8 January 2004 and at that time the main trial was concluded.

16. The Municipal Court rendered judgment No. Rs-407/02 of 6 February 2004, whereby the defendant was ordered to pay the appellant the amount of KM 1,187.92 as a compensation for pecuniary damage caused by the loss of earnings in the period specified in the judgment, including

the statutory default interest. In paragraph 2 of the judgment's enacting clause the court dismissed the remainder of the appellant's claim. In paragraph 3 of the enacting clause the court ordered the defendant to pay the appellant the amount of KM 10,000 as a compensation for non-pecuniary damage. The Court also ordered the defendant to compensate the appellant for the costs of the civil proceedings. The court dismissed the defendant's (the counter-plaintiff's) claim as ill-founded in which he sought to be paid the amount of KM 11,562.40, as well as his claim to be paid KM 1,700.60 for the lack of standing to be sued. The Court dismissed the appellant's request for an interim measure in which he sought that the defendant be obliged to register the appellant with the Pension and Disability Insurance and the Health Care Insurance Administration.

17. The appellant filed an appeal against the judgment of the Municipal Court (on 17 February 2004) as did the defendant (on 11 February 2004). On 21 September 2006, the Cantonal Court sent a letter to the Municipal Court to remove the defects from the appeals. The Cantonal Court rendered a judgment 001-0-Gž-07-000095 of 31 October 2007, whereby the appeals were partially granted and the part of the first instance judgment was quashed. A part of the decision on the claim for payment of non-pecuniary damage was quashed both in the awarding and dismissing part, as well as in the part of the decision on the claim for payment of pecuniary damage for the loss of the appellant's earnings and in this part the case was referred back for the renewed proceedings. As for the remainder, the appeals of the appellant and defendant were dismissed as ill-founded and the first instance judgment was upheld.

18. The appellant filed a revision appeal on 3 January and the defendant submitted his reply to the revision-appeal on 23 January 2008.

19. The Supreme Court rendered judgment No. 070-0-Rev-08-000174 of 9 June 2009, whereby the revision appeal was dismissed.

IV. Appeal

a) The statements from the appeal

20. The appellant complains that due to the failure to adopt a final decision 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 for the Protection of Human Rights and Fundamental Freedoms ("the

European Convention”) was violated, as well as his right to private life under Article II (3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention, his right to effective legal remedy under Article 13 of the European Convention, his right to non-discrimination under Article 1 of Protocol No. 12 to the European Convention, Articles 10 and 11 of the International Covenant on Economic, Social and Cultural Rights and Article 14 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The appellant points out that he was addressing a number of institutions for the purpose of conclusion of his dispute and he also stated that he had intervened to speed up the proceedings in his case but nothing helped and the proceedings have been pending for 13 years (at the moment of filing the appeal). In his letter dated 8 February 2008 the appellant sought the compensation for damage caused by the violation of Articles 6 and 13 of the European Convention and he also stated that his case was partially resolved but that the proceedings continued and it is the fifth time that his case has been referred back to the court of first instance for renewed proceedings.

b) Reply to the appeal

21. In the reply to the appeal, the Cantonal Court presented the chronological course of events in the appellant’s case. The Cantonal Court reiterated that the proceedings have been pending for a long period of time but the reason for it is the fact that the appellant was amending his claim for several times, that he requested that another court be designated and other things, which may have an effect on the course of the proceedings and their length. Moreover, the Cantonal Court has stated that the court’s case load must be taken into consideration, as well as the legal priority to which some cases are entitled and the fact that the Cantonal Court determines a work schedule on an annual basis with the measures to resolving the pending cases.

22. The Supreme Court and Municipal Court failed to give their opinions on the allegations stated in the appeal.

V. Relevant Law

23. The relevant provisions of the **Civil Procedure Code** (*Official Gazette of the Federation of Bosnia and Herzegovina*, Nos. 53/03, 73/05, 53/06) read as follows:

Article 10

The Court shall be bound to conduct the proceedings without delay and with the least possible expenses, as well as to prevent any abuse of the rights of any participant in the civil proceedings.

VI. Admissibility

24. According to Article VI(3)(b) of the Constitution of Bosnia and Herzegovina, 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.

25. Pursuant to Article 16 paragraph 1 of the Rules of the Constitutional Court, the Constitutional Court shall examine an appeal only if all effective remedies that are available under the law against a judgment or decision challenged by the appeal are exhausted and if the appeal is filed within a time-limit of 60 days as from the date on which the decision on the last remedy used by the appellant was served on him/her.

26. Pursuant to Article 16, paragraph 3 of the Rules of the Constitutional Court, the Constitutional Court may, exceptionally, examine an appeal when there is no decision of a competent court if the appeal indicates a grave violation of the rights and fundamental freedoms safeguarded by the Constitution of Bosnia and Herzegovina or by the international documents applied in Bosnia and Herzegovina. In the instant case the appellant refers to his right under Article 6, paragraph 1 of the European Convention, which also contains the right to “the proceedings within a reasonable time” for the reason that the ordinary court has not managed to adopt a decision on the appellant’s lawsuit for a long period of time.

27. The Constitutional Court observes that the appellant filed the appeal with the Constitutional Court on 12 February 2007 during the time when, in the proceedings before the Municipal Court, the appellant’s claim was partially decided in the part relating to the appellant’s reinstatement to work. As to the other part relating to the compensation for salaries and other employment-related rights, the Court rendered judgment Rs-407/04 of 6 February 2004 against which the appellant filed

a complaint and, at the time when the appeal was filed, there was no decision taken by the Cantonal Court on the mentioned complaint.

28. In view of the aforementioned, the appellant complained about impossibility to obtain a final decision in a long period of time, and considering the provisions of Article VI(3)(b) of the Constitution of Bosnia and Herzegovina and Article 16, paragraphs 1, 2, 3 and 4 of the Rules of the Constitutional Court, the Constitutional Court has concluded that the present appeal, in relation to adopting 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 meets the admissibility requirements.

VII. Merits

29. The appellant complains of the failure to have a final decision adopted in his case on the legal action that is employment-related claiming that the proceedings took unjustifiably long time and that, after 14 years, the case has only been partially solved. Therefore, he complains about 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. Also, the appellant states that he urged the adoption of a final decision, but that effective legal remedy did not exist. He also alleged a violation of Article 13 of the European Convention.

VII.1. The right to a fair trial within a reasonable time

30. Article II(3) of the Constitution of Bosnia and Herzegovina reads in its relevant part as follows:

All persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms referred to in paragraph 2 above; these include:

[...]

e) The right to a fair hearing in civil and criminal matters, and other rights relating to criminal proceedings.

31. Article 6 paragraph 1 of the European Convention, in its relevant part, reads as follows:

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. [...]

a) Relevant principles

32. According to the consistent case-law of the European Court of Human Rights and the Constitutional Court, the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities, and the importance of what is at stake for the applicant in the litigation (see the European Court of Human Rights, *Mikulić v. Croatia*, Application No. 53176/99 of 7 February 2002, Report No. 2002-I, paragraph 38).

33. In addition, according to the case-law of the European Court of Human Rights and the Constitutional Court, a large number of cases pending cannot justify an excessive length of proceedings, whereas constant referring of the decision back for retrial may suggest that there are serious shortcomings in the organization of judicial system (see the European Court of Human Rights, *Probstmeier v. Germany*, Judgment of 1 July 1997, paragraph 64, Reports 1997-IV).

34. Finally, the European Court of Human Rights emphasized that special diligence of the competent authorities was needed in all cases concerning personal status and capacity, and that this requirement was especially important in states where domestic law stipulates that certain judicial proceedings are of urgent nature (see the European Court of Human Rights, *Borgese v. Italy*, Judgment of 26 February 1992, Series A no. 228-B, paragraph 18).

b) Period considered

35. The present proceedings were instituted on 3 February 1994, however, the period which, *ratione temporis*, falls within the jurisdiction of the Constitutional Court does not commence back then but on 14 December 1995, as the date when the Constitution of Bosnia and Herzegovina entered into force. However, in assessing the reasonableness of the proceedings that the appellant complained about, the Constitutional Court will take into account the stage which the proceedings reached by 14 December 1995 (*loc. cit.*, the *Mikulić* Judgment, paragraph 37). Furthermore, the Constitutional Court observes that the proceedings were not fully completed, and that, according to the latest information, they have been pending before the first instance court. Thus, the entire proceedings on the appellant's claim have lasted for 15 years and nine months, and from the day of establishing the jurisdiction of the Constitutional Court, for almost 13 years, and have not been completed as yet.

c) Complexity of the case

36. The complexity of the proceedings must be considered within the scope of factual and legal aspects of the contentious proceedings, i.e. evidence that the court ought to present and assess within the scope of legal nature of the dispute. In the instant case, the appellant sought that unlawfulness of the termination of his employment, reinstatement to work and other employment-related rights be established. In this respect, the Constitutional Court holds that this does not concern particularly complex factual and legal issues that the court ought to have considered.

d) Analysis of reasonableness of the length of the proceedings

37. The Constitutional Court established that the proceedings were at a standstill before the Municipal Court (the Basic Court in Bihać at the time), after the establishment of the jurisdiction of the Constitutional Court (14 December 1995), and the appellant sought the resumption of the proceedings on 31 January 1996. The first instance court scheduled the first hearing for 14 April 1996, which was not held, and neither were the majority of scheduled hearings, resulting from the defendant's failure to attend, or because the court failed to put in place a panel necessary for the decision-making in the case. In addition, it follows from the case file that the first instance court had not taken any action in the period from 15 May 1996 to May 1997. The first instance judgment was

adopted on 4 February 1998, that is two years after the resumption of the proceedings, and the decision on the appeal was adopted two years and three months thereafter, and the case was referred back for retrial. In the renewed proceedings the first instance court adopted a decision within the time period of less than a year. However, the scheduled hearings were not held for the reason that the court failed to put a panel in place. The Cantonal Court decided on the appeal against the first instance judgment within 10 months time, but the case was referred back for a retrial in one part. The renewed proceedings took two years before the first instance court, and the discussion was postponed for an indefinite period of time in order to collect necessary evidence. The proceedings on the appeal against the first instance judgment of 6 February 2004 took three years. Two years and seven months after the parties lodged an appeal, the Cantonal Court requested that the appeals be specified, whereby it made a final decision on the appeal on 31 October 2007, that is three years and eight months after the adoption of the first instance judgment, with a part of the claim being referred back to the first instance court. The Supreme Court decided on the revision-appeal within one year and five months, which may not be an excessively long period for decision-making. However, in view of the overall length of the proceedings, the Constitutional Court observes that the Supreme Court should have reacted more promptly and prevented further postponement in the settlement of the case.

38. The Constitutional Court observes that the Municipal and Supreme Courts did not give their respective replies to the appeal, and that the Cantonal Court failed to offer arguments which might be deemed a reasonable and objective justification for such lengthy proceedings. The Cantonal Court stated that the conduct of the appellant affected the length of the proceedings due to the modification of the claim, and that one should keep in mind a large number of cases and number of court judges they had at disposal, as well as program of work prepared by the Cantonal Court. However, the Constitutional Court observes that the very nature of the dispute (e.g. claiming salaries) was such that it required the modification of the claim the longer the proceedings took. Besides, the Constitutional Court notes that the parties may dispose of their requests, and that possible expansion and modification of the claim, being procedural actions provided for by law, cannot be blamed on the appellant as bringing about such lengthy proceedings. The Cantonal Court did not state and the Constitutional Court did not establish that the appellant failed to possibly meet some order of the court or that he obstructed any sort of action taken by the court. Besides, the appellant filed submission urging the court to start working on the case. Also, the Constitutional

Court observes that the appellant urged, through submissions, that the case be dealt with, without success though. Therefore, in the instant case, the Constitutional Court cannot establish the appellant's responsibility for the length of the proceedings in the present case.

39. In its reply the Cantonal Court has stated that it deals with a large number of cases, that one should bear in mind the number of judges working on cases, the legal priority given to cases depending on their nature, as well as the fact that a large number of scheduled hearings was not held for the reason that no panel was in place. With regards to these allegations the Constitutional Court notes that the overload of judiciary, in general, cannot be accepted as a justification the Convention places a duty on the Contracting States to organize their legal systems so as to allow the courts to comply with the requirements of Article 6 of the European Convention. Nonetheless, a temporary backlog of business does not involve liability on the part of the Contracting States provided that they take, with the requisite promptness, remedial action to deal with an exceptional situation of this kind (see the European Court of Human Rights, *Zimmermann and Steiner v. Switzerland*, Judgment of 13 July 1983, Series A, No. 66, paragraphs 25-32; see decisions of the Constitutional Court, No. *AP 600/04* of 17 February 2005, paragraph 25, and No. *AP 505/04* of 15 June 2005, paragraph 31). In the instant case the court failed to reason the time period since when and the manner in which the backlog in solving cases occurred, and the measures which the court undertook in order to improve administration of justice. The Constitutional Court cannot accept arbitrary allegation as to the large number of cases, without noticing a good will and concrete work of the competent authority in the fight against such problems.

40. In addition to the aforementioned, the Constitutional Court notes that the appellant's claim was only partially solved, and that the case was again for the fourth time referred back to the first instance court for retrial. The Constitutional Court must emphasize that the conduct of the proceedings within a reasonable time is of fundamental importance for the legal system, for any unnecessary postponement, and referring back the case from a higher-instance to a lower-instance court, oftentimes leads to, *de facto*, deprivation of individual's rights and the loss of effectiveness and confidence in the legal system.

41. While assessing the aforementioned, as well as criteria stated in this decision, including the conclusion on the complexity of cases, its status as at 14 December 1995, that is the total length of

the proceedings of 15 years, as well as the conduct of the ordinary courts, in particular of the Municipal and Cantonal Courts, the Constitutional Court holds that the length of the proceedings in the instant case does not meet the requirement of “reasonableness” under Article 6 paragraph 1 of the European Convention.

42. Therefore, the Constitutional Court holds that in the present case there is a violation of the right to trial within a reasonable time, as one of the elements 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.

Issue of compensation for non-pecuniary damage

43. The appellant requested a compensation for damage resulting from the length of the contentious proceedings. Under Article 76 paragraph 2 of the Rules of the Constitutional Court, the Constitutional Court may, exceptionally, at the appellant’s request, determine a compensation for non-pecuniary damage. However, the Constitutional Court recalls that, unlike in the proceedings before the ordinary courts, the compensation for non-pecuniary damage is determined in the amount commensurate to the established violation of human rights and is calculated under a criterion laid down by the European Court of Human Rights and adjusted to the economic situation in BiH.

44. When deciding the appellant’s request for the compensation for non-pecuniary damages, the Constitutional Court refers to the earlier established principle of determining the amount of the compensation in such cases (see the Constitutional Court, Decision No. *AP 938/04*, published in the *Official Gazette of Bosnia and Herzegovina* No. 20/06, paragraphs 48-51). Under the established principle, the appellant was supposed to be paid for each year of postponement of adoption of a decision approximately KM 150.00, and if it concerned urgent proceedings the amount of KM 300.00 for each year. In view of the fact that a part of the contentious proceedings following the appellant’s lawsuit, which *ratione temporis* falls within the scope of the jurisdiction of the Constitutional Court, has taken 13 years, the appellant is awarded a compensation in the amount of KM 3,900, and the Government of the Una-Sana Canton is obliged to pay this amount to the appellant.

Other allegations

45. The Constitutional Court observes that the appellant complains about the violation of his right to private life under Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention, the right to prohibition of discrimination under Article 1 of Protocol No. 12 to European Convention, Article 10 and 11 of the International Covenant on Economic, Social and Cultural Rights and Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, were violated, but failed to corroborate his allegations and failed to state what amounted to violation. It follows from the contents of the appeal that the appellant sees these violations in the fact that his case was not decided on. In the light of the established violation regarding 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, the Constitutional Court does not find it necessary to consider separately the remainder of the appellant's allegations.

46. Furthermore, the Constitutional Court notes that the appellant complains about the violation of the right to an effective legal remedy under Article 13 of the European Convention, since his case was not decided before the national courts within a reasonable time. As to the appellant's allegations that his right to an effective legal remedy under Article 13 of the European Convention has been violated, the Constitutional Court notes that given the Court's conclusion that 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, paragraph 1 of the European Convention has been violated, the Constitutional Court does not find necessary to separately consider these allegations. However, the Constitutional Court notes that the national legal system of Bosnia and Herzegovina does not ensure protection before the ordinary courts insofar as the unreasonable length of the proceedings is concerned. As to the proceedings upon the appeal filed for failure to adopt a decision within a reasonable time limit, the Constitutional Court secures a subsidiary protection. Taking into account the situation before the ordinary courts and length of the proceedings which often exceeds the limits of "reasonable time limit", the Constitutional Court finds necessary to submit this Decision to all relevant authorities on the territory of Bosnia and Herzegovina. In this connection, the Constitutional Court refers to Article II(6) of the Constitution of Bosnia and Herzegovina, which provides *that Bosnia and Herzegovina, and all courts, agencies, governmental organs, and instrumentalities operated by or within the Entities, shall apply and conform to the human rights*

and fundamental freedoms referred to in paragraph 2 above. For all the aforementioned reasons, the Constitutional Court shall, in accordance with Article II(6) of the Constitution of Bosnia and Herzegovina, deliver this Decision to all relevant authorities on the territory of Bosnia and Herzegovina in order to make it possible for them to undertake all necessary steps to protect and secure an effective legal remedy with regards to the unreasonable length of the proceedings before the ordinary courts within the national legal system of Bosnia and Herzegovina.

VIII. Conclusion

47. The Constitutional Court concludes that the length of the proceedings, more than 15 years, has not met the requirement of “reasonableness” under Article 6 paragraph 1 of the European Convention, since the Cantonal Court failed to provide a reasonable and satisfactory reasoning for such a lengthy proceedings, particularly for the repeated referrals of the case from higher instance to lower instance courts. Hence, there is a violation of the right referred to in Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 paragraph 1 of the European Convention.

48. Having regard to Article 61, paragraphs 1 and 2 and Article 76 paragraph 2 of the Rules of the Constitutional Court, the Constitutional Court decided as set out in the enacting clause of this Decision.

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

Miodrag Simović
President
Constitutional Court of Bosnia and Herzegovina

