

The Constitutional Court of Bosnia and Herzegovina, sitting, in accordance with Article VI(3)(b) of the Constitution of Bosnia and Herzegovina, Article 59 para 2(2) and Article 61 paras 1 and 3 of the Rules of the Constitutional Court of Bosnia and Herzegovina (*Official Gazette of Bosnia and Herzegovina* Nos. 60/05 and 64/08), in the Plenary and composed of the following judges:

Mr. Miodrag Simović, President

Ms. Valerija Galić, Vice-President

Ms. Constance Grewe, Vice-President

Ms. Seada Paravlić, Vice-President

Mr. David Feldman, Judge

Mr. Tudor Pantiru, Judge

Mr. Mato Tadic, Judge

Mr. Krstan Simić, Judge

Mr. Mirsad Ćeman, Judge

Having deliberated on the request of **Vasilije Savić**, in case No. **AP-3263/08**, at its session held on 3 July 2009 adopted the following

DECISION ON ADMISSIBILITY AND MERITS

The appeal lodged by **Vasilije Savić** against the rulings of the Court of Bosnia and Herzegovina, Nos. X-KRN-07/351 of 6 October 2008 and X-KRN-07/351 of 23 September 2008, is dismissed as ill-founded.

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 Brcko District of Bosnia and Herzegovina*.

REASONING

I. Introduction

1. On 20 October 2008, Vasilije Savić (“the appellant”) from Bijeljina, represented by Stojan D. Vasić the lawyer practicing in Bijeljina, lodged an appeal with the Constitutional Court of Bosnia and Herzegovina (“the Constitutional Court”) against the rulings of the Court of Bosnia and Herzegovina (“the Court of BiH”), nos. X-KRN-07/351 of 6 October 2008 and X-KRN-07/351 of 23 September 2008. The appellant also submitted a request for an interim measure whereby the Constitutional Court would allow visits and telephone contacts with his closest relatives pending the adoption of a final decision on the appeal. On 26 January 2009, the appellant sent a letter informing the Constitutional Court that he was released from detention but he maintained the allegations of his appeal and requested the finding of violation of rights he complained against.

II. Procedure before the Constitutional Court

2. Pursuant to Article 22, paragraph 1 of the Rules of the Constitutional Court, on 21 November 2008 the Constitutional Court requested the Court of BiH and the Prosecutor's Office of BiH (“the Prosecutor’s Office”) to submit their replies to the appeal.

3. The Court of BiH and the Prosecutor’s Office submitted their replies on 11 and 10 December 2008 respectively.

4. Pursuant to Article 26 paragraph 2 of the Rules of the Constitutional Court, the replies to the appeals were submitted to the appellant on 14 January 2009.

5. Pursuant to Article 33 of the Rules of the Constitutional Court, on 5 June 2009 the Correctional Institution in Tuzla was requested to submit the Prison Rules with regards to the visits to detainees and their phone calls, i.e. information about whether the visits to detainees and phone calls provided for by Article 144, paragraph 1 and 4 of Criminal Procedure Code of Bosnia and Herzegovina, are approved without special procedure or whether the detainees are obliged to make a special request in this respect. The prison administration submitted its reply on 15 June 2009.

III. Facts of the Case

6. The facts of the case as they appear from the appellant's allegations and the documents submitted to the Constitutional Court may be summarized as follows:

7. By the ruling of the Court of BiH no. X-KRN-07/351 of 17 September 2008, the detention of 30 days was ordered for the appellant on the grounds of the existence of special circumstances indicating that the appellant could by remaining free, influence the witnesses, abettors or accomplices which are the reasons to order the measure of detention pursuant to Article 132 paragraph 1(b) of the Criminal Procedure Code of Bosnia and Herzegovina ("the CPCBiH"). In addition, the detention was ordered on the grounds of a reasonable doubt that he committed the criminal offence of organized crime under Article 250 paragraph 2 in conjunction with criminal offence of abuse of office or official authority under Article 220 paragraph 3 of the Criminal Code of Bosnia and Herzegovina ("the CCBiH").

8. In the reasons for the ruling ordering detention, the Court of BiH stated that based on the evidence submitted by the Prosecutor's Office, statements made by the witnesses and documentation seized during the search of the facilities and premises used by the appellant and other defendants, first of all identity cards, passports and other personal identification documents, it found that there was a reasonable doubt that the appellant had committed a criminal offence, i.e. that he had participated in the commission of the criminal offences in question. The Court of BiH further stated in the reasons for its ruling that on 16 September 2008 the facilities and premises used by the appellant and other suspected persons had been searched and as well as their motor vehicles and that on this occasion extensive documentation indicated in the proposal for detention by the Prosecutor's Office had been seized. The Prosecutor's Office stated in the proposal for detention that there was a risk of the appellant's and other suspected persons' flight, since the circumstances of the case indicated that there was a high probability that the suspected persons had provided false documents and that, in addition to this, the appellant had used to go to Belgrade – Republic of Serbia "where he kept company of the criminals". The Prosecutor's Office also pointed to the circumstance that the appellant and other suspected persons as an organized group had continued committing incriminated actions regardless of the fact that their colleagues had been arrested in May 2008 on the grounds of a reasonable doubt that they had committed the same criminal offence of which the appellant and other persons were suspected. The Prosecutor's Office submitted the report taken during the interrogation of the witness by the Police of Brcko District, which confirmed the involvement of the appellant in issuing false documents for a certain sum of money.

9. The Court of BiH ordered detention for special reasons laid down in Article 132, paragraph 1, item b) of the Criminal Procedure Code of Bosnia and Herzegovina. The Court of BiH stated that it had taken account of the fact that the present case was a very complex and extensive one with a number of suspected persons as it followed from the provided documentation and the fact that the Prosecutor's Office conducted the investigation into other cases connected to this case. In addition to this, the Court of BiH held that there was a reasonable doubt that the appellant and other suspected persons had acted as an organized group whose members were mutually connected and their roles were defined beforehand. The Court further held that the circumstances of the case pointed to a "wide-spread network" in which a number of persons could be involved, who knew each other or at least knew of each other so that it could be concluded that the appellant and other suspected persons knew the suspected persons against which an investigation was conducted and potential witnesses, since some of them were employees of CIPS, who were working on issuing personal identification documents. Taking into account the aforesaid, the court concluded that it was realistic to expect that the suspected persons, if released, could make contact with other suspected persons but also with the witnesses to be interrogated by the Prosecutor's Office and thus could obstruct the conduct of investigation.

10. The Court of BiH further stated that it took account of the fact that the Prosecutor's Office was still searching for evidence and clues relevant to these criminal procedures and that it followed from the preliminary hearings that the suspected persons had kept the relevant documentation outside the workplace. The Court of BiH found that it was feared that the suspected persons, if released, could destroy, hide or forge evidence and clues relevant to the criminal procedure. The Court of BiH also took account of the importance of CIPS project itself, concluding that this is an important state system and project whose security has been jeopardized by the offence the appellant and other persons are suspected of and it stated that it was indisputable that the consequences thereof would be far-reaching and immeasurable. The court concluded that the aforementioned circumstances as a whole justified the detention order.

11. Following the detention order permitting detention of the appellant, dated 17 September, the appellant requested the Court of BiH on 18 and 19 September 2008 to grant him permission for telephone calls and visits of his immediate family members, i.e. father, spouse, children and sister.

12. The Prosecutor's Office has been transmitted the aforesaid requests. In its reply to the request, the Prosecutor's Office explicitly opposed to visits and telephone contacts with the persons listed therein, with the exemption of the appellant's authorized or appointed defense councils. The Prosecutor's Office

emphasized that the investigation, pending in this case, should lead to further knowledge about persons that appear to be the accomplices, abettors or aiders of the appellant in the perpetration of the criminal offences concerned or the persons that are potential witnesses in the case. The Prosecutor's Office also considered that, by the requested contacts, the appellant could hinder the investigation by influencing the witnesses, accessories or accomplices or conceal, alter or destroy the items of evidence or clues of the criminal offence perpetrated in the specific function and which had been used for the commission of the criminal offence. The Prosecutor's Office pointed to the fact that until the moment of arrest, the appellant and other suspected persons had been employed in positions which they had used in order to commit criminal offences with which they were charged and that there was possibility of influencing the witnesses, and evidence and clues relevant to the criminal proceedings, either because of the number of persons they knew or because of accessibility to information. The Prosecutor's Office stated that the appellant could organize similar activities through his relatives and friends even during his detention in prison through the visits paid to him, phone calls or correspondence. It is proposed that the appellant should be prohibited any visits or telephone contacts with all the persons with the exception of his defense council.

13. By his ruling no. X-KRN-07/351 of 23 September 2008, the preliminary procedure judge of the Court of BiH prohibited to the appellant any visits and telephone contacts with other persons excluding his defense council. In the reasoning of the Ruling, the Court stated that in the instant case the court was guided by the obligations and restrictions laid down in Article 141, paragraph 2 of the Criminal Procedure Code of BiH, which specifies the manner in which the rights and freedoms of detained persons can be restricted. In this respect, the court concluded that in the present case it was necessary to restrict the appellant's rights and freedoms to achieve the purpose for which the custody measure has been ordered. Further, the Court notes that having regard to the fact that the custody has been ordered for the existence of particular circumstances indicating that the suspects would, if released, hinder the criminal proceedings by influencing the witnesses, accessories or accomplices or destroy, hide evidence and clues of evidences relevant to the proceedings, that a larger number of persons participated in the commission of the criminal offences the suspects have been charged with, that these persons are mutually connected and their roles were defined beforehand, that the investigation against the suspects has been pending and that it is necessary to interrogate a substantial number of persons, potential suspects and future witnesses, the Court established that in this stage of proceedings the visits and telephone calls to the appellant could have consequence on the further course of criminal proceedings. The Court concluded that the aforementioned circumstances in their entirety indicated that there was a realistic danger that the appellant could use the

visits paid by other persons and phone calls to hide or destroy evidence and clues or to directly or indirectly make contacts with other suspected persons or other persons involved in the commission of incriminated acts.

14. Deciding upon the appeal against the first instance ruling, on 6 October 2008, the Court of BiH issued the ruling no. X-KRN-07/351, dismissing it as ill-founded. In the reasoning thereof the Court of BiH notes that Article 141 paragraph 2 of the CPCBiH stipulates that the rights and freedoms of the person taken into custody may be restricted only insofar as it is necessary, amongst other things, to achieve the purpose for which custody has been ordered. The court indicates that it is correct that the prohibition of communication between the nearest family members represents an interference with the private family life. However, the Court evaluates that the investigation in this stage of proceedings represents a legitimate aim which does not infringe the principle of proportionality. That is for the reason that the purpose of determining the measure of custody would not be adequately achieved if the appellant would be in position, through the communication with other persons, be it the nearest family members, to influence the quality of investigation and, possibly, even the probative proceedings. The Court is also aware that the prohibition of visits and telephone contacts could restrict the right to privacy of the appellant. However, this right is not an absolute one and the restrictions are justified, as in the present case, where the interest to secure the rights of the appellant to contact other persons is harmonized with the need to secure the integrity of investigation and reaching the purpose for which the custody measure has been ordered.

IV. Appeal

a) Allegations of the appeal

15. The appellant claims that by the challenged ruling his right to a private and family life, home and correspondence safeguarded under Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 paragraph 1 of the European Convention for Protection of Human Rights and Fundamental Freedoms (“the European Convention”) has been violated. The appellant alleges that the prohibition of visits and phone contacts with all persons except his defense council could be justified only if an attempt of direct or indirect negative influence on the probative proceedings through his closest relatives has been substantiated by the facts and that there is no justification for the issuance thereof on the basis of sole presumption that such action is possible. The appellant emphasizes that the Court also recognized that the prohibition of communication between the members of closest family members represented the interference with the private and family life but, at the same time, the Court considered that the investigation at this stage of the proceedings represented a legitimate aim that does not breach the proportionality principle. The

appellant holds that the aim must be generally recognized to be legitimate and that the aim is generally recognized when general interest is realized thereby. The general interest, in the appellant's opinion, is primarily manifested in compliance with the citizens' rights and freedoms. He holds that the Court's decision directly endangers the principle of proportionality between the means used and aim sought to be achieved since the Court by such a decision disturbed a fair balance between the duty of protection of the right to private and family life, home and correspondence of an individual and the right to take all necessary actions for the prevention of crime. The appellant proposes the Constitutional Court to establish the violation of the said right and quash the measure of prohibition of telephone contacts and visits to the appellant with other persons or to declare the disputed Ruling null and void and return the case for reconsideration. He also requested that the Constitutional Court issue an interim measure by which the appellant be granted the permission of visits and telephone contacts with his closest family members. On 26 January 2009, the appellant submitted a letter to the Constitutional Court stating that, notwithstanding his release from custody, he holds that he suffered the violation of aforesaid rights and requested the Constitutional Court to adopt a decision finding the violation of the rights.

b) Reply to the appeal

16. In its reply to the appeal the Court of BiH emphasizes with regard to the appellant's allegations on violation of his rights under Article 8 paragraph 1 of the European Convention that he ignored paragraph 2 of the same Article, i.e. entirely neglected the facts that the Court of BiH established at the time of adoption of the decision. The Court of BiH reminds that the custody was ordered pursuant to the reasons prescribed by Article 132 paragraph 1(b) of the CPCBiH. The Court of BiH underlines that the reasons for which the detention was ordered in their nature were such that they restricted the appellant's contacts with the outer world for the purpose of full protection of the criminal proceedings. Thus, it was logical that in the Court's decision challenged by the appeal the prohibitions were imposed on the appellant. The Court of BiH stated that it had in mind the nature of the criminal offence when adopting the challenged decision, as well as the manner and means of the perpetration thereof, i.e. that the appellant's status in his working place was used, and that his cooperation with third persons was necessary in the perpetration of the criminal offence concerned. The appellant could have influenced those persons through the contacts with his immediate family members. The Court of BiH considers the appellant's objections indicating that the prohibition imposed and the aim sought are not proportionate be ill-founded and emphasizes that the restrictions of the right of visits and telephone contacts in the appellant's case are determined in the entirely lawful manner.

17. The Prosecutor's Office states in its reply that the appellant has been released by the ruling of the Court of BiH no. X-KRN.07/351 of 14 November 2008, thus rendering out of force the ruling on the restrictions of communication. They propose to reject the appeal as inadmissible in accordance with Article 16 of the Rules of the Constitutional Court or, as an option, to dismiss it as ill-founded for the lack of violations the appellant refers to.

18. The administration of the Correctional Institution in Tuzla informed the Constitutional Court that the visits to detainees and phone calls could not be approved without special procedure; the detainees have to make a special request in this respect.

V. Relevant Law

19. The **Criminal Code of Bosnia and Herzegovina** (*Official Gazette of BiH* nos. 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06 and 32/07)

Abuse of Office or Official Authority

Article 220 paragraphs 1 and 3

(1) An official or responsible person in the Bosnia and Herzegovina institutions who, by taking advantage of his office or official authority, exceeds the limits of his official authority or fails to execute his official duty, and thereby acquires a benefit to himself or to another person, or causes damage to another person or seriously violates the rights of another, shall be punished by imprisonment for a term between six months and five years.

(2) If a property gain acquired by the perpetration of the criminal offence referred to in paragraph 1 of this Article exceeds the amount of 50.000 KM the perpetrator shall be punished by imprisonment for a term of not less than three years.

Organized crime

Article 250

Whoever as a member of an organized criminal group perpetrates a criminal offence prescribed by the law of Bosnia and Herzegovina, for which a punishment of imprisonment of three years or a more severe punishment may be imposed, unless a heavier punishment is foreseen for a particular criminal offence, shall be punished by imprisonment for a term not less than five years.

20. The **Criminal Procedure Code of Bosnia and Herzegovina** (*Official Gazette of BiH* nos. 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 2907, 32/07, 53/07, 76/07, 15/08, 58/08, 12/09 and 16/09)

Article 132

- (1) *If there is a grounded suspicion that a person has committed a criminal offense, custody may be ordered against him:*
- b) *if there is a justified fear to believe that he will destroy, conceal, alter or falsify evidence or clues important to the criminal proceedings or if particular circumstances indicate that he will hinder the inquiry by influencing witnesses, accessories or accomplices;*

Article 141

- (2) *The rights and freedoms of the person taken into custody may be restricted only insofar as it is necessary to achieve the purpose for which custody has been ordered and to prevent the flight of the person taken into custody, commission of a criminal offense or endangerment to the life and health of people.*

Article 144

- (1) *Upon the approval of the preliminary proceedings judge and under his supervision or the supervision of a person designated by him, the detainee may receive visits from his spouse or extramarital partner or relatives, and at his request, from a physician and other persons subject to internal regulations of the custody. Some visits may be prohibited if they could detrimentally affect the conduct of the proceedings.*
- (4) *A detainee shall be prohibited from using cellular phone but shall have the right, subject to internal regulations of the custody, to make telephone calls at his own expense. To that end, the detention administration shall provide the detainees with a sufficient number of public telephone connections. The preliminary proceedings judge, the preliminary hearing judge, the individual judge or the presiding judge may, for a reason of security or due to the existence of one of the reasons referred to in Article 132 Paragraph 1 Item a) through c), of this Code restrict or prohibit, by a decision, the use of the telephone by a detainee.*

VI. Admissibility

21. 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 court in Bosnia and Herzegovina.

22. Pursuant to Article 16 paragraph 1 of the Rules of Constitutional Court, the 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.

23. In the particular case the subject matter of the appeal is the judgment of the Court of BiH no. X-KRN-07/351 of 6 October 2008, against which there are no other effective legal remedies available under the law. Furthermore, the appellant received the challenged ruling on 8 October 2008 and the appeal has been filed on 20 October 2008, i.e. within 60 days time-limit as provided for by Article 16 paragraph 1 of the Rules of the Constitutional Court. Finally, the appeal also meets the requirements under Article 16 paragraphs 2 and 4 of the Rules of the Constitutional Court because it is not manifestly (*prima facie*) ill-founded nor is there any other formal reason that would render the appeal inadmissible.

24. Having regard to Article VI(3)(b) of the Constitution of Bosnia and Herzegovina, Article 16 paragraphs 1, 2 and 4 of the Rules of the Constitutional Court, the Constitutional Court establishes that the appeal meets the admissibility requirements.

VII.Merits

25. The appellant disputes the challenged rulings claiming that his rights under Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 paragraph 1 of the European Convention have been violated.

26. Article II (3)(f) of the Constitution of Bosnia and Herzegovina reads as relevant:

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:

(...)

f. The right to private and family life, home and correspondence.

27. Article 8 of the European Convention read as follows:

- 1. Everyone has the right to respect for his private and family life, his home and his correspondence.*
- 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

28. The basic aim of Article 8 of the European Convention is the protection of an individual from the arbitrary interferences with his/her rights protected by Article 8 of the European Convention (see the European Court for Human Rights, *Kroon v. Netherlands*, judgment of 27 October 1994, Series A no. 297-c, paragraph. 31).

29. In the particular case, the Constitutional Court has to establish whether the public authority interfered with the appellant's right to private and family life by the challenged rulings, and if so, whether such interference has been justified. This condition, within the meaning of terms of the European Convention, consists of several elements: (a) the interference has to be based upon national or international law; (b) the law concerned must be widely available thus enabling an individual to be familiarized with the circumstances of the law that could be applied in the case concerned; (c) the law also has to be formulated with the adequate accuracy and clarity to allow an individual to adjust his/her actions in accordance therewith (see the European Court for Human Rights, *Sunday Times v. the United Kingdom*, judgment of 26 April 1979, Series A, no. 30, paragraph. 49).

30. The Constitutional Court holds that the challenged rulings dismissing the appellant's request to be granted permission to get visits and telephone contacts with the members of immediate family or to whom the communication is restricted solely to the contacts with his defense council, resulted in the interference of public authorities with the appellant's right to private and family life within the meaning of Article 8 paragraph 1 of the European Convention.

31. Further, the Constitutional Court must determine justification of such interference within the meaning of Article 8 paragraph 2 of the European Convention, i.e. whether it has been in accordance with the law and necessary in a democratic society to achieve any of the goals listed in Article 8 paragraph 2 of the European Convention.

32. The Constitutional Court notes that the challenged rulings were adopted on the basis of the CPCBiH which in its Article 141 provides for the circumstances under which the rights and freedoms of the detainees may be restricted. The Constitutional Court, therefore, holds that the "interference" in the appellant's right to private and family life has been prescribed by the law. Furthermore, the Constitutional Court notes that the CPCBiH has been published in the Official Gazette, that the text thereof is clear, accessible and foreseeable, by which the elements of "lawful interference" with the appellant's right under Article 8 of the European Convention have been satisfied.

33. For the interference to be in conformity with the law, it must, at the same time, be a necessary measure in a democratic society for the achievement of legitimate aim provided for in Article 8 paragraph 2

of the European Convention. “Necessary” within this context means that the interference corresponds to the “pressure of social needs” and that a reasonable relation of proportionality exists between the interference and the legitimate aim sought (see the European Court for Human Rights, *Niemietz v. Germany*, judgment of 16 December 1992, Series A, no. 251).

34. The Constitutional Court notes that the aims sought by the measures of restriction of rights and freedoms of detainees in the manner prescribed by Article 141 of the CPCBiH is the ensuring of undisturbed investigation conduct, i.e. the prevention of hindrance of criminal proceedings, which is a legitimate aim in a democratic state. In order to accomplish this goal it is necessary, however, to achieve a reasonable relation of proportionality between the legitimate aim on one hand and the protection of the appellant’s right to private and family life, on the other hand. In this respect, the Constitutional Court notes that it is provided by the law in general that the detainee has the right to get visits from persons of his own choice. The exemption to this rule is when the preliminary procedure judge issues written and reasoned decision on prohibition of certain visits because of their detrimental effect on the course of proceedings. Furthermore, the law guarantees that the rights and freedoms of detainees may be restricted only in the measure necessary to achieve the purpose for which custody has been ordered. In the instant case, the Constitutional Court notes that the ordinary courts held that the purpose of determination of detention would not be adequately effectuated if the appellant was given a possibility of communicating with other persons, including even the members of his family, excluding his defense council. The Constitutional Court further stresses that in the particular case the appellant was suspected with the perpetration of criminal offence of organized crime in conjunction with the abuse of office or official authority. Evidence gathered in the course of investigation, as the ordinary court established, indicated that the appellant, communicating with other persons, and even the immediate family members, could have a possibility to influence the quality of investigation conduct and, possibly, the presentation of evidence proceedings, especially taking into account the nature of criminal offence and manner and means of perpetration. Furthermore, the Constitutional Court notes that the ordinary courts concluded that the reasons for which the detention was imposed were such as to restrict the contact of the suspected persons with the outer world, so that they pointed to the prohibition.

35. Moreover, the Constitutional Court emphasizes that, under the case-law of the European Court of Human Rights, any detention lawful under Article 5 of the European Convention, in its own nature, imposes restrictions in terms of the private and family life. However, an important part of the detainee’s right to respect of family life is that the detention authorities facilitate the maintenance of contacts with the

immediate family. At the same time, the European Court recognizes that some measures of control over the detainee's contacts with the outer world are necessary and are not incompatible with the European Convention in their nature (see the European Court for Human Rights, *Ostrovar v. Moldavia*, judgment of 15 February 2006, paragraph 105). Taking into account the aforesaid position, the Constitutional Court notes that in the particular case the appellant has been ordered the custody as of 17 September 2008 to 14 November 2008, therefore, for the period of less than two months, in which the appellant has been prohibited any contacts with other persons with the exception of communication with his defense council. In essence, the measure pronounced was restricted to the period in which the custody measure was in force and in which, cumulatively, the legally prescribed reasons must have existed for its pronouncement. In this respect, the Constitutional Court notes that in the challenged rulings the Court of BiH gave detailed reasoning for temporary restriction of appellant's contacts only to the contacts with his defense council and that the measure of detention and, subsequently, the measure of prohibition of contacts with third persons, ceased when the reasons for such measure ceased to exist.

36. Constitutional Court particularly considered the facts that the appellant was ordered detention by the ruling of the Court of BiH of 17 September 2008 in which there was no additional restrictions as well as that the appellant requested the Court of BiH on 18 and 19 September 2008 to grant him permission for telephone calls and visits of his immediate family members, i.e. father, spouse, children and sister and that the Court of BiH decided on this request by its ruling of 23 September 2008. Constitutional Court finds that due to the shortness of the period from the appellant's detention to adoption of court decision on prohibition of visits and telephone contacts with other person, except with defense council, an issue of violation of appellant's rights under Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention is not raised.

37. In view of aforementioned, the Constitutional Court concludes that in the present case in which the appellant's communication with the outer world has been restricted to the contacts with his defense council, where this restriction lasted for a limited period and it was in accordance with the purpose and reasons for which the detention was determined as provided for by the law, the proportionality between the protection of the legitimate aim sought, on one hand, and the protection of the appellant's right to private and family life on the other hand, has not been infringed upon.

38. Having regard to the above, the Constitutional Court concludes that in the present case there has been no violation of the appellant's right to respect of private and family life, home and correspondence

stipulated by Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention.

▼ Conclusion

39. The Constitutional Court finds that the appellant's right to private and family life, home and correspondence under Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention has not been violated, as the interference of public authorities with this appellant's right during his detention has been in compliance with the law and necessary in a democratic society for the purpose of achieving a legitimate aim. The reasonable relation of proportionality between the interference with the appellant's right and the legitimate aim sought has been achieved.

40. Having regard to Article 61 paragraphs 1 and 3 of the Constitutional Court's Rules, the Constitutional Court decided as set out in the enacting clause.

41. In view of the fact that this is the final decision on the appeal and that the appellant has been released from custody in the interim, the Constitutional Court concludes that there is no need to separately consider the request for interim measure.

42. Pursuant to Article 41 of the Rules of the Constitutional Court, annexed to this decision are separate opinions of Judges Mato Tadic and Krstan Simic.

43. According to Article VI(4) of the Constitution of Bosnia and Herzegovina, the decisions of the Constitutional Court shall be final and binding.

Seada Palavrić
President
Constitutional Court of Bosnia and Herzegovina

Attachment:

Separate Dissenting Opinion of Judges Mato Tadić and Krstan Simić

Pursuant to Article 41 paragraph 2 of the Rules of the Constitutional Court of Bosnia and Herzegovina (*Official Gazette of Bosnia and Herzegovina* no. 60/05, 64/08 i 51/09), I hereby give

SEPERATE DISSENTING OPINION IN CASE NO. AP 3263/08

1. At its plenary session held on 3 July 2009, the Constitutional Court of BiH adopted Decision on Admissibility and Merits in case of appellant Vasilije Savić no. AP 3263/08, dismissing the appeal as ill-founded.
2. I agree with the majority part of the adopted decision. However, I do not agree that there was no violation of the constitutional right under Article II(3)(f) of the Constitution of Bosnia and Herzegovina (right to private and family life, home and correspondence) and same right as guaranteed under Article 8 of the European Convention for Protection of Human Rights and Fundamental Freedoms in relation to Ruling of the Court of BiH no X-KRN.-07/351 of 17 September 2008 in the part in which, without court's decision, the appellant (detained person) was prohibited to communicate with the family. Indeed, the ruling on detention and reasons the Court gave to substantiate it, are not disputable. What I see as an interference with the appellant's constitutional right is the fact that the Court failed to adopt any restrictive measure by its ruling of 17 September 2008 but only by its ruling on 23 September 2008.
3. In accordance with the law, only court can additionally restrict certain rights of the persons-detainees, pursuant to Article 141 paragraph 2 and Article 144 paragraph 1 of the Law on Criminal Proceedings.
4. In paragraph 35 of its decision, the Constitutional Court concludes that the Court of BIH, by ruling of 17 September 2008, has restricted the appellant's right to communicate with his family to the defense attorney only and that it offered reasoning for such a position, which is, unfortunately, quite incorrect. The very ruling does not contain any restrictions, which is acknowledged by the Constitutional Court itself in the following paragraph, 36, when it concluded that there were no restrictions imposed by the ruling of 17 September 2008 but by ruling of 23 September 2008 (which is correct).
5. Thus, according to the ruling of 17 September 2008 there was no interference with the appellant's constitutional right in terms of Article II(3)(f) and Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms only because there are no restrictions on communication with the members of the family in this ruling. Thus, this is where the violation occurred as only court could restrict this detainee's right.
6. The interference occurred only by ruling of 23 September 2008 which is, in my opinion, well-founded. However, the Constitutional Court acknowledges this (item 36) but justifies it by the short period of interference. This position is unacceptable to me. It cannot be established that there is some interference and or no interference which is then justified by the short period of

interference. The right guaranteed by the Constitution does not recognize this. Thus, either there is or there is no interference with the protected right.

7. With all due respect, such justification for interference with the appellant's right protected by the Constitution does not contribute to the rule of law, legal safety and consistent application of the law.

Mato Tadić
Judge
Constitutional Court of BiH

SEPARATE DISSENTING OPINON OF JUDGE KRSTAN SIMIĆ
IN CASE NO. AP 3263/08

I fully join the separate opinion of Judge Mato Tadić in case no. AP 3263/08.

Krstan Simić
Judge
Constitutional Court of BiH

Banja Luka, 17 July 2009