

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)(2) and Article 61(1) and (3) 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. Mirsad Ćeman,

Ms. Margarita-Tsatsa Nikolovska,

Mr. Zlatko M. Knežević

Having deliberated on the appeal of **Mr. Ajdin Dauldži** in case no. **AP 2700/08**, at its session held on 19 November 2011, adopted the following

DECISION ON ADMISSIBILITY AND MERITS

The appeal of Mr. **Ajdin Dauldži** against the judgment of the Cantonal Court of Zenica, no.

004-0-Gž-07-001 457 of 25 June 2008 and judgment of the Municipal Court of Zenica, no. P-144/02 of 27 April 2007 is hereby 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 Brčko District of Bosnia and Herzegovina*.

REASONING

I. Introduction

1. On 5 September 2008 Mr. Ajdin Dauldži (“the appellant”) from Zenica, represented by Ms. Armina Gičević, a lawyer practicing in Zenica, filed an appeal with the Constitutional Court of Bosnia and Herzegovina (“the Constitutional Court”) against the judgment of the Cantonal Court of Zenica (“the Cantonal Court”), no. 004-0-Gz-07-001 457 of 25 June 2008 and judgment of the Municipal Court of Zenica (“the Municipal Court”), no. P-144/02 of 27 April 2007.

II. Proceedings before the Constitutional Court

2. Pursuant to Article 22(1) and (2) of the Rules of the Constitutional Court, the Cantonal Court of Zenica, Municipal Court of Zenica and Ms. Selma Jašarević (“the defendant”) were requested to submit their replies to the appeal.

3. The Cantonal Court and the Municipal Court submitted their respective replies on 1 October 2008 and 9 October 2008. The defendant failed to submit her reply.

4. Pursuant to Article 26(2) of the Rules of the Constitutional Court, the replies to the appeal were forwarded to the appellant on 29 January 2009.

III. Facts of the Case

5. The facts of the case, as they appear from the appellant’s assertions and the documents submitted to the Constitutional Court may be summarized as follows.

6. On 7 August 1996 the appellant brought an action with the Municipal Court and on 1 August 2001 he submitted specified statements of claim wherein he requested the court to order S. J. («the defendant») to pay him KM 2,471.00 by way of obligation arising from a Business Premises Sub-Lease Contract

dated 30 May 1995 and pay him compensation for the costs of the proceedings according to the applicable Lawyer's Fee.

7. By judgment no. P-998/96 of 22 April 2002, the Municipal Court dismissed the appellant's claim as ill-founded. By its ruling no. Gž-752/02 of 21 October 2002, the Cantonal Court granted the appellant's appeal against the aforementioned first-instance judgment, quashed the first-instance judgment and remitted the case back to the first-instance court for a new trial. The Cantonal Court found that the first-instance court had incompletely established the facts as it had failed to determine who had signed the Sub-Lease Contract, whether it had been signed by the appellant or his wife. The Cantonal Court ordered the first-instance court to present the evidence proposed in the appeal and, if necessary, evidence which it considered relevant to the decision on this disputable relation and, following the assessment of evidence, to decide on the appellant's claim so as to apply the substantive law correctly.

8. The Municipal Court, in judgment no. P-144/02 of 27 April 2007, which was rendered in the renewed proceedings, according to the instructions given in the ruling of the Cantonal Court, no. Gž-752/02 of 21 October 2002, dismissed the appellant's claim whereby it requested the court to order S. J. to pay him KM 2,471.00 by way of obligation arising from the Business Premises Sub-Lease Contract dated 30 May 1995 along with the statutory default interest as of 15 January 1996 until the finalization of payment and to pay him the amount of KM 1,320.66 by way of compensation for the proceedings costs. According to the same judgment, the appellant was ordered to compensate the defendant for the proceedings costs in the amount of KM 859.95 within a time limit of 30 days under the threat of enforcement. The Municipal Court stated in the reasons for its judgment that the Cantonal Court had given instructions that the evidence stated in the appellant's appeal, that is, *inter alia*, a graphology expert witness analysis to establish who had signed the contract, as a relevant fact, should have been presented. However, the appellant, as stated by the Municipal Court, did not propose the presentation of that piece of evidence during the proceedings before that court, which was prescribed by the provisions of Article 148(1) of the Civil Procedure Code. The Municipal Court noted that it had not presented this evidence as the parties disposed of their proposals for evidence and that the court was not allowed to present evidence, except in cases prescribed by the law, if the party did not propose it. Having conducted the evidentiary proceedings in which it heard the appellant, defendant and proposed witnesses, the court examined the substantive evidence, assessed it, each of them individually and in their mutual correlation, and it dismissed the appellant's claim. Taking into account the assessment of evidence, the court found that it was not possible to establish who had signed the contract on the part of the lessor without graphology

expert analysis, the reason being that the testimonies of the witnesses and defendant were contradictory. In this regard, the court noted that the defendant claimed that the contract in question had been signed by the appellant's wife, and the witness, i.e. the appellant's wife claimed that this had been done by her husband [the appellant] himself. The court noted that it could not give credence to the testimony of the witness, lawyer M.H. stressing that given his conduct during the identification of the persons who had signed the contract, given the time distance from the event in question to the moment of giving the testimony, it was obvious that this witness could not remember the persons who had signed the contract in question. This court held that it was necessary to request a graphology expert analysis as a proposal for evidence, as indicated by the Cantonal Court, but the appellant had not proposed this evidence within the meaning of Article 148(1) of the Civil Procedure Code. Referring to the provision of Article 291(1) of the Civil Procedure Code, the Municipal Court noted that the appellant as a physical person could be a party to the proceedings, which was a procedural requirement which the court was mindful of *ex officio*. The court further noted that in addition to the capacity to be the party to the proceedings in the present case, a substantive relation between the appellant and defendant had to exist, affording them standing to sue or to be sued in the present case, which the court was not to be mindful of *ex officio*, but the court was to be mindful of indications of the parties, stressing that the defendant objected that the appellant lacked standing to sue. The court further stated that the present case related to an obligation arising from the relation between the appellant and defendant, more precisely the Lease Contract within the meaning of the Law on Lease of Business Premises and Buildings, and that the appellant and defendant might have had such a relation in order to have real legal standing in this dispute. That court found that the appellant did not prove that he had such substantive relation with the defendant based on the contract in question, i.e. did not prove that he had signed the contract in question, which was the reason for dismissing the appellant's claim "due to the lack of standing to sue on the appellant's part as it is the subject of the substantive law.

9. By judgment no. 004-0-Gž-07-001 of 25 June 2007, the Cantonal Court dismissed the appellant's appeal and upheld the first-instance judgment. The Cantonal Court considered as unfounded the appellant's allegations that the first time the defendant stated that the appellant was not the one who had signed the contract was at the main hearing. The court noted that it followed from the minutes taken at the hearings held on 2 April 2001 and 14 May 2001 that the first-instance court had heard the defendant as a witness stating that the appellant had formally concluded the contract and that his wife, V.D. had signed his first and last name on the contract in the office of lawyer M.H. practicing in Zenica. The Cantonal Court further noted that the attorney of the appellant had signed both minutes without objections to their content.

Furthermore, the court noted that in the procedural situation in which the defendant rendered indisputable the fact that contract dated 30 May 1995 had been signed by the appellant's wife, not the appellant himself, the defendant's obligation to prove the fact on which the objection relating to the lack of standing to sue was based, in accordance with the provisions of Article 125(1) of the Civil Procedure Code, ceased to exist. The court noted that the content of the minutes taken at the hearing held on 30 July 2001 confirmed that the appellant's attorney had denied what she had admitted at the hearing held on 14 May 2001. The Cantonal Court referred to the provision of Article 125(2) of the Civil Procedure Code which prescribes that "if a party denies the fact which he/she has admitted, the court shall assess whether it will considered that fact admitted or challenged". The Cantonal Court concluded that the first-instance court had assessed the presented evidence in accordance with the rules on assessment of evidence prescribed by the provisions of Article 8 of the Civil Procedure Code, and it fully accepted the reasons given in the decision of the first-instance court.

10. The Cantonal Court further noted that the principle of substantive truth was dominant according to the former Civil Procedure Code (*Official Gazette of the Federation of BiH*, nos. 42/98 and 3/99). Therefore, if the appellant had not noted in his appeal dated 27 May 2002 that "a graphology expert witness analysis should be conducted, if necessary", this court, referring to its authorizations provided for by Article 205(2) of the then applicable Civil Procedure Code, would have considered as admitted the fact decisive to the outcome of this dispute, which was the basis for allegations set forth in the reply to the appellant, i.e. that the appellant had not signed the contract dated 30 May 1995. This would have entailed, as noted by the Cantonal Court, a decision different from the decision no. GŽ-752/02 of 21 October 2002. The Cantonal Court noted that given the procedural situation in which the statements and allegations of the appellant and his wife and those of the defendant and his husband were directly opposite with regards to the fact decisive to the outcome of this dispute, i.e. that the appellant had not signed the contract in question, then this disputable fact could have been proved only through the objective, not subjective, evidence, that is through a graphology expert analysis, and the appellant should have proposed that evidence. As the appellant did not propose the presentation of evidence through the graphology expert analysis in the proceedings before the first-instance court, the Cantonal Court noted that nothing remained to the first-instance court but to refer to the obligations of the parties to the proceedings prescribed by the provisions of Article 7(1) and Article 123(1) of the Civil Procedures Code and dismiss the appellant's claim. The Cantonal Court concluded that the appellant had not fulfilled his procedural obligation to prove the accuracy of the factual allegations on which he based his claim, i.e. that he established a sub-lease

relation with the defendant according to the contract dated 30 May 1995 in accordance with Article 24 of the Law on the Lease of Business Buildings and Premises, and that the defendant owed him the amount indicated in the action.

IV. Appeal

a) Statements from the appeal

11. The appellant complains that the challenged decisions are in violation of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (“the European Convention”) and right to property under Article II(3)(k) of the Constitution of Bosnia and Herzegovina and Article 1 of Protocol No. 1 to the European Convention. The appellant holds that the courts unnecessarily insisted on carrying out a graphology expert witness analysis with regards to the circumstance relating to drafting and signing the contract in question despite the fact that the signature on the contract was absolutely clear and legible. He holds that he should not have had to prove the fact that was indisputable to him, i.e. that he had signed the contract in question, since the fact that he had signed the contract was proved through the presented evidence. Furthermore, he alleges that the court unreservedly accepted the objection relating to the lack of standing to sue stressing that the court based the whole judgment on that objection thus causing detrimental consequences for him, although he proved his right during the proceedings. He alleges that the burden of proof was on the defendant who did not present evidence in favor of her claims and that the court could have only considered the proved fact as founded. In his opinion, he should not have proved the fact which he considered indisputable, and thus created more considerable costs which one or the other party would have to pay. As he could not collect his claims through the amicable settlement, he sought the court protection hoping and believing in the fair proceedings but 13 years later he is back at the beginning. The appellant doubts as to the impartiality of the court and he alleges that the reasons of the challenged first-instance judgment reminds of the reasons for the previous first-instance judgment (dismissing) to the considerable extent, which was quashed by the Cantonal Court. For all the aforementioned reasons, he complains about the violation of his right to property safeguarded by the European Convention and its Protocols. The appellant requested the Court to quash the challenged judgments and modify the first-instance judgment in the manner as to grant the claim as a whole.

b) Reply to the appeal

12. In its reply to the appeal, the Cantonal Court stated that the appellant was wrong when he claimed violation of his right to a fair trial and his right to property under Article II(3) and (k) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention and Article 1 of Protocol 1 to the European Convention by the judgment of the Cantonal Court. Furthermore, the Cantonal Court states that it follows from the allegations stated in the appeal that the appellant disagrees with the opinion of this court given in its decision. It means that the issue concerns different legal interpretations and these different interpretations should not be brought into connection with violations referred to in the European Convention. In the proceedings before this court, the appellant was given an opportunity to protect his rights and freedoms safeguarded under the European Convention and Constitution of Bosnia and Herzegovina. As to the instant case, the court acted correctly and adopted a lawful decision.

13. In its reply to the appeal the Municipal Court states that the judgment of the Municipal Court and judgment of the Cantonal Court are correct and based on the law.

V. Relevant Laws

14. **The Civil Procedure Code** (*Official Gazette of the Federation of BiH nos. 53/06, 73/05 and 19/06*) as relevant reads:

Article 7(1)

Parties shall be obliged to present all facts on which they base their claims and present evidence proving those facts.

Article 8

The court shall decide which facts shall be considered as proved, on the basis of free evaluation of evidence. The court shall conscientiously and meticulously evaluate each individual piece of evidence and all evidence in their entirety.

Article 123

Each party shall be obliged to prove the facts on which s/he bases his claim.

The court shall determine the facts upon which the case shall be decided on the basis of free evaluation of evidence.

Article 125(1) and (2)

Facts that have been admitted during the proceedings before the court need not be proved. If the admitted facts are denied, the court shall determine whether to consider the facts admitted or contested.

Article 147

The court may, at a party's proposal, decide to hear experts, when professional knowledge, which the court does not have, is necessary for the establishment or clarification of certain facts.

Article 148

The party proposing the expert evaluation shall be obliged to indicate in its proposal the subject and scope of the expert evaluation, as well as to propose the person who shall provide the expertise.

15. **The Law on the Lease of Business Buildings and Premises** (*Official Gazette of SRBiH* nos. 33/77, 12/87, 30/90, *Official Gazette of RBiH* nos. 3/93 and 13/94), its relevant provisions read as follows:

Article 10

The Contract on the Lease of Business Premises shall contain in particular:

1. specification by the contractual parties of the following:

[...]

8. the place and date of the conclusion of the contract and the signatures of the contractual parties.

Article 11

The Contract on the Lease of Business Premises shall be concluded in writing.

The Contract which has not been concluded in writing shall produce no legal effect.

Article 24

A lessee can sub-lease a part of the leased premises to another person only on the basis of the lessor's consent.

The provisions of this law, which apply to the Contract on the Lease of Business Premises, shall apply accordingly to the sub-lease contract.

VI. Admissibility

16. Pursuant 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.

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

18. In the present case, the subject-matter challenged by the appeal is the Judgment of the Cantonal Court no. 004-0-Gž-07-001 457 of 25 June 2008, against which there are no other effective legal remedies available under the law. Next, the appellant received the challenged judgment on 8 July 2008, and the appeal was filed on 5 September 2008, that is within the time-limit of 60 days as prescribed by Article 16(1) of the Rules of the Constitutional Court. Finally, the appeal meets the requirements referred to in Article 16(2) and (4) of the Rules of the Constitutional Court, as neither being manifestly (*prima facie*) ill-founded, nor is there any other formal reason rendering the appeal inadmissible.

19. In view of the provisions of Article VI(3)(b) of the Constitution of Bosnia and Herzegovina and Article 16(1),(2) and (4) of the Rules of the Constitutional Court, the Constitutional Court established that the relevant appeal meets the admissibility requirements.

VII. Merits

20. The appellant considers that the challenged judgments are in violation of the right to a fair trial and the right to property under Article II(3)(e) and (k) of the Constitution of Bosnia and Herzegovina and Article 6 paragraph 1 of the European Convention and Article 1 of Protocol No. 1 to the European Convention.

21. **Right to a fair trial**

Article II(3) of the Constitution of Bosnia and Herzegovina, as relevant, reads:

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.

Article 6 paragraph 1 of the European Convention, as relevant, reads:

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.

22. It is undisputed that the relevant proceedings concern the establishment of civil rights and obligations given that the claim was aimed at the fulfillment of the contracted obligation and the compensation of damage, therefore, the Constitutional Court has the competence to examine whether the proceedings were in compliance with the standards referred to in Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 paragraph 1 of the European Convention.

23. The appellant holds that he did not have a fair trial due to the arbitrary establishment of the facts of the case in the relevant proceedings, which arose from the unfairly conducted evidentiary proceedings and due to arbitrary application of the substantive law.

24. As to the appellant's allegations about a violation of the right to a fair trial, the Constitutional Court recalls that according to the case-law of the European Court of Human Rights ("the European Court") and the Constitutional Court, it is not the task of these Courts to review the ordinary courts' findings relating to facts and application of the substantive law (see European Court, *Pronina vs. Russia*, Decision on Admissibility of 30 June 2005, Application no. 65167/01). Namely, the Constitutional Court is not called upon to substitute ordinary courts in the assessment of facts and evidence, but, in general, it is the task of ordinary courts to assess the presented facts and evidence (see European Court, *Thomas vs. The United*

Kingdom, Judgment of 10 May 2005, Application no. 19354/02). It is the Constitutional Court's task to examine whether the constitutional rights (the right to a fair trial, the right of access to court, the right to an effective legal remedy, *etc.*) have been violated or disregarded, and whether the application of law was, possibly, arbitrary or discriminatory. Thus, within its appellate jurisdiction, the Constitutional Court deals exclusively with the issue of a possible violation of the constitutional rights or the rights under the European Convention in the proceedings before the ordinary courts. In the case at hand, the Constitutional Court will examine whether the proceedings as a whole were fair as required by Article 6 paragraph 1 of the European Convention, that is whether the right to property was violated (see Constitutional Court, Decision no. *AP 20/05* of 18 May 2005, the *Official Gazette of BiH* no. 58/05). Furthermore, the Constitutional Court recalls that it will not interfere with the manner in which the ordinary courts had granted evidence as evidentiary material. In this respect, the Constitutional Court will not interfere either with what evidence of the parties to the proceedings the ordinary courts gave credence to on the basis of the judges' margin of appreciation (see Constitutional Court, Decision no. *AP 612/04* of 30 November 2004, and European Court, *Doorson vs. The Netherlands*, Judgment of 6 March 1996, published in the Reports, no. 1996-II, paragraph 78).

25. In the present case, the ordinary courts reached a conclusion on the basis of the relevant facts established during the present proceedings as to the ill-foundedness of the appellant's claim, whereby he claimed that the defendant pay him the established amount in respect of the obligation arising from the contract on the sub-lease of business premises. The Municipal Court reasoned clearly and precisely that in the renewed proceedings, proceeding upon the Ruling of the Cantonal Court no. GŽ-752/02 of 21 October 2002, it presented evidence proposed by the appellant in the appeal lodged on 27 May 2002 before the Cantonal Court (it heard witnesses: M. H., a lawyer, and the appellant's wife V. D.), and by assessing these presented pieces of evidence it was nevertheless unable to conclude that the appellant had signed the respective contract. Furthermore, the Municipal Court reasoned that, during the renewed proceedings, the appellant failed to propose, in terms of the provisions of Article 148(1) of the Law on Civil Procedure, the presentation of evidence through expert analysis by graphology expert of the signatures on the respective contract, in order to determine this important fact, although, among others, he proposed in the appeal lodged before the Cantonal Court the presentation of evidence by way of expert analysis by graphology expert. Therefore, the evidence of expert analysis by graphology expert witness of the signature on the respective contract was not presented by the court taking into account that the parties dispose with their own proposals relating to evidence, and the court cannot present evidence, except for

the exceptions stipulated by law, if the party, that is the appellant in the present proceedings, failed to propose them. Hence, by invoking provisions of Article 7(1) and Article 123(1) of the Law on Civil Procedure, the court dismissed the appellant's claim. The Cantonal Court reasoned that the First Instance Court acted in accordance with the rules of assessment of presented evidence, that it did not establish facts incorrectly and did not violate the obligation of conscientious and careful assessment of evidence under Article 8 of the Law on Civil Procedure, confirming the position of the First Instance Court that the appellant failed to prove, on the basis of the respective contract, that he had a legal relationship with the defendant regulated by substantive law. Furthermore, the Cantonal Court clearly and unambiguously explained why it assessed as contradictory the statements of the appellant's attorney, stating that she denied what she had confirmed and admitted at the hearings (the minutes of the hearings of 2 April and 14 May 2001), which she signed without remarks about its contents, and citing the defendant's statement, who was heard in the capacity of a party to the proceedings, "My husband and Ms. Vesna Dauldži had concluded the contract...", "Mr. Ajdin Dauldži (the appellant) had concluded the contract formally, and his wife Vesna had signed his name and surname on the contract". According to the position of the Cantonal Court, the First Instance Court had acted correctly by dismissing the appellant's claim as ill-founded while invoking the relevant provisions of the Law on Civil Procedure, thereby concluding that the appellant failed to fulfill his procedural obligation of proving the correctness of the facts that he had, on the basis of the respective contract with the defendant, entered into a sub-lease relationship in accordance with the provisions of Article 24 of the Law on the Lease of Business Buildings and Premises, and that the defendant owed him the awarded amount as arising from that legal relationship.

26. The Constitutional Court observes that the lawsuit was filed in the present case for the meeting of the contractual obligation, and that the preliminary issue arose as to whether there is a legal relationship regulated by substantive law between the appellant and the defendant, in terms of a contract on the sub-lease of the respective business premises, and whether the defendant owes him the awarded amount as arising from that legal relationship. The Constitutional Court also observes that no issue was raised in the present case as to whether the respective contract was null or subject to cancellation, but an issue arose as to who were the contracting parties to the respective contract, on which basis the appellant sought from the defendant the amount of money in respect of the obligation arising from the respective contract. As the defendant objected that the appellant had not signed the respective contract, that is, she made an objection relating to the lack of standing to sue thereby claiming that the appellant's wife had signed the respective contract, the court presented evidence in the evidentiary proceedings in order to establish this relevant fact.

On the basis of the presented evidence (inspecting the minutes from the hearings) the court concluded that the appellant's attorney admitted that the respective contract had been signed by the appellant's wife, that is, that she subsequently denied that admission, thus the court held that that disputable fact can only be established through objective evidence, namely through expert analysis by graphology expert. In a procedural situation like this, since the statements by the appellant and by the defendant, as well as statements by the interrogated witnesses, are contradictory and in direct contrast to the fact crucial for the outcome of this dispute, as to whether the appellant had signed the respective contract (validity requires special form), it is undisputable that that fact may have been established solely by way of objective evidence. However, it is undisputed that the appellant failed, during the course of the judicial proceedings, and for the sake of establishing this relevant fact, to propose the presentation of evidence, namely the expert analysis by graphology expert, hence the court did not present this piece of evidence bearing in mind that the parties dispose with their proposals relating to evidence, and the court cannot, except for the exceptions stipulated by law, present evidence unless they were proposed by a party. In the present case, taking into account the manner in which judicial proceedings were conducted, the Constitutional Court holds that the court cannot be said to have arbitrarily applied the rules on the burden of proof, and the reason for the appellant's failure in the present proceedings is in the manner in which the appellant acted in procedural terms.

27. Furthermore, the Constitutional Court observes that the proceeding in this civil matter was conducted in accordance with the Law on Civil Procedure, which stipulates the following in Article 123(1): "...each party shall be obliged to prove the facts on which s/he bases his/her claim...". Pursuant to the aforesaid legal provision, the appellant was under an obligation to collect the facts for the adoption of the judicial decisions. The adversarial principle prescribed by the aforementioned article means "as many facts as many rights", and thus the court is released from obligation to collect evidence *ex officio*. The Constitutional Court considers that the interpretation of Article 7 of the Law on Civil Procedure, which stipulates that parties shall be obliged to present all facts on which they base their claims and present evidence proving those facts, necessarily imposes a conclusion that the appellant, in the procedural situation as this one is, was under an obligation to prove that the signatures on the relevant contract were his signatures.

28. The Constitutional Court holds that assessment of evidence by the first instance court in the present case, which was confirmed in the second-instance proceeding, was not arbitrary, nor was the evidentiary proceeding abused to the detriment of the appellant in terms of the right to a fair trial and the principle of

“equality of arms”, which is an important element of a fair trial and which implies that each party must be afforded a reasonable opportunity to present their case, including the presentation of evidentiary material, under conditions that do not put them at a substantial disadvantage *vis-à-vis* their opponent (see, the European Court of Human Rights, *Dombo B.V. vs. The Netherlands*, judgment of 27 October 1993, Series A, no. 274, page 19). The Constitutional Court holds that the First Instance Court, and the Second Instance Court consequently, offered clear and precise reasons as to why it was not possible in the present case to accept as established the appellant’s allegations that he had signed the respective contract, and that the defendant owed the awarded amount of money to the appellant as arising from that relationship, and that the mentioned reasoning of that issue fully meets the standards of Article 6 of the European Convention.

29. Also, the Constitutional Court observes that not even the alleged biasness on the part of the court, which the appellant mentioned “one gets an impression that the First Instance Court adopted the same dismissing judgment, regardless of all the presented evidence” was not corroborated by any evidence whatsoever indicating a reasonable doubt that the First Instance Court was biased when deciding the appellant’s claim. Given that the appellant did not state how the biasness of the court was reflected, but only arbitrarily pointed to a violation of this principle, the Constitutional Court concludes that these allegations of the appellant are also ill-founded.

30. In view of the aforementioned, the Constitutional Court holds that, regarding these allegations of the appellant, there is no violation of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention.

31. The appellant holds that the challenged judgments also violated his right to property under Article II(3)(k) of the Constitution of Bosnia and Herzegovina and Article 1 of Protocol No. 1 to the European Convention. Since the appellant relates the violation of the right to property to, essentially, erroneously established facts of the case and erroneous application of the substantive law, in the context of elaboration of the previous paragraphs of this decision, in relation to a violation of the right to a fair trial, the Constitutional Court considers these allegations of the appellant to be also ill-founded.

VIII. Conclusion

32. The Constitutional Court concludes that the challenged judgments of the Cantonal Court and Municipal Court are not in violation of the appellant’s right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 paragraph 1 of the European Convention, and the right to property under Article II(3)(k) of the Constitution of Bosnia and Herzegovina and Article 1 of

Protocol No. 1 to the European Convention, as the manner in which they had, through the assessment of the presented evidence, established facts of the case and interpreted and applied positive-legal regulations, cannot be considered arbitrary. The reasons which were laid down in the challenged judgments, which relate to the application of the substantive and procedural law, were explained clearly, precisely and in detail, and there are no other objections whatsoever indicating that the proceeding before the court was unfair, and that the appellant's right to a fair trial and the right to property were violated.

33. Pursuant to Article 61(1) and (3) of the Rules of the Constitutional Court, the Constitutional Court has decided as stated in the enacting clause of this decision.

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

Prof Dr Miodrag Simović
President
Constitutional Court of Bosnia and Herzegovina