

The Constitutional Court of Bosnia and Herzegovina, sitting, in accordance with Article VI(3)(b) of the Constitution of Bosnia and Herzegovina, Article 18(2), Article 57(2)(b) and Article 59(1) and (2) of the Rules of the Constitutional Court of Bosnia and Herzegovina – Revised text (*Official Gazette of Bosnia and Herzegovina*, no. 94/14), in Plenary and composed of the following judges:

Mr. Mirsad Ćeman, President,

Mr. Mato Tadić, Vice-President,

Mr. Zlatko M. Knežević, Vice-President,

Ms. Margarita Tsatsa-Nikolovska, Vice-President,

Mr. Tudor Pantiru,

Ms. Valerija Galić,

Mr. Miodrag Simović,

Ms. Constance Grewe,

Ms. Seada Palavrić,

Having deliberated on the appeal of **Mr. Drago Lukenda**, in case no. **AP 1634/16**, at its session held on 1 December 2016 adopted the following

DECISION ON ADMISSIBILITY AND MERITS

The appeal lodged by **Mr. Drago Lukenda** is hereby granted.

A violation of the right to liberty and security of person under Article II(3)(d) of the Constitution of Bosnia and Herzegovina and Article 5(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms in the process of depriving Mr. Drago Lukenda of liberty, undertaken on 19 February 2016 by the members of the Ministry of the Interior of the West Herzegovina Canton – Široki Brijeg Police Administration, is hereby established.

REASONING

I. Introduction

1. On 8 April 2016, Mr. Drago Lukenda from Široki Brijeg (“the appellant”) lodged an appeal with the Constitutional Court of Bosnia and Herzegovina (“the Constitutional Court”) claiming that he was unlawfully deprived of liberty on 19 February 2016 by the members of the Ministry of the Interior of the West Herzegovina Canton, Široki Brijeg Police Administration (“the PA”).

II. Procedure before the Constitutional Court

2. Pursuant to Article 23 of the Rules of the Constitutional Court, the PA was requested on 22 and 28 April 2016 to submit its respective reply to the appeal.
3. The PA submitted its reply on 29 April and 4 May 2016 respectively.

III. Facts of the Case

4. 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.
5. On 19 February 2016 the PA made an official record no. 02-2-8/1-4-72/16 regarding the circumstances of the disturbance of public order and peace at the closely specified location. It

follows from the record that the authorized official persons, while acting on the report on the disturbance of public order and peace arrived to the designated location, but that, due to a physical obstacle, they were unable to reach the designated location where the appellant, the named employees of the Service for Urban Town Planning of the Municipality of Široki Brijeg, and B.M. and R.M. were. Since the authorized official persons were unable to hear, due to noise, the instructions of the aforementioned persons on how to cross over to the other side, they informed them in a loud voice in order to be heard that they should come to the PA official premises, in order to be able to take statements from them in relation to the report of disturbance of public order and peace. Since none of the mentioned persons responded to the call, the authorized official persons tried to find the crossing over to the other side and that is when they met the employees of the Service for Urban Town Planning, who informed them that the rest of the persons involved in the event had left. Thinking that the others might have left for the PA, they too went in that direction and thus saw the appellant in front of the family house of B.M. who, when asked why he did not go to the PA, answered “police what do you want” and headed towards the parked vehicle. Since they concluded that the appellant had the intention to leave the location where they were, the authorized official person issued a clear order to him to get in the official car, to which the appellant replied that he would not come with them and would not get in the car. After the order had been repeated several times for the appellant to get in the official car and after the appellant refused to do so, by using physical force and by handcuffing the appellant, the appellant was brought to the PA premises. Furthermore, the record noted that after being brought to the PA to the designated office, it was not possible to establish a normal contact with the appellant, because he was impudently making noise and shouting, despite the warnings by the present authorized official persons. Furthermore, it follows from the record that the appellant was then brought to the detention premises. Finally, the record noted that during the appellant’s deprivation of liberty a person with the initials R.M., employed with the Municipal Court in Široki Brijeg showed up, and she shouted and said “take the thief away”.

6. According to the records of PA no. 02-2-8/1-5-08/16 of 19 February 2016, at 13.55 hrs on the mentioned day the appellant was detained in the PA official premises by the authorized official persons, pursuant to Article 153(1) of the Criminal Procedure Code of FBiH (“the FBiH CPC”), on the grounds for suspicion that he had committed a minor offense under Article 11 of the Law on Public Order and Peace. It follows from the record that the appellant, in terms of Article 5 of the FBiH CPC, *inter alia*, was informed of the reasons for his deprivation of liberty. The records carry the appellant’s signature and the seal and signature of the authorized official person.

7. According to the PA records on the release of the detained person no. 02-2-8/1-5-08/16 of 19 February 2016, the appellant was released on the very same day at 21.50 hrs, pursuant to Article 153(3) of the FBiH CPC, as mentioned, due to the cessation of the reason for detention. The minuets carry the appellant's signature, as well as the signature of the authorized official person.

IV. Appeal

a) Allegations stated in the Appeal

8. The appellant asserts that his right under Article II(3)(d) of the Constitution of Bosnia and Herzegovina and Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the European Convention") has been violated. The appellant indicates that he lodged the appeal "over continuous repetition of unlawful deprivation of liberty", stating that "persons holding positions in judicial authority use such positions to achieve unlawful objectives, thereby stopping at nothing to use the authorized official authorities to violate human rights and freedoms guaranteed under the Constitution". The appellant asserts that his fundamental rights have been violated by the PA, which his neighbors have used to realize unlawful construction on the land over which his family has rights.
9. Furthermore, the appellant alleges that on 19 February 2016 he was deprived of liberty on the grounds for suspicion that he had committed a minor offense referred to in Article 11 of the Law on Public Order and Peace. In his opinion "the alleged minor offense" had not occurred at a public spot, but during the inspection of a private construction site, where, as a person authorized by the investor, he was attacked by neighbors, and that, although the mentioned minor offense did not occur, he was unlawfully deprived of liberty. Furthermore, the appellant alleges that R.M. is a judge of the Municipal Court in Široki Brijeg, and that she participated in his detention indicating that it was noted in the official record of the PA dated 19 February 2016. The appellant claims that during any unlawful construction and action the police would order appearance in person in the PA premises for "questioning" that would last until the completion of unlawful action. In support of these claims he presented the conclusion of the Administration for Inspection Work of 5 February 2016 wherefrom it follows that B.M. was ordered to remove objects built without building permit, the official record of the PA dated 12 April 2011 made upon the appellant's report related to the property and legal dispute with R.M. wherefrom it follows that the appellant was ordered to come to the PA in order to calm down the situation and to take a statement, which he did, that regarding the

same circumstances an interview with R.M. was conducted, and the official record of the PA dated 7 November 2013 made upon the report by R.M. over the appellant's taking photos of her house, wherefrom, among other things, it follows that the appellant was called to report to the PA, which he did.

10. Finally, the appellant claims that also on 18 September 2015 he was deprived of liberty, taken in the PA official vehicle, detained at the PA for some time and released without questioning or any records whatsoever.

b) Reply to the appeal

11. In its reply to the appeal the PA alleges that it acted on 19 February 2016 upon the report by the Head of the Service for Urban Town Planning and Environment Protection of the Municipality of Široki Brijeg on the disturbance of public order and peace through a fight at the designated location. Furthermore, it was indicated that the authorized official persons, after reaching the scene, following a brief talk, invited the persons they found there on that occasion to come to the PA premises in order to establish facts in relation to the committed minor offense. The appellant failed to respond to the call or to comply with the duly issued order by police officers, in support of which references were made to the official record of the PA of 19 February 2016. As a result he was arrested and brought to the official premises of the PA where he continued disturbing public order and peace by shouting and making noise. Also, it was indicated that the record on the deprivation of liberty over the committed minor offense under Article 11 of the Law on Public Order and Peace was served on the appellant, and the record on the release of the person deprived of liberty after the completion of the minor offense processing at 21.50 hrs.
12. Furthermore, it is indicated in the reply that on 3 March 2016 the PA filed a request with the Municipal Court in Široki Brijeg for the initiation of minor offense proceedings against B.M. over the committed minor offense referred to in Article 11(1)(a) of the Law on Public Order and Peace, and against the appellant over the committed minor offense referred to in Article 11(1)(a) and Article 12(1)(a) of the Law on Public Order and Peace.
13. Furthermore, it is indicated in the reply that on 12 April 2011 the PA acted upon the appellant's telephone report in relation to the property and legal dispute, on which occasion the appellant was summoned to the premises of the PA where an interview was conducted regarding the circumstances of the report and official record was made. Next, it is indicated that on 7 November 2013 the appellant was summoned to the premises of the PA for an interview regarding the

circumstances of the report by R.M. Finally, it is indicated in the reply that based on the inspection of the available PA records no action was taken on 18 September 2015 concerning the appellant.

14. The PA submitted, along with the reply, the record on the deprivation of liberty and the record on the release of the person deprived of liberty drafted on 19 February 2016, the request for the institution of minor offense proceeding dated 3 March 2016, and the official record of 12 April 2011 and 7 November 2013.
15. It follows from the request for the institution of minor offense proceedings, which was submitted along with the reply to the appeal, that public order and peace were disturbed on 19 February 2016 at the designated location, in a way that firstly the first-reported B.M. approached the second-reported appellant who was with the employees of the Service for Urban Town Planning at the location where he planned to build a facility, which was located in the vicinity of the family house of the first-reported B.M., and started arguing with him regarding the circumstances of the construction of the facility, whereafter B.M. and the appellant started pushing and grabbing one another, fell to the floor, until they got separated by I.C. Furthermore, the request reads that during the activities of police officers the appellant disobeyed clear orders by police officers on several occasions to come to the PA official premises, and after police officers realized that the appellant intended to get into his personal vehicle and leave the scene, the police officers arrested the appellant by using force and transported him in an official vehicle to the PA official premises. Finally, the request reads that, as described, B.M. and the appellant had committed the minor offense referred to in Article 11(1)(a) of the Law on Public Order and Peace, and the appellant had committed the minor offense referred to in Article 12(1)(a) of the Law on Public Order and Peace.

V. Relevant Law

16. The **Law on Public Order and Peace** (the basic text and amendments were taken over from <http://www.skupstina-zzh.ba/opsirnije.asp?id=111>) reads in the relevant part as follows:

Article 11

A fine in the amount ranging from BAM 400.00 to 800.00 will be imposed for a minor offense on:

- a) *a person who disturbs public peace and order in a public place by provoking, participating or aiding in a fight, abuse or a physical assault against another person,*

(...)

Article 25

(Competence)

The Ministry of the Interior of the West Herzegovina Canton shall have competence for the implementation of the provisions of this Law.

17. The Law on Minor Offenses (*Official Gazette of FBiH*, no. 63/14) reads in the relevant part as follows:

Article 17

Deprivation of Liberty and Guarantees Ensuring Appearance and Payment of Fine

(1) Police officers or other authorized officials may deprive of liberty a person suspected of committing a minor offence, but must immediately, no later than within 12 hours, bring such a person before the court, in order to ensure his/her presence in court under the following circumstances:

1) where a person refuses or is unable to disclose his/her identity; or

2) where a person is not domiciled in Bosnia and Herzegovina or is temporarily living outside the country and there is suspicion that he/she shall flee in order to evade responsibility for the minor offense; or

3) where there is a danger that the person will either continue committing the minor offense or commit the same type of minor offense again.

(2) The Court is obligated to question the defendant without delay and no later than within 12 hours of the person being deprived of their liberty.

(3) Any such deprivation of liberty may be ordered only if the same purpose cannot be achieved by another measure and must be reasonable in view of the nature of the alleged offense and must take into account the age and other personal features of the person, so that the duration of detention is proportionate to the circumstances. Any person deprived of liberty in accordance with the provisions of this Article shall be informed as soon as possible, in a language which he understands, and in detail of the reasons for such deprivation of liberty and of the minor offense of which he/she is accused.

(4) In order to secure the appearance before the Court, the police or any other authorized body may require a person accused of committing a minor offense who is not domiciled in Bosnia and Herzegovina or who is temporarily living outside the country and who wants to leave Bosnia and Herzegovina before the conclusion of the procedure, or for whom there is suspicion that he/she might flee in order to avoid responsibility for the minor offense, to hand in his/her passport or other identity document until his/her appearance before the Court, though for a period not longer than 24 hours. The passport and other identity document shall be handed to the Court together with the minor offense order or request to initiate a minor offense procedure.

(5) In order to secure the payment of a fine, a person accused of a minor offense who is not domiciled in Bosnia and Herzegovina, or who is temporarily living outside the country and who wants to leave Bosnia and Herzegovina before the conclusion of the procedure, or for whom there is suspicion that he/she might flee in order to avoid responsibility for the minor offense, may be required by a judge to deposit a monetary guarantee equal to the maximum fine which can be imposed for such minor offense.

Article 18

Application of Provisions of the Criminal Code and Criminal Procedure Code of the Federation of Bosnia and Herzegovina

(...)

(2) If not otherwise prescribed by provisions of this Law, the following provisions of the Criminal Procedure Code of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of BiH, nos. 35/03, 37/03, 56/03, 78/04, 28/05, 55/06, 27/07, 53/07, 9/09 and 12/10 - hereinafter the Criminal Procedure Code) shall be applied mutatis mutandis in the minor offense procedure: Chapter I entitled "Basic Provisions"; [...] Chapter VIII Section 1 entitled "Search of Dwellings, other Premises and Persons"; Chapter VIII Section 2 entitled "Temporary Seizure of Objects and Property"; Chapter VIII Section 4 entitled "Questioning the Suspect"; Chapter VIII Section 5 entitled "Examination of Witnesses"; Chapter VIII Section 6 entitled "Crime Scene

Investigation and Reconstruction of Events”; Chapter VIII Section 7 entitled “Expert Evaluation”; Chapter XI entitled “Submissions and Minutes”; [...].

[...]

Article 108

Other cases of entitlement to compensation for damage

A person shall be entitled to compensation for damage in the event that:

- 1) he/she was detained in a minor offense procedure, and a procedure was suspended;*
- 2) he/she was detained longer than stipulated by law due to an error or unlawful work on the part of a judge.*

Article 111

Process of exercising one’s right

(1) An authorized person has the obligation to address his/hers claim for the compensation for damage to the competent body, ministry or administration in charge of dealing with minor offenses in order to reach an agreement on the existence of damage and the amount of compensation.

(2) If an agreement is not reached within three months from the day of receiving the request, an authorized person may file a lawsuit with a competent court for the compensation for damage against the Federation of Bosnia and Herzegovina, canton, city or municipality, depending on which budget the fine was paid to, material gain seized, registered seized object or monetary value of the seized object.

(3) A claim for the refund is lodged with an administration body in charge of finances in accordance with paragraph (2) of this Article.

18. The Law on Police Officers of the West Herzegovina Canton (the basic text and amendments taken from: <http://www.skupstina-zzh.ba/opsirnije.asp?id=111>) reads in the relevant part as follows:

Article 9

Decisions and Orders for the Exercise of Police Powers

A police officer shall apply police powers based on one's own decision, in keeping with law, as well as based on a legitimate order by a superior officer or a competent body.

(...)

Article 10

Police Powers Prescribed by this Law

In addition to duties and powers prescribed by the CPC and other laws, this Law confers on police officers, namely police body, in order to prevent criminal offenses, minor offenses and maintaining public order and peace, the following powers:

(...)

2. of summoning and conducting interviews;

3. of apprehension,

(...)

Article 15

Summoning and Conducting an Interview

Whenever there is a legitimate reason a police officer may summons a person to come to the official premises of a police body for an interview.

Interviews shall be conducted between 6.00 hrs and 21.00 hrs and may not last more than six hours.

A summons for an interview must contain the following: name and surname of the person being summonsed, the name of organizational unit of a police body sending a summons for an interview, place, date, time and reason for summons, and a warning that a person being summonsed will be brought in under coercion if he/she fails to respond to the summons.

In exceptional cases, a police officer shall be authorized to summons a person verbally or by using a suitable telecommunication instrument, whereby he/she shall have the obligation to inform the person of the reason for summons, as well as to warn the person of a possibility to be brought in under coercion. With the

consent of the person concerned, a police officer may bring him/her to the official premises.

Article 16

Apprehension without a Warrant

Without written warrant by a competent body, a police officer may bring to the official premises of a police body a person:

- 1. whose identity needs to be established, where there is no other way to do it;*
- 2. concerning whom an investigation has been initiated officially;*
- 3. who fails to respond to the summons for an interview referred to in Article 15 of this Law;*

Detention referred to in paragraph 1 of this Article may last for as long as necessary to carry out a police action, and no longer than six hours.

Article 27

Conditions for the Use of Force

A police officer may use force solely when necessary and exclusively to the extent needed to pursue a legitimate goal. Unless otherwise provided by this Law, coercion means such as physical force including (...) tying means may be used when necessary to protect human life, to repel an assault, to overcome resistance, and to prevent flight.

(...)

VI. Admissibility

19. In accordance with 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.
20. In accordance with Article 18(1) of the Rules of the Constitutional Court, the Constitutional Court may examine an appeal only if all effective legal remedies, available under the law against the judgment or decision challenged by the appeal, have been exhausted and if it is filed within a time limit of 60 days from the date on which the appellant received the decision on the last legal remedy that he/she used.

21. In accordance with Article 18(2) of the Rules of the Constitutional Court, the Constitutional Court may examine an appeal even when no decision by a competent court exists, if the appeal points to serious violations of rights and fundamental freedoms safeguarded under the Constitution or international documents applicable in Bosnia and Herzegovina.
22. In the present case, the appellant essentially claims that his right under Article II(3)(d) of the Constitution of Bosnia and Herzegovina and Article 5 of the European Convention has been violated. In support of these allegations the appellant particularly points to the event of 19 February 2016 when, police officers, by using force, brought him to the police station and, according to the records prepared on the same day, he was deprived of liberty on the grounds for suspicion that he had committed a minor offense referred to in Article 11 of the Law on Public Order and Peace, and was released on the same day, after being held for eight hours.
23. Given that the respective appeal points to serious violations of the rights under the Constitution of Bosnia and Herzegovina and the European Convention, and that requesting the appellant to seek out the most effective way in specific circumstances of the present case to protect his right would result in excessive burden placed on the appellant, the Constitutional Court concludes that the respective appeal is admissible in terms of Article 18(2) of the Rules of the Constitutional Court (see, Constitutional Court, *mutatis mutandis, inter alia*, Decision on Admissibility and Merits no. *AP 3376/07* of 28 April 2010, Decision on Admissibility and Merits no. *AP 3080/13* of 16 March 2016, available on www.ustavnisud.ba). Finally, the appeal also meets the requirements under Article 18(3) and (4) of the Rules of the Constitutional Court, for there is neither formal reason rendering the appeal inadmissible, nor is it manifestly (*prima facie*) ill-founded.
24. In view of the provisions of Article VI(3)(b) of the Constitution of Bosnia and Herzegovina and Article 18(1), (3) and (4) of the Rules of the Constitutional Court, the Constitutional Court has established that the relevant appeal meets the admissibility requirements.

VII. Merits

25. The appellant claims that his right under Article II(3)(d) of the Constitution of Bosnia and Herzegovina and Article 5 of the European Convention has been violated.

The right to liberty and security of person

26. Article II(3) of the Constitution of Bosnia and Herzegovina, in the relevant part, 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:

d) The right to liberty and security of person;

27. Article 5 of the European Convention, in the relevant part, reads:

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

a) the lawful detention of a person after conviction by a competent court;

b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

[...]

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

28. In the present case the appellant alleges that on 19 February 2016 he was unlawfully deprived of liberty by police bodies, which resulted in the violation of his right under Article 5 of the European Convention.

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29. It follows from the documents submitted to the Constitutional Court that on 19 February 2016 around 13.30 hrs, police officers, by using force (physical force and handcuffs) brought the appellant to the police station, for disobeying their verbal summons for him to come to the PA official premises to give a statement regarding the circumstances on a report on disturbance of public order and peace, that after he had been brought to the PA official premises, he was placed in the room designated for detained persons, and, finally, on the same day at 21.50 hrs, he was released.
30. The Constitutional Court recalls that according to the position of the bodies of the European Convention, bringing a person to a police station against the will of the person concerned and detention in a cell results in the deprivation of liberty, even when the deprivation of liberty lasted for a relatively short time (see, for example, *Murray v. The United Kingdom*, [GC], 28 October 1994, paragraph 49 ss., Series A no. 300-A, in connection with detention in a military center for less than three hours of questioning; *Novotka v. Slovakia* (dec.), Application no. [47244/99](#), 4 November 2003 with further references, in connection with one hour spent in police detention; *Shimovolos v. Russia*, Application no. [30194/09](#), paras 49-50, 21 June 2011, in connection with police detention in duration of 45 minutes for questioning; *Witold Litwa v. Poland*, Application no. [26629/95](#), paragraph 46, ECHR 2000-III, in connection with detention in duration of six hours and 30 minutes in the Sobering Up Center).
31. Bearing in mind the circumstances of the present case i.e. that the appellant was first and foremost brought in and then detained in the PA official premises designated for persons deprived of liberty against their will, and the mentioned positions of the bodies of the European Convention, it follows that, despite the detention lasting for eight hours, the appellant's deprivation of liberty falls under Article 5(1) of the European Convention.
32. The Constitutional Court recalls that Article 5(1) of the European Convention, first and foremost, requires for the deprivation of liberty to be "lawful". When it comes to lawfulness, including the question as to whether a procedure prescribed by the law is complied with, the European Convention, in essence, refers to national law and establishes the obligation to comply with substantive and procedural rules of national law. However, the compliance with the domestic law does not suffice, because Article 5(1) additionally requires that each deprivation of liberty be in compliance with the purpose of Article 5, i.e. the protection of an individual against arbitrariness. This does not concern solely "the right to liberty" but also "the right to security" (see, ECHR, *inter alia*, *Bozano v. France*, 18 December 1986, paragraph 54, Series A no. 111, *Wassink v. The Netherlands*, 27 September 1990, paragraph 24, Series A no. 185-A). The fundamental principle is

that an arbitrary detention cannot be consistent with Article 5(1), and that the notion of “arbitrariness” in terms of Article 5(1) of the European Convention extends beyond the lack of conformity with the national law, so that a deprivation of liberty may be lawful in terms of domestic law, but still arbitrary and thus contrary to the European Convention (see ECHR, *Saadi v. the United Kingdom* (GC), no. 13229/03, paragraph 67, 29 January 2008).

33. Accordingly, the first question to be answered is whether the appellant’s deprivation of liberty was in conformity with the substantive and procedural rules of domestic law.
34. The Constitutional Court observes that Article 9 of the Law on Police Officers of the West Herzegovina Canton stipulates that, among other things, a police officer shall exercise police powers based on one’s own decision, in keeping with law. Article 10 of the same Law stipulates that police powers are, *inter alia*, summoning and conducting interviews, and apprehension. In accordance with Article 15 of the same Law, whenever there is a legitimate reason a police officer may summons a person to come to the official premises of a police body for an interview. The same article stipulates the content of the summons for an interview. Also, the mentioned article prescribes a possibility for a police officer to verbally summons a person in exceptional cases, whereby he/she has the obligation to inform the person of the reasons for summons, as well as to warn the person of a possibility to be brought in under coercion. According to Article 16 of the same Law, a police officer may, without written warrant by a competent body, bring to the official premises of a police body a person who, among other things, fails to respond to the summons (verbal or written alike) referred to in the cited Article 15 of the Law on Police Officers of the West Herzegovina Canton. Furthermore, in accordance with Article 27 of the same Law, a police officer may use force solely when necessary in order to pursue a legitimate goal. Namely, coercion, such as physical force and tying means may be used when necessary to protect human life, to repel an assault, to overcome resistance, and to prevent flight. Finally, whether it concerns summoning and conducting interviews within the meaning of Article 15 or apprehension without warrant within the meaning of Article 16 of the Law on Police Officers, an interview or detention may last no longer than six hours.
35. The Constitutional Court observes that the appellant, as well as other participants in the disputed event, were verbally summonsed to come to the PA in order to make a statement. It is not clear how police officers established that the participants in the disputed event, including the appellant, understood the summons. Namely, as stated in the official record, the authorized official persons “were unable, due to noise, to hear the instructions” on how to reach the place where the disputed

event occurred and where the participants in the disputed event were at the time when police officers summonsed them to come to the PA in order to deposit statements.

36. Furthermore, as it follows from the official record, on their way back to the PA authorized official persons met the employees of the Service for Urban Town Planning, who informed them that the rest of the participants in the event had left. Based on the official record it is not possible to conclude that the authorized official persons had repeated the summons to the employees of the Service for Urban Town Planning to come to the PA, or that the employees informed the police that they were on their way to the PA in order to make statements. Furthermore, after this encounter, authorized official persons also met the appellant who, according to the official record, when asked by them as to why he did not go to the PA, answered the authorized official persons “police, what do you want, and other words they did not hear”, he then turned his back to them and walked towards a car parked in the near vicinity. According to the official record, the authorized official persons, upon seeing that the appellant had the intention to leave the place where they were, “issued a clear order to the appellant to get into the official vehicle and not to create problems, to which the appellant answered that he would not get into the vehicle and that he would not come with them”. After repeating the order a number of times for the appellant to sit in the official vehicle, which the appellant disobeyed, they used coercion against the appellant, physical force and they handcuffed him, and then he was brought in the official premises.
37. The Constitutional Court observes that it is not possible to conclude based on the official record as well as the answers to the allegations stated in the appeal what the exceptional situation was so as to indicate a need to verbally summons the appellant to come to the police station, instead of doing it by sending a summons in writing stating the place, date and time of summons, the reasons for summons, and a warning that in the event of failing to comply with the summons he may be forcibly brought in, which the Law on Police Officers of the West Herzegovina Canton prescribes as a rule. Namely, at the time when the verbal summons to the appellant to come to the PA was repeated, the disputed event had already been over, police officers did not have to establish the appellant’s identity, and no investigation was initiated officially against the appellant. Furthermore, the official record reads that the appellant, upon being summonsed to come with them to the PA, answered “police, what do you want, and other words they did not hear”, that is to say that “he did not want to enter the vehicle and that he did not want to come with them” but that the official record did not read that the appellant refused to come on his own to the PA as requested from him in the verbal summons addressed by authorized official persons. All the more so because the disputed event had already been over and the parties thereto “having had left”, as stated in the official record,

thus it cannot be concluded that the present case was about preventing the flight. Also, it is not possible to conclude why the authorized official persons did not take the statement from the appellant at the spot where they met him, or conducted an interview. Finally, irrespective of whether the specific situation falls under summoning and interview conducting or apprehension without a warrant within the meaning of the powers of police officers referred to in the Law on Police Officers, it could not last over six hours. According to the presented records, the appellant was arrested on 19 February 2016 at 13.55 hrs and was released on the same day at 21.50 hrs, i.e. the detention lasted for eight hours, namely two hours longer than allowed for an interview or apprehension without a warrant to last.

38. Accordingly, the Constitutional Court cannot conclude that in the circumstances of the present case exceptional circumstances existed indicative of the need to verbally summons the appellant for an interview at the PA, i.e. to apprehend the appellant without a warrant. Also, based on the circumstances of the present case it is not possible to conclude and no reasons were offered in that regard that show why the appellant's detention in the PA lasted for over six hours.
39. Furthermore, it follows from the official record that the appellant, having been brought to the PA official premises under coercion, "shouted and made noise and that it was not possible to establish contact with him as he was impudent and brazen despite warnings by the present police officers, whereafter he was taken to the premises designated for detention". In the reply to the appeal the PA characterized the appellant's behavior as a continuation of the disturbance of public order and peace. Based on the record on the deprivation of liberty it follows that the appellant was deprived of liberty on the grounds of suspicion that he had committed a minor offense under Article 11 of the Law on Public Order and Peace.
40. The Constitutional Court observes that Article 17 of the Law on Minor Offenses stipulates that a police officer may, upon request of an authorized official person, deprive of liberty a person suspected of committing a minor offense, but must immediately, no later than within 12 hours, bring such a person before the court, in order to ensure his/her presence in court under the following circumstances: where a person refuses or is unable to disclose his/her identity, or where a person is not domiciled in BiH or is temporarily living outside the country and there is a suspicion that he/she shall flee in order to evade responsibility for the minor offense, or where there is a danger that the person will either continue committing the minor offense or committing the same type of minor offense again. The same article stipulates that such deprivation of liberty may be ordered only if the same purpose cannot be achieved by another measure and must be reasonable and in compliance with the nature of the alleged offense and must take into account the age and other personal features

of the person, so that the duration of detention is proportionate to the circumstances. Finally, any person deprived of liberty must be informed as soon as possible, in a language which he/she understands, and in detail, of the reasons for such deprivation of liberty and of the minor offense of which he/she is accused.

41. According to the mentioned provision it follows that in order for the deprivation of liberty to be legitimate it is necessary for the general requirement to be met i.e. that there are grounds for suspicion that a minor offense had been committed, along with the cumulative existence of one of the special conditions enumerated in the mentioned article.
42. In the present case, as it follows from the record on the deprivation of liberty of the appellant, the appellant was deprived of liberty on the grounds of suspicion that he had committed a minor offense referred to in Article 11 of the Law on Public Order and Peace. It is indisputable in the present case that the appellant had been at the scene where the public order had been disturbed, i.e. that he had been one of the participants in the disputed event, which was characterized as the disturbance of public order and peace, regarding which police officers took action, which can be considered as sufficient for a conclusion to be made on the existence of grounds of suspicion. However, the records on the deprivation of liberty, as well as the reply to the allegations stated in the appeal, mention not a single special condition as prescribed by Article 17(1) of the Law on Minor Offenses, which were met in the present case. Also, it is not possible to conclude from the documents presented to the Constitutional Court that the appellant was in any way familiar with them, as stated in Article 17(3) of the Law on Minor Offenses (which prescribes that *any person deprived of liberty in accordance with the provisions of this Article shall be informed as soon as possible, in a language which he understands, and in detail of the reasons for such deprivation of liberty and of the minor offense of which he/she is accused*). In that sense, the allegation stated in the official record that “it was not possible to establish contact with the appellant because he was impudent and brazen, where he shouted and made noise” cannot be subsumed under any of the special conditions under Article 17 of the Law on Minor Offenses (three conditions: *where a person refuses or is unable to disclose his/her identity; where a person is not domiciled in Bosnia and Herzegovina or is temporarily living outside the country and there is a suspicion that he/she shall flee in order to evade responsibility for the minor offense, or where there is a danger that the person will either continue committing the minor offense or committing the same type of minor offense again*).
43. Furthermore, in order for the deprivation of liberty to be lawful in accordance with Article 17 of the Law on Minor Offenses, it must be carried out for the purpose of bringing a person before a court immediately and within 12 hours at the latest. In the present case, the appellant was not brought

before a court immediately and was released eight hours later, which is how long the deprivation of liberty lasted so that the time limit of 12 hours was not exceeded, within which a person deprived of liberty must be brought before a court at the latest. However, based on documents presented before the Constitutional Court, it is not possible to conclude that the appellant's deprivation of liberty was necessary in order to secure his bringing before a court, i.e. that this purpose could not be achieved by any other measure. Namely, the PA lodged the request for the institution of a minor offense procedure against the appellant with the Municipal Court in Široki Brijeg on 3 March 2016, and the appellant's deprivation of liberty took place on 19 February 2016. Also, as already indicated in this decision, despite the fact that the 12-hour period was not exceeded, based on documents presented to the Constitutional Court, it is not possible to conclude, despite the existence of grounds for suspicion, which of the special conditions prescribed by Article 17 of the Law on Minor Offenses went into effect, or that the appellant was made aware of them.

44. In view of the aforementioned, the Constitutional Court holds that, in the circumstances of the present case, the procedure prescribed by law was not complied with due to the omission on the part of police organs to establish, and to inform the appellant, at the time of the deprivation of liberty, of the existence of any of the special conditions prescribed by Article 17 of the Law on Minor Offenses, in addition to the existence of the grounds for suspicion that he had committed the specific minor offense, which conditions must be met cumulatively, and that the appellant's deprivation of liberty was a necessary measure in order to achieve the purpose of the deprivation of liberty as established under the cited legal provision, i.e. the appearance before a court.
45. The Constitutional Court concludes that there has been a violation of the appellant's right under Article II(3)(d) of the Constitution of Bosnia and Herzegovina and Article 5(1) of the European Convention.

Other allegations

46. The appellant claims that on 18 September 2015 too he was deprived of liberty, taken away in the PA official vehicle, detained for some time at the PA and released without questioning and any sort of records. In the reply to this part of the appellant's allegations the PA indicated that upon the inspection of the available records of the PA it was established that there was no activity on 18 September 2015 concerning the appellant. Accordingly, and bearing in mind that both the appellant and the PA submitted identical official records on dealing with the appellant from 2011 and 2013, the Constitutional Court, given the lack of any evidence whatsoever suggesting a different conclusion, could not accept as well-founded the appellant's allegations in this part.

VIII. Conclusion

- 47.** The Constitutional Court concludes that there has been a violation of the right under Article II(3)(d) of the Constitution of Bosnia and Herzegovina and Article 5(1) of the European Convention as the deprivation of liberty in the circumstances of the present case was not “lawful”, since it was not undertaken in compliance with the substantive and procedural rules of the national law.
- 48.** Pursuant to Article 18(2), Article 59(1) and (2) of the Rules of the Constitutional Court, the Constitutional Court decided as set out in the enacting clause of the present decision.
- 49.** According to Article VI(5) of the Constitution of Bosnia and Herzegovina, the decisions of the Constitutional Court shall be final and binding.

Mirsad Ćeman
President
Constitutional Court of Bosnia and Herzegovina