

The Constitutional Court of Bosnia and Herzegovina, sitting, in accordance with Article VI(3)(c) of the Constitution of Bosnia and Herzegovina, Article 57(2)(b) and Article 59(1) and (3) of the Rules of the Constitutional Court of Bosnia and Herzegovina – Revised text (*Official Gazette of Bosnia and Herzegovina*, 94/14), in Plenary and composed of the following judges:

Mr. Zlatko M. Knežević, President

Mr. Mato Tadić, Vice-President

Mr. Mirsad Ćeman, Vice-President

Ms. Margarita Tsatsa-Nikolovska, Vice-President

Mr. Tudor Pantiru,

Ms. Valerija Galić,

Mr. Miodrag Simović,

Ms. Seada Palavrić,

Mr. Giovanni Grasso

Having deliberated on the request filed by the **County Court in Banja Luka (Judge Milan Blagojević)**, in the Case no. **U 23/18**, at its session held on 5 July 2019, adopted the following

DECISION ON ADMISSIBILITY AND MERITS

The request filed by the **County Court in Banja Luka (Judge Milan Blagojević)** for review of the compatibility of Article 433 (1) of the Civil Procedure Code (*Official Gazette of the Republika Srpska*, 58/03, 85/03, 74/05, 63/07, 105/08 - Decision of the Constitutional Court of the Republika Srpska, 45/09 - Decision of the Constitutional Court of the Republika Srpska, 49/09 and 61/13) with Article II(2) of the Constitution of Bosnia and Herzegovina and Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms in conjunction with 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 for the Protection of Human Rights and Fundamental Freedoms is hereby dismissed.

It is hereby established that Article 433 (1) of the Civil Procedure Code (*Official Gazette of the Republika Srpska*, 58/03, 85/03, 74/05, 63/07, 105/08 - Decision of the Constitutional Court of the Republika Srpska, 45/09 - Decision of the Constitutional Court of the Republika Srpska, 49/09 and 61/13) is compatible with Article II(2) of the Constitution of Bosnia and Herzegovina and Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms in conjunction with 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 for the Protection of Human Rights and Fundamental Freedoms.

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 18 December 2018, the County Court in Banja Luka (Judge Milan Blagojević; “the applicant”) filed a request with the Constitutional Court of Bosnia and Herzegovina (“the Constitutional Court”) for review of the compatibility of Article 433 (1) of the Civil Procedure Code (*Official Gazette of the Republika Srpska*, 58/03, 85/03, 74/05, 63/07, 105/08 - Decision of the Constitutional Court of the Republika Srpska, 45/09 - Decision of the Constitutional Court of the Republika Srpska, 49/09 and 61/13; “the CPC”) with Article II (2) of the Constitution of Bosnia and Herzegovina and Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (“the European Convention”). The applicant supplemented the request on the same date.

II. Procedure before the Constitutional Court

2. Pursuant to Article 23 (2) of the Rules of the Constitutional Court, the National Assembly of the Republika Srpska (“the National Assembly”) was requested on 24 January 2019 to submit its response to the request.
3. The National Assembly submitted the response on 28 February 2019.

III. Request

a) Allegations stated in the request

4. The applicant holds that the legislator, by way of the provision of Article 433(1) of the CPC, provided for two bans - one relating to the parties to civil proceedings (to contest in the disputes involving small value claims a judgment over erroneously established facts), and the other relating to the appellate court in the same proceedings (to review the judgment on that ground). Although the ban is not explicitly stated, it follows from the wording “only due to”, which exclude the right to contest the judgement over erroneously established facts. The applicant states that the ban is in contravention of Article II (2) of the Constitution of Bosnia and Herzegovina and Article 13 of the

European Convention. The applicant points out that Article II (2) of the Constitution of Bosnia and Herzegovina “elevated to the constitutional level” all rights under the European Convention, including the right to an effective remedy under Article 13 of the European Convention, the content of which is cited in the English language as well as in the local language. The mentioned provisions include an emphasis on “effectiveness” of domestic legal remedies. According to the applicant, an emphasis is also on the right to such an “effective” remedy for “everyone”, meaning that everyone must have the right to that legal remedy irrespective of whether the value of a dispute is lower or higher than BAM 5,000, given that the right to an effective remedy is in no way limited in the cited provision (by prescribing that an effective remedy may be lodged only by those entities that are in dispute with regard to claims the value of which exceeds the amount of BAM 5,000, whereas those whose claims are of the value lower than BAM 5,000 are not entitled to that remedy). Furthermore, the applicant states that it follows from the cited provision of the European Convention “that the right to an effective remedy always has to be brought into connection with whether the legal remedy points to a violation of rights or freedoms set forth in the European Convention. In support of the aforementioned, the applicant refers to the case of *Klass v. Germany*. In applying the aforementioned position of the European Court of Human Rights to the present case, as stated by the applicant, it is evident that the defendant denies that he did what the plaintiff charged him with in the lawsuit and states that, in the event that he was obligated by a final and binding decision to pay the plaintiff the amount claimed, his right to property would be violated. The applicant underlines that the impugned provision prohibits the defendant to contest the first instance judgment with regard to decisive facts and the court to examine the lawfulness and correctness of the first instance judgment to that end. Accordingly, the legal provision (prohibition) as such leads not only to a violation of the defendant’s right to an effective remedy, but also to a violation of the right to property eventually. In view of the above, in the applicant’s opinion, the impugned provision is not in conformity with Article II (2) of the Constitution of Bosnia and Herzegovina and Article 13 of the European Convention.

5. In a supplement to the request, the applicant indicates that the right to an effective remedy cannot be denied by referring to the principle of efficiency of court proceedings and provides the reasons for the aforesaid. In the applicant’s opinion, references to the efficiency of court proceedings “as the ‘reason’ for not applying the right referred to in the Convention to an effective remedy in civil proceedings relating to lower value civil disputes, would be a disproportionate burden that cannot be justified either legally or morally. Instead, it would lead to a direct violation of the right to property safeguarded under the European Convention”.

b) Facts of the case

6. The applicant indicates that the case in respect of which the request for review is lodged relates to a lawsuit initiated by ZP “Elektrokrajina” a.d. Banja Luka (“the plaintiff”) against Z.I. (“the defendant”), whereby the plaintiff requested the defendant to pay the amount of BAM 1,921.85 with the statutory default interest for an unlawful consumption of electricity. The evidence presented before the first instance court by the plaintiff in support of the allegations on the unlawful consumption of electricity by the defendant are as follows: a copy of the plaintiff’s minutes with the specified number and date; a copy of the plaintiff’s order to suspend the supply of electricity, including the specified number and date; and a copy of the calculations of unauthorised consumption of electricity, including the amount specified. The applicant states that when the content of the minutes on the control of the metering point is carefully analysed, it is clear that, at the defendant’s metering point, the plaintiff’s employees only noted the following: “Acting in accordance with the order to suspend the supply of electricity [...] we found that the metering point was out of order (out of operation) so that two connectors, nodes n-n L1/L2, were disconnected and pulled backwards, so that the consumption of electricity was not measured (registered) by the electric meter.” The mentioned order to suspend the supply of electricity literally read: “the connectors were disconnected and pulled back without authorisation”. The applicant further points out that, based on the above said substantive evidence, it was not established that the disconnection had been a result of human activities, while the defendant was asserting throughout the proceedings that he did not use electricity unlawfully and that the plaintiff’s employee measured the consumption on a monthly basis and did not mention a defect and, consequently, it was obvious that the defect was on the electricity meter. The applicant states that in order to give a reliable and correct answer to the question as to how the disconnection occurred, and also for the proper and complete determination of this legally relevant fact, certain expert evaluation should be carried out by an expert in the field of electrical engineering, which evidence should be produced by the plaintiff. Given the state of facts, an ungrounded, irrational and legally excessive burden would be placed on the defendant if he had to propose and present evidence through expert evaluation to prove whether it was a technical defect or human activity. In the applicant’s opinion, for the aforementioned reasons, deciding on the appeal against the first instance judgment obligating the defendant to pay the awarded amount of money on the ground of unauthorized consumption of electricity, the appellate court is prevented from making a correct decision because the facts have remained incorrectly established, so that (for the time being) the first instance judgment can be neither upheld, nor modified upon the appeal. In addition, the applicant states that, given this state

of affairs, the upholding of the first instance judgment could result in a violation of the defendant's right to property. Likewise, if there is a revision of the judgment and a rejection of the statement of claim, there could be a violation of the plaintiff's right to property (although the plaintiff is entitled to the amount claimed against the defendant, which can be determined only by conducting an appropriate expert evaluation).

c) Reply to the request

7. In its reply to the request, the National Assembly stated that the Constitutional Court had already passed its decision in the case no. U-1/18 of 15 February 2018 in respect of the same Article and with regard to the request filed by the (same) applicant. Accordingly, it proposed that the request be declared inadmissible pursuant to Article 19 (d) of the Rules of the Constitutional Court. Nevertheless, in the event that the request were to be decided on the merits, the National Assembly stated that, as to an alleged breach of Article 13 in conjunction with Article 1 of Protocol No. 1 to the European Convention, the Constitutional Court had already decided on that issue in its Decision no. U-1/18 (paragraphs 36-40 and 44). In addition, there is no violation of Article II (2) of the Constitution of Bosnia and Herzegovina, and the National Assembly again referred to the Decision of the Constitutional Court no. U-1/18. Furthermore, the National Assembly referred to a decision of the European Court of Human Rights and the position taken in the case of *Powell and Rayner v. The United Kingdom*, as well as the fact that Article 13 can be referred to by "everyone who claims that his/her rights and freedoms as set forth in the Convention have been violated", and not by the judge assigned to the case. The National Assembly finds an interpretation of the text of the Convention in English to be "inappropriate". The National Assembly refers to the Ruling of the Constitutional Court of the Republika Srpska no. U-65/17 of 23 May 2018, establishing that the mentioned legal provision is in accordance with the Constitution of the Republika Srpska and the European Convention.

IV. Relevant Law

8. The **Constitution of Bosnia and Herzegovina**, as relevant, reads:

Article II

Human Rights and Fundamental Freedoms

2. International Standards

The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law.

9. The **Civil Procedure Code of the Republika Srpska** (*Official Gazette of the Republika Srpska*, 58/03, 85/03, 74/05, 63/07, 105/08 - Decision of RS CC, 45/09 - Decision of RS CC, 49/09 and 61/13; for the purpose of this decision the text of the regulation, as published in the official gazettes, shall used, as it has not been published in all official languages and alphabets), as relevant, reads:

Article 433

The judgment or the decision concluding the small claims proceedings may be contested only due to the procedural errors and to the misapplication of substantive law.

V. Admissibility

10. In examining the admissibility of the request, the Constitutional Court invokes the provisions of Article VI (3) (c) of the Constitution of Bosnia and Herzegovina.

11. Article VI (3) (c) of the Constitution of Bosnia and Herzegovina reads:

(c) The Constitutional Court shall have jurisdiction over issues referred by any court in Bosnia and Herzegovina concerning whether a law, on whose validity its decision depends, is compatible with this Constitution, with the European Convention for Human Rights and Fundamental Freedoms and its Protocols, or with the laws of Bosnia and Herzegovina; or concerning the existence of or the scope of a general rule of public international law pertinent to the court's decision.

12. The request for review of the constitutionality was submitted by the County Court of Banja Luka (Judge Milan Blagojević), meaning that the request was filed by an authorised person pursuant to Article VI (3) (c) of the Constitution of Bosnia and Herzegovina (see, Constitutional Court, Decision on the Admissibility and Merits no. *U 5/10* of 26 November 2010, paragraphs 7 through 14, published in the *Official Gazette of Bosnia and Herzegovina* no. 37/11). Bearing in mind the provisions of Article VI (3) (c) of the Constitution of Bosnia and Herzegovina and Article 19 (1) of the Constitutional Court's Rules, the Constitutional Court establishes that the present request is admissible, as it has been submitted by an authorised person and because there is no single reason under Article 19(1) of the Constitutional Court's Rules rendering this request inadmissible.

VI. Merits

13. In the present case the applicant holds that the provision of Article 433 (1) of the CPC is not in accordance with Article II (2) of the Constitution of Bosnia and Herzegovina and Article 13 of the European Convention. Taking into account the allegations stated in the request, the Constitutional Court concludes that the applicant connects Article 13 of the European Convention with the right to property, thus the Constitutional Court will examine these allegations to that end.

14. The Constitutional Court first observes that it had already decided about the impugned provision of Article 433 (1) of the CPC, *i.e.* about its compatibility with the Constitution of Bosnia and Herzegovina and the European Convention, in the case no. U-1/18 of 15 February 2018. In the said case the Constitutional Court passed the decision dismissing the request filed by the County Court in Banja Luka (Judge Milan Blagojević) for review of the compatibility of, *inter alia*, Article 433 (1) of the CPC with Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 (1) of the European Convention. In the mentioned decision, the Constitutional Court concluded that Article 433 (1) of the CPC was compatible with Article II (3) (e) of the Constitution of Bosnia and Herzegovina and Article 6 (1) of the European Convention. In the reasoning of its decision, the Constitutional Court stated that, as to the provision of Article 433 (1) of the CPC, the applicant raised the issue in respect of the scope *i.e.* the boundaries of the right to file an appeal, as the applicant considered that there was a violation of the litigants' right to a fair trial within the segment of the right of access to a court, due to the lack of possibility to lodge an appeal over the erroneously and incompletely established facts of the case. In this regard, the Constitutional Court indicated that Article 6 of the European Convention did not compel contracting states to set up courts of higher instances and the right to appeal. Nevertheless, a State which does institute courts of appeals and the right to appeal is required to ensure that persons amenable to the law shall enjoy before these courts the fundamental guarantees contained in Article 6 (1) of the European Convention (an independent and impartial tribunal, "equality of arms", trial within a reasonable time, etc.). However, this in no way means that the guarantees of the right to a fair trial relate to the scope *i.e.* the boundaries of the right to file an appeal. In fact, the aforementioned is actually at the discretion of each State, and a failure to regulate the right to file an appeal in no way does mean that it is in violation of the right of access to a court or any other fundamental guarantee of the right to a fair trial. Therefore, the Constitutional Court concluded that the limitation imposed by the provision of Article 433 (1) of the CPC is neither unreasonable nor excessive, as it is essentially consistent with the efficiency of civil proceedings as well as with the legal nature of disputes and, therefore, it does not impair the very essence of the right of access to a court and does not impose an excessive burden on the parties to civil proceedings. In addition, as to the right to file an appeal in small

claims disputes, the Constitutional Court indicated that the legislator determines what disputes include small claim disputes (Article 429 of the CPC), and points to an active role of the parties to civil proceedings before a first instance court, where the parties enjoy all the guarantees of the right to a fair trial without limitations. In view of the above, the Constitutional Court has held that the legislator by the impugned provisions, in no way denies the fundamental procedural guarantees of parties to civil proceedings under Article 6 (1) of the European Convention, which also must be adhered to by courts of appeal, and that those limitations established by the impugned provision have a reasonable justification that is not contrary to the right of access to a court, as the applicant contested.

15. In addition, in the reasoning of the aforementioned Decision no. U-1/18, the Constitutional Court has found that the applicant's allegations are ill-founded with regard to the right not to be discriminated against under Article II(4) of the Constitution of Bosnia and Herzegovina and Article 14 of the European Convention (these allegations, although not explicitly stated, were connected with the right to a fair trial), *i.e.* that the provision of Article 433 of the CPC is compatible with the right not to be discriminated against, as the applicant failed to offer any arguments that would lead to a clear conclusion that the impugned provisions (*inter alia*, the provision of Article 433 of the CPC) discriminated against that the parties to civil proceedings in any way whatsoever. Moreover, the Constitutional Court has concluded that the impugned provision of Article 433 (1) of the CPC in no way raises an issue under Article II(3)(h) of the Constitution of Bosnia and Herzegovina and Article 10 of the European Convention.

16. In the present case, the applicant contests the same provision (as in the case no. U-1/18), but he presently alleges that the provision of Article 433 (1) of the CPC is in contravention of Article II(2) of the Constitution of Bosnia and Herzegovina and Article 13 of the European Convention in conjunction with the right to property.

17. The Constitutional Court first points out that Article 31 of the Rules of the Constitutional Court regulates the scope of decision-making by the Constitutional Court. As a rule, the Constitutional Court decides only on the allegations (reasons, arguments, facts etc.) and on the violations that are stated in the request/appeal. Nevertheless, the Constitutional Court recalls that it is "bound", under the aforementioned Article of the Rules of the Constitutional Court, by the allegations contained in the request and the appeal, concerning the contents thereof, *i.e.* regarding the facts referred to in the request/appeal. Thus, it may happen that despite the appellant's or the applicant's clear allegation of a violation of a particular right, the Constitutional Court, based on the

presented facts, “subsumes” that right, which the appellant or applicant deems to be violated, under some other right not referred to in the request/appeal, in accordance with the rule of *iura novit curia* (the court knows the law). The Constitutional Court recalls that the mentioned rule applies to all cases, meaning that, when it receives a case, the Constitutional Court examines the facts in relation to all rights that could potentially be raised in the presented factual allegations, even where they are not explicitly stated, that is regardless of the classification of the rights made by the appellant or applicant (see, Decision of the Constitutional Court no. *U-16/11* of 13 July 2012). Therefore, in each individual request and appeal, the Constitutional Court considers all the possibilities arising from the facts by which it is strictly bound, and considers the request *i.e.* appeal from all possible aspects that might arise from it, although it does not explicitly state so in its decisions, solely for the purpose of expediency. The Constitutional Court recalls that it is not entitled to initiate the proceedings *ex officio*, but it may subsume the facts of the request or appeal under any other right.

18. Putting the aforementioned within the context of the present case, the Constitutional Court observes that the applicant challenges the identical provision as the one in the case no. U-1/18 and the allegations contained in the request in question are identical to the ones contained in the previous request (impossibility to file an appeal against a first instance judgment in small claims disputes on the ground of erroneously and incompletely established facts), but (in the present case) the applicant alleges a violation in respect of Article II (2) of the Constitution of Bosnia and Herzegovina and the right to an effective remedy under Article 13 of the European Convention in conjunction with 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.

19. The Constitutional Court recalls that the provision of Article II (2) of the Constitution of Bosnia and Herzegovina guarantees that the rights and freedoms set forth in the European Convention and its Protocols shall apply directly in Bosnia and Herzegovina and shall have priority over all other law. This means, *inter alia*, that the laws applicable in Bosnia and Herzegovina must have minimum guarantees provided by the European Convention, *i.e.* that the laws must be in accordance with the European Convention. In addition, the Constitutional Court recalls that the right to an effective remedy under Article 13 of the European Convention is not an independent but accessory right and may be referred to by anyone claiming a violation of his/her rights and freedoms under the European Convention. The Constitutional Court observes that the applicant connected the alleged violation of Article 13 of the European Convention with the right to property. The Constitutional Court recalls that the right to an effective remedy under Article 13 of the

European Convention is a procedural right and therefore is included in the substantive provisions of the European Convention. Furthermore, the Constitutional Court notes that the European Court of Human Rights, in its Judgment *Sürmeli v. Germany* (see, Judgment no. 75529/01, paragraphs 97-101, ECHR 2006-VII), established the subject-matter, meaning and scope of Article 13 of the European Convention and stated that Article 13 of the European Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an “arguable complaint” under the European Convention and to grant appropriate relief. The effectiveness of a remedy within the meaning of Article 13 of the European Convention does not depend on the certainty of a favourable outcome for the applicant. Likewise, even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so. It is therefore necessary to determine in each case whether the means available to litigants in domestic law are “effective” in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that has already occurred. Besides, the Constitutional Court points to the case-law of the European Court of Human Rights (see, Judgment *Ganci v. Italy*, Application no. 41576/98), where it is stated that the requirements under Article 13 of the European Convention are less strict than those under Article 6 of the European Convention and the following: “The Court reiterates that where a question of access to a tribunal arises, the requirements under Article 13 are absorbed by those of Article 6.”

20. The Constitutional Court recalls that in the cited Decision no. U-1/18 it established the following: “As already stated, according to the case-law of the European Court of Human Rights, a State is not required to ensure the right to file an appeal in its legal system. However, in the event that the State sets up courts of appeal and foresees the right to file an appeal, the aforementioned implies that the parties to civil proceedings before courts enjoy fundamental procedural guarantees afforded by Article 6 (1) of the European Convention (independent and impartial tribunal, “equality of arms”, trial within a reasonable time, *etc.*). However, the aforementioned does not mean that the guarantees of the right to a fair trial relate to the scope *i.e.* the boundaries of the right to file an appeal. In the opinion of the Constitutional Court, the aforementioned is actually at the discretion of each State, and a failure to regulate the right to file an appeal in no way does mean that it is in violation of the right of access to a court or any other fundamental guarantee of the right to a fair trial. Therefore, in the event that a State sets up courts of appeal, the State enjoys a certain margin

of appreciation to regulate this sphere according to the requirements and needs of its legal system and to determine the scope *i.e.* the boundaries of the right to file an appeal.”

21. Bringing the aforementioned (the discretionary right of each State to regulate its legal system and to determine the scope and boundaries of the right to file an appeal) into connection with the allegations contained in the relevant request - that the provision of Article 433 (1) of the CPC is in contravention of Article 13 of the European Convention in connection with the right to property, the Constitutional Court cannot arrive at the conclusion that the applicant has been trying to impose. The fact is that the right to file an appeal in small claims disputes is limited so that neither the parties can contest nor can the court review a first instance judgment over erroneously or incompletely established facts of the case. However, it does not lead to a conclusion that the provision of Article 433 of the CPC is inconsistent with Article 13 of the European Convention, in connection with the right to property. The provision of Article 433 (1) of the CPC does in no way tackle the issue of the property of the parties to the proceedings. Namely, any dispute in which a certain amount of money is claimed will result in an increase in property of one party, *i.e.* in a loss of property for the other party, depending on the outcome of the proceedings. In addition, the fact that the parties are not entitled to file an appeal over erroneously or incompletely established facts of the case, or that a second instance court cannot review a first instance judgment for erroneously or incompletely established facts of the case neither calls into question nor has an effect on the right to property. Namely, as stated in the Constitutional Court’s Decision no. U-1/18, “...in small claims disputes, the parties to civil proceedings are obligated fully to discuss the facts of the case by proposing all evidence based on which they prove the well-foundedness of their allegations, as well as to challenge another party’s allegations as opposed to theirs.”

22. Therefore, it is actually a failure of one of the parties to the proceedings during the first instance proceeding or of the first instance court that the facts, as considered by the applicant, were erroneously or incompletely established in the case that was the basis for filing the request and that they cannot be reviewed because of the limitations imposed by the provision of Article 433 (1) of the CPC. However, the provision of Article 433 of the CPC, in itself, does in no way call into question the right to an effective remedy under Article 13 of the European Convention in conjunction with the right to property. In view of the above, the Constitutional Court finds that the will and discretionary right of the legislator expressed in the provision of Article 433 (1) of the CPC that, after the first instance proceedings and without limitations on procedural guarantees afforded to the litigants before the first instance court, it determines the boundaries and scope of the

examination of an appeal (before the second instance court), in no way denies the right of the parties to the proceedings to an effective remedy in connection with the right to property. Therefore, taking into account the views expressed in Decision no. U-1/18, the Constitutional Court finds that the allegations contained in the relevant request could in no way cast doubts on those views, on the contrary, the views presented in Decision no. U-1/18 may apply to the case at hand as a basis for concluding that the right of a State to regulate its legal system and to impose limitations on the right to file an appeal is not in contravention of the right under Article II (2) of the Constitution of Bosnia and Herzegovina and Article 13 of the European Convention, in conjunction with 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.

23. In view of the above, the Constitutional Court concludes that the impugned provision of Article 433 (1) of the CPC is consistent with Article II (2) of the Constitution of Bosnia and Herzegovina and Article 13 of the European Convention, in conjunction with 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.

VII. Conclusion

24. The Constitutional Court concludes that the provision of Article 433 (1) of the CPC is consistent with Article II (2) of the Constitution of Bosnia and Herzegovina and Article 13 of the European Convention in conjunction with the right to property, since the impugned provision clearly regulates civil proceedings upon an appeal in small claims disputes and falls within the scope of discretionary right of a State to regulate its legal system and to impose limitations on the right to file an appeal, while the fact that the party who is dissatisfied with the decision of the first instance court can no longer challenge that decision on the ground of erroneously or incompletely established facts of the case does in no way call into question the guarantees provided in Article 13 of the European Convention in connection with the right to property.

25. Having regard to Article 59 (1) and (3) of the Rules of the Constitutional Court, the Constitutional Court decided as stated in the enacting clause of the present Decision.

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

President
of the Constitutional Court of Bosnia and Herzegovina

Zlatko M. Knežević

/signed/