

The Constitutional Court of Bosnia and Herzegovina, sitting, in accordance with Article VI(3)(b) of the Constitution of Bosnia and Herzegovina, Article 57(2)(b) and Article 59(1) and (2) and Article 74 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. Mato Tadić, President

Mr. Tudor Pantiru, Vice-President

Mr. Miodrag Simović, Vice-President

Mr. Mirsad Ćeman,

Ms. Valerija Galić,

Ms. Seada Palavrić,

Mr. Zlatko M. Knežević,

Ms. Angelika Nußberger, and

Ms. Helen Keller

Having deliberated on the appeal of **I.L.**, in case **AP-4474/20**, at the session held on 23 September 2021, adopted the following

DECISION ON ADMISSIBILITY AND MERITS

The appeals filed by **I. L.** are granted.

The 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 for the Protection of Human Rights and Fundamental Freedoms is established in relation to rendering a decision within a reasonable time in civil proceedings conducted before the Court of Bosnia and Herzegovina in the cases no. S1 3 P 023512 20 P 2 and no. S1 3 P 020222 15 P.

Pursuant to Article 74 of the Rules of the Constitutional Court of Bosnia and Herzegovina, **the Council of Ministers of Bosnia and Herzegovina** is ordered to pay **I.L.** the amount of BAM 600.00 as a compensation for non-pecuniary damage for failure to reach a decision within a reasonable time. The payment is to be made within three months from the delivery of this decision, with the obligation to pay legal default interest on any unpaid amount or part of the amount of compensation determined by this decision after the expiration of this period.

Pursuant to Article 62 (7) of the Rules of the Constitutional Court, **the President of the Court of Bosnia and Herzegovina** is ordered, in accordance with this Decision, to immediately take appropriate measures to terminate the civil proceedings in the cases no. S1 3 P 023512 20 P 2 and S1 3 P 020222 15 P in accordance with Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Pursuant to Article 72(5) of the Rules of the Constitutional Court of Bosnia and Herzegovina, **the President of the Court of Bosnia and Herzegovina** is ordered to notify the Constitutional Court of Bosnia and Herzegovina of the measures taken to enforce this decision within three months.

REASONS

I. Introduction

1. On 11 December 2020, I.L. ("the appellant") from Sarajevo filed an appeal with the Constitutional Court of Bosnia and Herzegovina ("the Constitutional Court") due to the length of the civil proceedings in the case of the Court of Bosnia and Herzegovina ("the Court BiH ") no. S1 3 P 023512 20 P 2. The appeal was registered under the number AP-4474/20.
2. On 11 December 2020, the appellant filed an appeal with the Constitutional Court due to the length of the civil proceedings in the case of the Court of BiH no. S1 3 P 020222 15 P. The appeal was registered under the number AP-4475/20.

II. Proceedings before the Constitutional Court

3. Considering that the same appellant filed the said appeals, and that the appeals relate to the same issue, the Constitutional Court, in accordance with Article 32 paragraph (1) of the Rules of the Constitutional Court, decided to join the cases no. AP-4474/20 and no. AP-4475/20 in which they will conduct one procedure and adopt one decision registered as the case no. AP-4474/20.
4. Pursuant to Article 23 of the Rules of the Constitutional Court, on 5 February 2021 the Court of BiH was requested to submit its response to the appeals.
5. On 18 February 2021, the Court of BiH submitted its response to the appeals in question.
6. On 20 April 2021 and 24 August 2021, the Constitutional Court obtained information from the Court of BiH on the status of the cases.

III. Facts of the case

7. The facts of the case, as they appear from the appellant's assertions and the documents submitted to the Constitutional Court, can be summarized as follows:

The facts of the case no. AP-4474/20

8. On 1 November 2016, the appellant filed a lawsuit with the Court of BiH against the first defendant ("the Council of Ministers of BiH"), the second defendant ("the Return Fund of BiH), the third defendant ("N.Š", Acting Director of the second defendant) and the fourth defendant ("Z.K", Head of the Legal Department of the second defendant) for establishing a discrimination and mobbing, and for non-pecuniary damages compensation.

9. The Court of BiH scheduled the preparatory hearing for 29 March 2017. It then postponed the hearing at the proposal of the representatives of the first defendant and the second defendant ("the Office of the Attorney General of BiH") because the Attorney General "already has three scheduled hearings before the Court of BiH" on the mentioned date.

10. The Court of BiH, acting upon the request of the appellant for disqualification of the acting judge, granted the request in question by a decision of 5 April 2017 as well-founded.

11. At the preparatory hearing held on 31 May 2017, the appellant withdrew the lawsuit in relation to the first defendant and the fourth defendant, so the Court of BiH ruled that the lawsuit in question was considered withdrawn in relation to the aforementioned defendants.

12. During the proceedings, the appellant repeatedly amended her claim (by submissions of 27 June 2017, 25 January 2018, 6 November 2018 and 23 January 2020).

13. In the period from 12 July 2017 to 31 January 2020, the Court of BiH scheduled 16 hearings (12 July 2017, 16 October 2017, 5 December 2017, 13 March 2018, April 17, 2018, 12 June 2018, 10 October 2018, 11 December 2018, 6 March 2019, 13 May 2019, 20 June 2019, 26 September 26 2019, 15 October 2019, 18 November 2019, 23 January 2020 and 31 January 2020). Out of the scheduled hearings, the Court of BiH held seven hearings, while it postponed nine hearings. It postponed three hearings at the suggestion of the Office of the Attorney General of BiH. Two hearings were postponed due to the inability of the Office of the Attorney General of BiH to ensure the presence of the Attorney General and one hearing was postponed because "the second defendant (N.Š.) has informed the Office of the Attorney General that he is unable to attend the scheduled hearing due to illness. The appellant's attorney and the Attorney General agreed by phone to move the hearing to a new date. Additionally, two hearings were postponed at the suggestion of the

second defendant (due to illness or health reasons). Further, two hearings were postponed at the appellant's attorney's suggestion (once because D.A. did not have a proper power of attorney, and the second time because the appellant's attorney D.A. revoked the appellant's power of attorney, so A.D. as a new attorney requested a postponement to get acquainted with the case file). One hearing was postponed as the appellant, who was duly informed, did not attend and one hearing was postponed due to the absence of the judge (because he attended the seminar).

14. In judgment no. S1 3 P 023512 16 P of 11 February 2020 (which was corrected by the decision on correction of the present judgment of 5 May 2020, where in the introduction to the judgment, instead of the date "11 February 2020", date "11 March 2020" was inserted), the Court of BiH partially upheld the appellant's claim. It found that (now) the first defendant (the Return Fund) and the second defendant (N.Š.) had mobbed, discriminated against and treated the appellant unequally in period from August 2015 to December 2017 by continuously undertaking acts of non-physical harassment at the workplace (in a manner specified in the operative part of the judgment). The Court of BiH obliged the first defendant to pay the appellant the amount of BAM 6,570.00 as compensation for non-pecuniary damage, with legal default interest. The remaining part of the claim was dismissed as unfounded (for the court to find that the defendants in the relevant period mobbed and discriminated against the appellant due to allegations that the second defendant made it difficult for the appellant to perform the duties of technical secretary in August 2015 by drafting the Rulebook on Internal Organization of the first defendant and by submitting it for adoption to the Council of Ministers of BiH. The court was also requested to establish that this draft changed the job description of only that job, so that the job of technical secretary is expanded by adding to that job description the tasks from the job description of drivers and administrative workers. The request was also to determine that unauthorized employees were allowed to perform work tasks stated in the job description of the appellant, and there was also a request of the appellant that the first defendant and the second defendant jointly pay her non-pecuniary damage, i.e. the amount of damages above the awarded amount. It is determined that each party bears its own costs of the proceedings. In the reasoning of the present judgment, the Court of BiH stated, *inter alia*, that during the evidentiary proceedings at the main hearing, the appellant presented 254 pieces of material evidence, while the first defendant and the second defendant presented 14 pieces of material evidence. Furthermore, there was a request to determine that seven witnesses were interrogated in the present proceedings, and that the appellant and the second defendant were interrogated as litigants, as well as that evidence was presented by way of reading the findings and opinion of a neuropsychiatric expert.

15. In deciding on the appeals of the appellant and the first defendant filed against the judgment of the Court of BiH of 11 March 2020, the Court of BiH, by its decision no. S1 3 P 023512 20 Gž of 24 August 2020, upheld the appeals, quashed the first instance judgment and remitted the case to the first instance court for retrial. In the reasons for the decision, the Court of BiH stated, *inter alia*, that the appeals indicate that the first instance court did not assess all the evidence individually and in their mutual relation in accordance with Article 13 of the Civil Procedure Code before the Court of BiH. The Court of BiH also stated that the first instance court, in the reasons for the judgment, failed to give an analysis of the presented evidence the challenged judgment is based on. The Court of BiH stated that, in the retrial, the first instance court would remove the violations of the provisions of the civil procedure indicated in the decision in question by presenting the adopted evidence at the main hearing. Furthermore, the Court also stated that in accordance with the provisions of Article 195 of the CPC, it would deal with all disputed issues in respect of which the second instance panel gave warning in its decision. The warning is to pay special attention to the evidence presented, taking into account the evidence of the defendants on which the burden of proof lies, and bring that evidence in connection with the evidence presented by the appellant, perform a mutual analysis and only then decide on the claim.

16. In the course of the renewed proceedings, the Court of BiH held a main hearing on 21 December 2020. In the minutes from the hearing, the Court of BiH stated that the second defendant did not attend the hearing in question, but that he submitted a written submission to the Court of BiH stating that "due to isolation because of Covid 19" he was not able to attend the hearing. The Court of BiH further stated that, since the appellant objected to the hearing without the presence of the second defendant, and that in the retrial she wished to re-present evidence, not only material evidence, but also to re-interrogate already heard witnesses, the Court BiH has scheduled a hearing for the continuation of the main trial for 4 February 2021.

17. On 2 February 2021, the appellant informed the Court of BiH by telephone, and then by written submission on 8 February 2021, that due to health problems she was unable to attend the trial until her health improves and medical treatment finishes. The appellant submitted a medical certificate from the Atrium Polyclinic issued on 4 February 2021. She stated that the certificate was issued "for the purpose of justifying her absence from the court hearing."

18. The Court of BiH held hearings in the present proceedings on 2 June 2021 and 28 July 2021.

19. The Court of BiH has scheduled the next hearing for 1 September 2021.

20. According to the state of the appellate case file, the proceedings before the first instance court is pending.

The facts of the case AP-4475/20

21. On 30 November 2015, the appellant filed a lawsuit with the Court of BiH against the first defendant (“the Return Fund of BiH”), the second defendant (M.B.) and the third defendant (Z.K.) for compensation for non-pecuniary damages due to discrimination and mobbing.

22. The Court of BiH scheduled the preparatory hearing for 8 February 2016, and postponed that hearing at the request of the appellant (because it was scheduled only one day before the hearing in another case). The Court of BiH scheduled the next hearing for 30 March 2016 (at that hearing the Court of BiH adopted the proposal of the parties to postpone that hearing).

23. Furthermore, in the period from 18 July 2016 to 22 December 2020, the Court of BiH scheduled 27 hearings (18 July 2016, 15 September 2016, 18 October 2016, 18 January 2017, 23 February, 2017, 16 March 2017, 25 May 2017, 3 July 2017, 11 October 2017, 18 December 2017, 19 February 2018, 16 April 2018, 4 June 2018, 26 September 2018, 5 December 2018, 20 February 2019, 22 April 2019, 13 June 2019, 25 September 2019, 16 October 2019, 3 December 2019, 28 January 2020, 24 February 2020, 14 April 2020, 15 July 2020, 30 September 2020 and 3 November 2020). As regards the scheduled hearings, the Court of BiH held 13 hearings, while it postponed 14 hearings: five at the proposal of the appellant, i.e. her representative (the hearing was postponed once because the appellant filed a submission in the case file before the opening of the hearing, so the defendants were given a reasonable deadline to get acquainted with the case file; the hearing was postponed two times due to the inability of the appellant's representative to attend the scheduled hearing; once it was postponed because the appellant's representative revoked her power of attorney and once because the appellant's attorney submitted a request for disqualification of the judge); the hearing was postponed three times due to the inability of the BiH Attorney General's Office to provide the public attorney's presence due to the epidemiological situation; the hearing was postponed two times at the suggestion of the second defendant (due to the inability of his representative to attend the hearing), two times at the suggestion of the third defendant (due to health problems, and due to the use of annual leave) and once because witnesses (A.S. and A.H.) did not attend the scheduled hearing.

24. During the proceedings, the appellant repeatedly amended her claim (by submissions of 12 April 2016, 10 November 2016 (at the preparatory hearing), 15 September 2017 and 30 September 2020 (at the main hearing), and with the submission of 6 July 2018, (through her attorney) she

proposed to be heard as a litigant via a video link (because she left the territory of Bosnia and Herzegovina "due to personal safety").

25. By a notice sent to the appellant on 23 December 2020, the Court of BiH postponed the hearing scheduled for 22 December 2020 "indefinitely", at the proposal of the second defendant's attorney (who stated in his motion that his secretary V.L. is in isolation due to suspicion of infection with the Covid-19 virus, which is why he was also recommended self-isolation. He proposes that the hearing be scheduled no earlier than the second half of January 2021). On 10 May 2021, the summons were served on the parties to the proceedings to attend the main hearing.

26. Following the hearing held on 1 July 2021, the Court of BiH rendered judgment no. S1 3 P 020222 15 P of 30 July 2021, by which the appellant's claim, relating to the relevant period from July 2012 to 30 November 2012, was rejected as untimely. The claim relating to compensation for non-pecuniary damage caused by the published text "Press Release" no: 01-52-1-246-1715 of 20 May 2015, in relation to second defendant, was dismissed because of *litispendentia*. The remaining part of the claim was to establish that the first defendant, the second defendant as the manager and the third defendant as the head of the department, who, according to the Law on Protection against Discrimination, were held as responsible persons and they mobbed, discriminated against and treated the appellant unequally. They were undertaking acts of non-physical and physical harassment at her workplace and outside the workplace while she was on sick leave. They repeated these actions for a long period from December 2012 until August 2015, which had explicitly degrading effects. They directly endangered the mental and physical condition of the plaintiff, caused mental and physical pain, reduced her life activity, caused degradation in working conditions and working professional status of the plaintiff, and caused fear. They did all of this in ways specified in the operative part of the judgment. The claim was also to oblige the defendant to jointly and severally pay compensation to the total amount of BAM 15,000 for non-pecuniary damage. The non-pecuniary damage was related to mental pain caused by injury to honour, reputation and dignity through continuous mobbing and discrimination. The compensation was also sought due to physical pain caused by bodily injuries at work and during work, reduction of work and life activities, and suffered fear. The Court of BiH thus dismissed the remaining part of the claim as ill-founded and ordered the appellant to pay certain amount of money to the first defendant and the second defendant as compensation for the costs of the proceeding. In the reasoning of the judgment in question, the Court of BiH stated, *inter alia*, that during the evidentiary proceedings at the main hearing, the appellant presented 116 pieces of material evidence, as well as numerous pieces of material evidence of the defendants. The Court also stated that the parties to the

proceedings before the court interrogated 11 witnesses, and that the evidence was presented by reading the findings and opinion of the expert neuropsychiatrist Prof Dr A.K. and findings and opinions of forensics expert Head Doctor H.Ž., as well as that the appellant and the second defendant as litigants were interrogated.

27. The instruction on the legal remedy of the judgment in question states that the dissatisfied party has the right to appeal against the judgment within 30 days from the day of receipt of the judgment.

IV. Appeal

a) Allegations from the appeal

28. It follows from the allegations of the appeal that the appellant considers that her right to a trial within a reasonable time as an element of her right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 paragraph 1 European Convention for the Protection of Human Rights and Fundamental Freedoms ("the European Convention") has been violated due to the length of the civil proceedings. She therefore seeks compensation for non-pecuniary damages. She points out that the proceedings in question have priority, in accordance with the relevant provisions of the BiH CPC (because they are related to employment), and that the Law on Prohibition of Discrimination in Bosnia and Herzegovina prescribes urgency in resolving such cases. She further states, in relation to the case number S1 3 P 023512 20 P 2, that the proceedings before the first instance court lasted more than four years, and that the second instance decision remitted the case to the first instance court for retrial. As to the case number S1 3 P 020222 15 P, the Court states that the procedure has been pending for five years, and that the first instance decision has not been rendered yet.

b) Responses to the appeal

29. In its responses to the appeals in question, the Court of BiH referred, *inter alia*, to the course of the proceedings before that court as set out in the facts of the decision. The Court of BiH further stated that it is clear from the chronology of the proceedings in question that the court "scheduled hearings at a normal pace" and that no action that it has taken or omitted to take contributed to the proceedings lasting longer than usual. The Court further stated that the parties, and especially the appellant, requested the postponement of the scheduled hearings (a kind of action that contributed to the length of the proceedings in question). The Court also stated that during the entire proceedings the appellant "irrationally" burdened the court with frequent submissions, amendments

to the lawsuit, determination of the lawsuit, submission of new evidence, change of attorney and the like, which certainly affected the duration of the proceedings. The Court further stated that in addition to the appellant's conduct (which contributed to the length of the proceedings in question), there were the justified requests of the defendants, who requested on several occasions that the scheduled hearings be postponed. Therefore, as the court complied with all such requests of the appellant, it placed the parties in the same position and granted the requests of the defendants as well. In addition, as regards the case AP-4474/20, the Court of BiH stated that, following the decision of the second instance court from August 2020 (which remitted the case to the first instance court for retrial), it scheduled the main hearing for 21 December 2020 „considering that the proceedings would end at that hearing, and that the hearing would be concluded and a new decision adopted.“ However, during that hearing the appellant “insisted on hearing all the witnesses again, because she was not present at the hearings when they had been heard by her attorneys. " Because of the above, (with the consent of the litigants) the Court issued a decision scheduling the main hearing for 4 February 2021 (which was postponed at the request of the appellant). As regards the case AP-4475/20, the Court of BiH stated that it “postponed the hearing (scheduled for 22 December 2020) indefinitely, i.e. until the parties and attorneys” are ready and inform the Court of BiH of their readiness to continue the proceedings, and because of the Covid-19 pandemic."

V. Relevant Law

29. The **Civil Procedure Code** (*Official Gazette of BiH*, 36/04, 84/07, 58/13, 94/16 and 34/21).

For the purposes of this decision, an unofficial consolidated text prepared in the Constitutional Court of BiH is used, which as relevant reads:

Article 15

- (1) *A party has the right to have the Court decide within a reasonable time on its requests and proposals.*
- (2) *The court is obliged to conduct the proceedings without delay and with as few costs as possible, and to prevent any abuse of the rights that the parties to the proceedings are entitled to.*

Article 78

- (1) *The court may postpone the scheduled hearing for the main trial before it is held, if it finds that the legal preconditions for its holding have not been met or that the evidence whose*

presentation has been determined will not be obtained until the hearing (postponement of the hearing).

(2) The court shall, no later than eight days before the hearing, check whether the conditions referred to in paragraph 1 of this Article have been met.

(3) When postponing the hearing, the Court shall immediately notify all summoned persons of the time of the new hearing.

31. The **Law on Prohibition of Discrimination** (*Official Gazette of Bosnia and Herzegovina*, 59/09 and 66/16). For the purposes of this decision, an unofficial consolidated text, prepared in the Constitutional Court of BiH, is used, which reads:

Article 11

(Protection in Existing Proceedings)

[...]

(4) Court and other bodies shall apply the principle of urgency in all proceedings, which concern examination of claims of discrimination.

(5) In line with general rules of procedure, courts and other bodies shall be required to take necessary action to ensure that proceedings, which concern examination of claims of discrimination, are conducted as a matter of urgency and completed within the shortest time possible.

VI. Admissibility

32. Pursuant to Article VI(3)(b) of the Constitution of BiH, the Constitutional Court “shall have appellate jurisdiction over issues under this Constitution arising out of a judgment of any other court in Bosnia and Herzegovina”.

33. The Constitutional Court emphasizes that, in accordance with Article 18 paragraph (2) of the Rules of the Constitutional Court, the Constitutional Court may examine an appeal where there is no decision of a competent court, if the appeal indicates a grave violation of the rights and fundamental freedoms safeguarded by the Constitution of Bosnia and Herzegovina or by the international documents applied in Bosnia and Herzegovina. In the present case, the appellant indicates a violation of the right to a decision within a reasonable time in ongoing proceedings, in terms of the provisions of Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article

6 paragraph 1 of the European Convention. Having regard to the facts of the cases, the Constitutional Court considers that the appeals in question are admissible within the meaning of Article 18(2) of the Rules of the Constitutional Court.

34. Finally, the appeal meets the requirements under Article 18(3) and (4) of the Rules of the Constitutional Court because it is neither manifestly (*prima facie*) ill-founded nor there is any other formal reason that would render the appeal inadmissible.

35. In view of the provisions of Article VI(3)(b) of the Constitution of Bosnia and Herzegovina and Article 18(2), (3) and (4) of the Rules of the Constitutional Court, the Constitutional Court has established that the present appeal meets the admissibility requirements.

VII. Merits

36. The appellant considers that her right to a trial within a “reasonable” time as one of the elements of her 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 has been violated due to the length of the civil proceedings in question.

The right to a fair trial - a reasonable time

37. 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.

38. Article 6 (1) of the European Convention as relevant reads:

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.

Relevant principles

39. First of all, the Constitutional Court points out that, according to the consistent case law of the European Court of Human Rights (“the European Court”) and the Constitutional Court, the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the

case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities, and the importance of what is at stake for the applicant in the litigation (see European Court, *Mikulić v. Croatia*, application no. 53176 / 99 of 7 February 2002, Report No. 2002-I, paragraph 38).

40. The European Court has also pointed out that special diligence of the competent authorities is required in all cases concerning personal status and characteristics, and that this requirement is particularly important in countries where domestic law provides that certain court proceedings are urgent (see European Court, *Borgese v. Italy*, judgment of 26 February 1992, Series A no. 228-B, § 18 and *Novović v. Montenegro*, application no. 13210/05, judgment of 23 October 2012, § 51).

Period to be taken into account

41. Considering that in the case no. AP-4474/20 the proceeding before the first instance court is pending, and that in case no. AP-4475/20 the deadline for possible appeal against the first instance judgment is still pending, in relation to the duration of the proceedings in question, the Constitutional Court will consider the period from the filing of the present complaints with the Court of BiH, i.e. from 1 November 2016 (in relation to the case no. AP-4474/20), i.e. from 30 November 2015 (in relation to the case no. AP-4475/20) until the decision of the Constitutional Court is rendered. Therefore, this is a period of four years and 10 months, or five years and nine months.

Analysis of the duration of the proceedings

42. With regard to the assessment of the complexity of the case, the Constitutional Court notes that the appellant initiated the civil proceedings in question in order to establish that there was discrimination and mobbing, and compensation for non-pecuniary damage to be obtained. In addition, the Constitutional Court notes that the lawsuits in question were filed against several defendants (in one case the appellant withdrew the lawsuit against the first defendant and the fourth defendant), and that in both proceedings numerous pieces of material evidence were proposed and presented. The Constitutional Court also notes that several witnesses were interrogated, and that the evidence was presented by reading the findings and opinion of the expert witness. However, taking into account the legal issues that should have been resolved in the proceedings in question, the Constitutional Court finds that these are not complex cases. At the same time, the Constitutional Court notes that these are procedures (for establishing that there was discrimination and mobbing) where burden of proof lies on the defendant and which are of an urgent nature according to the law.

43. Assessing the conduct of the Court of BiH, the Constitutional Court notes that the Court of BiH in the case no. AP-4474/20 during the first instance proceedings (which lasted about three years and three months) scheduled 16 hearings, decided on the request for disqualification of the judge, withdrawal of the lawsuit, and rendered a first instance decision. At the same time, the Constitutional Court notes that out of 16 scheduled hearings, the Court of BiH held seven hearings, while it postponed nine hearings (see paragraph 13 of the Decision). Also, in the case no. AP-4475/20, the Court of BiH scheduled 29 hearings in the period from the filing of the lawsuit to the first instance decision (which lasted about five years and eight months). The Court of BiH decided on the request for disqualification of the judge (as follows from the response of the Court of BiH to the appeal), and rendered a first instance decision. The Constitutional Court notes that the Court of BiH held 13 hearings out of 29 scheduled hearings, while it postponed 16 hearings (see paragraph 23 of the Decision). Regarding the previous analysis of the duration of the proceedings in question, the Constitutional Court recalls that in the Decision on Admissibility and Merits no. AP-4101/15 of 10 May 2017 (available at www.ustavisud.ba) it concluded that the violation of the right to a trial within the reasonable time established in this case “is not an isolated incident, nor can it be attributed to a specific sequence of events in this case, but is a consequence of systemic shortcomings in the organization of justice and effective exercise of jurisdiction in this field and must be qualified as a result of a case law, which is incompatible with the constitutional right to a fair trial.” The Constitutional Court considers that this case law is not applicable in specific cases, because such conduct of the Court of BiH must be attributed to a specific sequence of events in these cases and cannot be defined as a consequence of general circumstances and shortcomings in organizing jurisdiction in the field of justice. It follows from the above that the fact that the Court of BiH postponed a large number of scheduled hearings, and that it postponed most of the hearings at the proposal of the litigants, contributed decisively to the total duration of the proceedings in question. In this connection, the Constitutional Court recalls the position of the European Court in civil cases the Court considers that parties may be expected to act with “due diligence” (see, *exempli causa*, European Court, *Pretto and Others v. Italy*, 8 December 1983, paragraph 33) but that it is nevertheless not obliged to ascertain whether or not their conduct has been negligent, unreasonable or delaying: that conduct in itself is an objective factor for which the state cannot be held responsible (op. cit. paragraph 34). However, this does not relieve ordinary courts from the obligation to provide a prompt trial, as required by Article 6 of the European Convention (see European Court, *Scopelliti v. Italy*, 23 November 1993, paragraph 25), even in legal systems in which conduct of proceedings is left up to disposal of parties. Ordinary courts must effectively control the proceedings, because they decide how to conduct the proceedings, which evidence to

take and how to evaluate acts and omissions of the parties, while bearing in mind all procedural requirements guaranteed by Article 6(1) of the European Convention (see European Court, *Uljar and Others v. Croatia*, judgment of 8 March 2007, paragraph 37). Thus, the ordinary court is obliged to harmonize the right of the parties to exercise procedural powers, including adjournment of the trial, with the obligation to conduct the proceedings within a reasonable time, as required by Article 6 of the European Convention, by examining in each case whether postponement of the hearing is justified. The stated obligation derives *a fortiori* from the provision of Article 15, paragraph 2 of the CPC, which stipulates that the court is obliged to conduct the proceedings without delay and with as few costs as possible, and to prevent any abuse of rights belonging to the parties in the procedure. Making a connection between the above principles and circumstances of specific cases, the Constitutional Court notes that the fact that the scheduled hearings in the present proceedings were postponed 25 times, *a priori* indicates that the Court of BiH did not adequately perform its duty of managing the proceedings. So many adjourned hearings could only be justified in exceptional circumstances. Taking into account that the Court of BiH did not justify so many postponed hearings in its response to the appeal i.e. it did not indicate that the postponements were justified, the Constitutional Court considers that the responsibility for the duration of the proceedings that are of urgent nature, is mostly to be placed on that court.

44. In view of the above, the Constitutional Court finds that there has been a violation of the appellant's right to a trial within a reasonable time, as a segment 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. This was so, given that the Court of BiH, despite the fact that these are urgent cases, did not properly perform its duty of managing the proceedings so as to have them conducted within a "reasonable" time, as required by the standard of Article 6 of the European Convention.

The issue of non-pecuniary damage

45. For the purposes of Article 74 of the Rules of the Constitutional Court, the Constitutional Court may order compensation for non-pecuniary damages. However, the Constitutional Court recalls that, unlike proceedings before ordinary courts, compensation for non-pecuniary damages is determined in special cases of violation of guaranteed human rights and fundamental freedoms.

46. The Constitutional Court considers the decision in the present case, and the judgments of the European Court against Bosnia and Herzegovina (see European Court, *Spahić and Others v. BiH*, Application no. 20514/15 and other dated 14 November 2017, *Kunić and Others v. BiH*, Application no. 68955/12 and other of 14 November 2017, *Elčić and others v. BiH*, Application no.

34524/15 and other dated 17 January 2019, *Golić and Others v. BiH*, Application no. 51441/16 and other of 16 May 2019 and *Ugarak and Others v. BiH*, Application no. 25941/18 and other of 19 September 2019), including the current case law, economic conditions in Bosnia and Herzegovina (data available at www.bhas.ba) and the circumstances of the present case. Thus, under Article 74 of the Rules of the Constitutional Court, i.e. Article 41 of the European Convention, the Constitutional Court considers that in the specific case, due to the unreasonable length of the proceedings in question, the appellant should be paid the amount of BAM 600.00 (or BAM 300.00 per proceeding) as a compensation for non-pecuniary damages.

47. This compensation shall be paid by the Council of Ministers of Bosnia and Herzegovina within three months from the date of delivery of this decision, with the obligation to pay the appellant legal default interest on any unpaid amount or part of the amount determined by this decision.

48. This decision of the Constitutional Court or more specifically the part relating to compensation for non-pecuniary damages represents an enforceable document.

VIII. Conclusion

49. The Constitutional Court concludes that there is a violation of the right to a “trial within a reasonable time” as a segment 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 because the Court of BiH did not perform the duty of managing the proceedings in a way in which the proceedings were to be conducted within a "reasonable" time, as required by the standard of the right to a fair trial.

50. Pursuant to Article 59 (1) and (2) and Article 74 of the Rules of the Constitutional Court, the Constitutional Court decided as set out in the enacting clause of this decision.

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

Mato Tadić
President
Constitutional Court of Bosnia and Herzegovina