

The Constitutional Court of Bosnia and Herzegovina, sitting, in accordance with Article VI(3)(b) of the Constitution of Bosnia and Herzegovina, Article 59(2)(2) and Article 61(1) and (3) of the Rules of the Constitutional Court of Bosnia and Herzegovina (*Official Gazette of Bosnia and Herzegovina* Nos. 60/05, 64/08 and 51/09), in plenary and composed of the following judges:

Mr. Miodrag Simović, President

Ms. Valerija Galić, Vice-President

Ms. Constance Grewe, Vice-President

Ms. Seada Palavrić, Vice-President

Mr. Tudor Pantiru

Mr. Mato Tadić

Mr. David Feldman

Mr. Krstan Simić

Mr. Mirsad Ćeman

Having deliberated on the appeal of **Mr. Halid Husagić** in Case No. **AP-677/07**, at its session held on 25 September 2009 adopted the following



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## DECISION ON ADMISSIBILITY AND MERITS

The appeal lodged by **Mr. Halid Husagić** against the judgment of the Supreme Court of the Federation of Bosnia and Herzegovina No. 070-0-Rev-06-000069 of 5 December 2006 is hereby dismissed as ill-founded.

This Decision shall be published in the *Official Gazette of Bosnia and Herzegovina*, the *Official Gazette of the Federation of Bosnia and Herzegovina*, the *Official Gazette of the Republika Srpska* and the *Official Gazette of the Brčko District of Bosnia and Herzegovina*.

## REASONING

### I. Introduction

1. On 22 February 2007, Mr. Halid Husagić ("the appellant"), represented by Sead Sarihodžić, a lawyer practicing in Tuzla, filed an appeal with the Constitutional Court of Bosnia and Herzegovina ("the Constitutional Court") against the ruling of the Supreme Court of the Federation of Bosnia and Herzegovina ("the Supreme Court") No. 070-0-Rev-06-000069 of 5 December 2006.

### II. Procedure before the Constitutional Court

2. Pursuant to Article 22 paragraphs 1 and 2 of the Rules of the Constitutional Court, on 26 March 2007, the Constitutional Court requested the Supreme Court, the Cantonal Court in Tuzla ("the Cantonal Court"), the Municipal Court in Tuzla ("the Municipal Court") and the plaintiff "Tuzla-stan" LCC - Housing Company for Maintenance of Shared Parts of Buildings, Apartments and Business Premises, Engineering and Services, Tuzla ("the plaintiff") to submit their respective replies to the appeal. .

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3. The Supreme Court submitted its reply to the appeal on 6 April 2007. The Cantonal and Municipal Courts submitted their respective replies to the appeal on 5 April 2007, whereas the plaintiff did so on 4 April 2007.

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

### ***III.*** Facts of the Case

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

6. By the judgment of the Municipal Court No. P-2159/02 of 29 November 2004 the appellant was obliged to move out of the apartment in Tuzla, Stupine B-7, entrance V, apartment No. 23 ("the apartment at issue"), along with all persons and objects, and to hand over the vacant apartment to the plaintiff, as well as to compensate the costs of the civil proceeding. The reasoning of the judgment reads that the lawsuit in the present legal matter was filed on 21 March 1996 by the Basic Housing Community of Tuzla, legal successor of which is the plaintiff. It is further stated that, according to the parties, it was undisputed that the appellant moved into the apartment on the basis of decisions and rulings of the Lignite Mine "Kreka" Tuzla ("the Mine"), and that the apartment at issue was allocated to him as a compensation for his real properties in Lipnica which were under a threat as a result of exploitation of the mine. The Court stated that it was undisputed that the handover of the apartment at issue had taken place between the plaintiff and the appellant in December 1991, and that during 1992 and 1996 proceedings for eviction of the appellant from the apartment at issue had been conducted before the competent bodies of the Municipality of Tuzla, and that the outcome of the proceedings was not known. It was further stated that on 27 September 1990 the predecessor of the plaintiff had concluded an agreement with the Mine on joining funds for the housing construction related to the apartment at issue as well, but that the agreement was cancelled. This was established by a finally binding judgment of the Cantonal Court No. Ps-107/01 of 14 November 2001. The Court also stated that, according to the parties, it was undisputed that the plaintiff had returned the funds to the Mine which the Mine had paid to the plaintiff previously, and that the appellant had never entered into a contract on the use of the apartment at issue. The Court explained that an occupancy right may be acquired by way of legal moving into an apartment within

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the meaning of Article 11 paragraph 1 of the Law on Housing Relations, and that paragraph 2 stipulates that the legal moving into an apartment is moving carried out on the basis of the contract on the use of apartment entered into on the basis of an appropriate act. The Court did not grant the objection of the appellant related to the plaintiff's standing to sue. The Court stated that, by the letter of 31 January 1992, the Mine informed the predecessor of the plaintiff that it withdrew from buying the apartment at issue under the agreement of 27 September 1990, stating that it was not in a position to fund the purchase, and that the appellant learnt of the cancellation of the agreement, according to his statement, back in 1992. Besides, the court stated that proceedings were under way before the mentioned court under No. P-1426/92, following a lawsuit of the appellant against the Mine, whereby the appellant seeks from the court to oblige the Mine to purchase an apartment in Tuzla, in the settlement of Stupine, Zlokovac or Komanda grada, and to hand it over into the possession of the appellant.

7. The court further states that it follows from the presented evidence that the Mine, on the basis of which ruling the appellant used the apartment at issue, is not the owner of the apartment, wherefrom it follows that there were no grounds for the appellant to use the apartment at issue, as no one can transfer more rights to another than one may have. Based on the presented evidence the Court concluded that the funding of the construction of the apartment at issue was neither carried out by the Mine nor did the appellant prove to have done so. The appellant stated that the plaintiff was the one to fund the construction of the apartment at issue. Therefore, the Court concluded that the plaintiff, as an owner not registered in the books – as no land book on condominium ownership has been established in Tuzla, had priority over the appellant when it comes to the legal grounds. The Court stated that the provisions of the Law on Ownership Relations shall apply to the relation between the owner of the apartment seeking the hand over of the apartment and eviction of the person occupying the apartment without a valid legal basis, and that Article 43 paragraph 1 of the law prescribes that the owner may seek, by filing a lawsuit, from the possessor the return of a specified matter. It was further stated that the court did not grant objections of the appellant related to the privatization of the plaintiff, and claims that the plaintiff's property was transferred to the Municipality of Tuzla, which the appellant failed to prove since the plaintiff who had funded the construction of the apartment at issue has the standing to sue to seek the appellant's eviction. On the other hand the court granted as well-founded the plaintiff's allegations that the relation between the appellant and the Mine, which committed itself to allocating an apartment to the appellant as a compensation of damage, does not concern the plaintiff. Thus the appellant may claim the

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compensation of the damage for his real properties exclusively from the Mine, and not at the expense of the funds and property of third persons, namely the plaintiff. For the reasons mentioned above, the court granted the plaintiff's claim.

8. By Judgment No. Gž 214/05 of 4 October 2005, the Cantonal Court granted the appellant's appeal, and the first instance judgment was modified and the plaintiff's claim for eviction of the appellant from the apartment at issue was dismissed with the obligation to pay the appellant compensation for the costs of the civil proceedings. In the reasoning for its decision the Cantonal Court stated that, contrary to the establishment of the first instance court, the plaintiff failed to prove that his legal predecessor was the owner or presumed owner of the apartment at issue, nor did he prove that he had a priority right to possession, which was a precondition for *rei vindicatio* and *actio publiciana*. The court stated that the predecessor of the plaintiff was solely an organizer of a targeted housing construction, and that the eviction of the appellant in 1992, that is in 1996, had not been carried out by the predecessor of the plaintiff (the Tuzla Basic Housing Community, and the Tuzla Public Housing Company consequently) and found as well-founded the objection related to the lack of the standing to sue the plaintiff, for which reasons it modified the first instance judgment.

9. By Judgment No. 070-0-Rev-06-000069 of 5 December 2006, the Supreme Court granted the plaintiff's revision-appeal, and modified the judgment of the Cantonal Court so as to dismiss the appellant's appeal and grant the judgment of the Municipal Court No. P-2159/02 of 29 November 2004, with the appellant being obliged to pay the plaintiff the costs of the civil proceedings. The court noted that it granted the revision-appeal within the meaning of Article 237 paragraph 3 of the Law on Civil Procedure ("ZPP"), since deliberations on the revision-appeal might be significant for the application of the law in other cases. Furthermore, the court reiterated the facts as established by the first instance and second instance courts and concluded that the Cantonal Court might not have concluded on the basis of evidence presented in the first instance proceedings that the plaintiff had failed to prove its ownership over the apartment at issue. The Supreme Court argued that the Municipal Court had engaged in establishing the plaintiff's standing to sue, and on the basis of evidence presented by the plaintiff (agreement on joining funds, letter of the Mine on canceling the agreement, notice of refund and the inspection of the judgment and the case-file of the mentioned court No. Ps-107/01), found that none other than the plaintiff was the owner of the apartment at

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issue. The Supreme Court stated that it followed from the presented evidence that the very plaintiff, that is its legal predecessor (the Tuzla Basic Housing Community) had invested in the construction of the apartment at issue, and that the burden of proving that the plaintiff was not the owner of the apartment at issue lied on the appellant. Moreover, the appellant had to prove his assertions relating to the lack of the standing to sue the plaintiff, that is he had to offer evidence “that someone else had funded the construction of the apartment, which he did not even claim, he only denied that the legal predecessors of the plaintiff had done so”. Finally, the court stated that the appellant might exercise his rights only against the Mine, which committed itself, through court settlement No. RII-626/89 of 15 August 1989, to provide a three-room apartment for the appellant, whereas the appellant occupied the apartment at issue without any legal grounds. Thus the plaintiff as a presumed owner (as it was not able to be registered as an owner of the apartment at issue since no land books on condominium ownership have existed in Tuzla) has the right to claim the repossession of the apartment under the provisions of Article 48 paragraph 1 of the Law on Ownership Relations. Therefore, on the basis of Article 249 paragraph 1 and Article 250 paragraph 1 of the Law on Civil Procedure, the court granted the revision-appeal and modified the challenged judgment.

## **IV. Appeal**

### **a) Allegations stated in the appeal**

10. The appellant holds that the challenged judgment of the Supreme Court violated his right to a fair trial and the right to home under Article II(3)(e) and (f) of the Constitution of Bosnia and Herzegovina and Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (“the European Convention”). The essence of the allegations stated in the appeal comes down to the claims about erroneously established facts of the case and arbitrary application of the law as the appellant claimed that the plaintiff was neither the owner nor presumed owner of the apartment at issue, since, according to the appellant, the apartment could not have been privatized. The appellant claims that the apartment at issue is his home and that the challenged judgment brought the appellant into a position of being a refugee in his hometown. It is further stated that the reasons stated in the revision-appeal point to erroneously and incompletely established facts of the case which is strictly prohibited by Article 240 paragraph 2 of the Law on

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Civil Procedure. It is also stated that the Supreme Court accepted new evidence submitted along with the revision-appeal without any possibility for the appellant to participate in the proceedings.

**b) Reply to the appeal**

11. The ordinary courts stated that their decisions did not violate the appellant's constitutional rights and that they provided clear reasons and reasoning in their respective decisions.

12. The plaintiff stated that the challenged decision of the Supreme Court was correct, that there was no violation of the appellant's rights under Articles 6 and 8 of the European Convention. The plaintiff also stated that the appellant had a pending property claim against the third persons, namely against the Mine, and that the appellant cannot pursue his claim at the expense of the plaintiff.

**V. Relevant law**

13. **The Law on Housing Relations** (*Official Gazette of SR BiH* Nos. 14/84 and 36/89, and *Official Gazette of FBiH* Nos. 11/98, 38/98 and 19/99), in its relevant part reads as follows:

*Article 11*

*A citizen shall acquire an occupancy right on the day of a lawful movement into an apartment.*

*A lawful movement into an apartment is a movement effected on the basis of a contract on the use of apartment entered into on the basis of an appropriate act or other act established by the mentioned law, which constitutes a legally binding basis for the movement into apartment.*

*Acquiring an occupancy right contrary to the provisions of the mentioned law shall not generate legal effect.*

14. **The Law on Ownership Relations** (*Official Gazette of the Federation of Bosnia and Herzegovina* Nos. 6/98 and 29/03) in its relevant part reads as follows:



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*Article 43*

*The owner may file a lawsuit seeking from the possessor the restitution of an individually specified matter.*

*The owner must prove that he/she is entitled to the matter which restitution he/she seeks, as well as that the matter at issue is in factual possession of the defendant.*

*The right to file a lawsuit under paragraph 1 of this article shall not be subject to the statute of limitations.*

*Article 48 paragraphs 1 and 3*

*A person who has acquired an individually specified matter on a legal basis and in a lawful manner, and who has not known, or could not know, that he/she has not become an owner of the matter (presumed owner), shall have the right to seek the restitution from the bona fide possessor who has been in possession of the matter without legal basis or on the weaker legal basis.*

*The right to file a lawsuit under paragraph 1 of this article shall not be subject to the statute of limitations.*

**VI. Admissibility**

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

16. Pursuant to Article 16, paragraph 1 of the Rules of the Constitutional Court, the Constitutional Court shall examine an appeal only if all effective legal remedies available under the law against a judgment/decision challenged by the appeal are exhausted and if the appeal is lodged

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within a time-limit of 60 days as from the date on which the decision on the last effective legal remedy used by the appellant is served on him/her.

17. In the present case, the subject matter challenged by the appeal is the judgment of the Supreme Court No. 070-0-Rev-06-000069 of 5 December 2006, against which there are no other effective legal remedies available under the law. The appellant received the challenged judgment on 5 January 2007, and the appeal was filed on 22 February 2007, that is within the time limit of 60 days as prescribed by Article 16 paragraph 1 of the Rules of the Constitutional Court. Finally, the appeal also meets the requirements under Article 16 paragraphs 2 and 4 of the Rules of the Constitutional Court because it is not manifestly (*prima facie*) ill-founded, nor is there any other formal reason rendering the appeal inadmissible.

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

## **VII. Merits**

19. The appellant challenges the mentioned judgment claiming that the mentioned judgment violated his right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 paragraph 1 of the European Convention, and the right to home under Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention.

### **The right to a fair trial**

20. Article II(3) of the Constitution of Bosnia and Herzegovina reads in its relevant part as follows:

*All persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms referred to in paragraph 2 above; these include:*

*[...]*

*e) The right to a fair hearing in civil and criminal matters, and other rights relating to criminal proceedings.*

Article 6 paragraph 1 of the European Convention, in its relevant part, reads as follows:

*1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. [...]*

21. The Constitutional Court holds undisputed that the appellant's civil rights were deliberated on in the mentioned civil procedure and that, as a result thereof, Article 6 paragraph 1 of the European Convention and Article II(3)(e) of the Constitution of Bosnia and Herzegovina are applicable.

22. The Constitutional Court observes, considering the allegations stated in the appeal, that the essence of the allegations related to the violation of the right to a fair trial concerns the allegations about erroneously and incompletely established facts of the case and erroneous application of the law, including the allegations that the reasons stated in the revision-appeal refer to erroneously and incompletely established facts of the case, which is strictly prohibited by Article 240 paragraph 2 of the Law on Civil Procedures, as well as the allegations that the Supreme Court granted new evidence submitted along with the revision-appeal without any possibility for the appellant to participate in the proceedings.

23. The Constitutional Court recalls that it is not called upon to check the established facts and manner in which the ordinary courts interpreted positive regulations unless such decisions violated constitutional rights. That is the case when an ordinary court's decision disregards or erroneously applies constitutional law, when the application of positive regulations is manifestly arbitrary, when

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the very law is unconstitutional or when fundamental procedural rights are violated, such as the right a fair trial, the right of access to court, the right to an effective legal remedy, and in other cases (see Decision of the Constitutional Court No. *U 29/02* of 27 June 2003, published in the *Official Gazette of Bosnia and Herzegovina* No. 31/03).

24. The Constitutional Court observes that the Supreme Court provided detailed and clear arguments as to the reasons why it granted the revision-appeal of the plaintiff and modified the judgment of the Cantonal Court thereby dismissing the appellant's appeal and upholding the judgment of the Municipal Court No. P-2159/02 of 29 November 2004. The Court argued that it adopted its decision on the basis of the competences laid down in Article 249 paragraph 1 and Article 250 paragraph 1 of the Law on Civil Procedures. The mentioned provisions regulate the competence of the Court of Revision to, among other things, in case of having found a violation of the provisions of civil procedure, be in a position to modify through its judgment the judgment of the second instance court, or, in case of having found that substantive law was erroneously applied, be in a position to grant a revision-appeal and modify the challenged judgment. It follows from the aforementioned, as clearly and unambiguously stated in the challenged judgment, that the Supreme Court did not, as alleged in the appeal, adopt the challenged decision due to erroneously and incompletely established facts of the case. Under Article 240 paragraph 2 one may not lodge a revision-appeal for the reasons mentioned earlier, rather, one may do so for the violation of the provisions of civil procedure and erroneous application of the substantive law, or in particular of the provisions of the Law on Ownership Relations.

25. The Constitutional Court considers arbitrary the appellant's allegations that the Supreme Court granted new evidence submitted along with the revision-appeal without giving him a possibility to participate in the proceedings, since the Court of Revision only reiterated the findings of the Municipal Court, arising from evidence presented before the mentioned court at the request of both parties to the proceedings. In this context, the Constitutional Court also emphasizes the fact that the appellant had a possibility, within the meaning of Article 245 paragraph 2 of the Law on Civil Procedures, to give a reply to the revision-appeal which, according to the status in the case file, he did not exhaust.

26. The Constitutional Court considers that there are no indications whatsoever in the present case that the facts and evidence in the challenged judgment were assessed in a manner indicative of

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a violation of Article 6 paragraph 1 of the European Convention. On the other hand, the Supreme Court gave clear and precise reasons for its position in the reasoning of the challenged decision, and also provided a logical and convincing reasoning for the application of the relevant law (namely the Law on Ownership Relations), which does not appear to be arbitrary or unacceptable by itself in any part. The Constitutional Court notes, albeit the appellant failed to indicate so, that the Municipal Court treated the plaintiff as an owner (Article 43), and the Supreme Court as a presumed owner (Article 48), but concludes that this circumstance, in a situation where the courts clarified that no land book on condominium ownership was established in Tuzla in which it would be possible to register the plaintiff's right over the apartment at issue, has no bearing in itself on the settlement of the specific legal matter regarding the appellant.

27. On the other hand, it is undisputable that the appellant had no obligation-related relationship with the plaintiff. Namely, the appellant may exhaust his rights exclusively from the court settlement concluded with the Mine, No. RII-626/89 of 15 August 1989, for the annulment of which the appellant has instituted civil proceedings before the mentioned court, registered under No. P-1426/92 (see paragraph 6 of this decision). The respective proceeding in which the appellant has sought from the Mine to hand over an appropriate apartment into his possession, has not been completed yet, according to the status of the case file, nor has it been the subject matter of this appeal.

28. In view of the aforementioned, the Constitutional Court concludes that there is no violation of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 paragraph 1 of the European Convention in the present case.

### **The right to respect for home**

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

*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:*

(...)

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

Article 8 of the European Convention reads as follows:

*1. Everyone has the right to respect for his private and family life, his home and his correspondence.*

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

30. The appellant stated that his right to “home” was violated as the challenged decision brought him into a position of a refugee in his hometown.

31. The Constitutional Court recalls that the purpose of Article 8 of the European Convention is to protect individuals from arbitrary interference of authority with their rights guaranteed by this article (see European Court of Human Rights, *Kroon v. The Netherlands*, judgment of 27 October 1994, Series A, No. 297-C). In order to establish whether a violation of Article 8 of the European Convention has occurred in the present case, it is necessary to establish first and foremost whether the apartment at issue is the appellant’s “home” within the meaning of Article 8 of the European Convention and whether the challenged decision constitutes “interference” on the part of the public authorities with the respect for the appellant’s “home”.

32. It follows from the facts of the case that the appellant has used the apartment at issue since December 1991, and that, according to the allegations of the Municipal Court, he was in possession of the apartment at the time of the completion of the main hearing. According to the position of the Constitutional Court, in order to conclude whether the apartment is the appellant’s home, the relevant issue is the factual and not the real status of the premises at issue, that is the strength of the bond that the individual has had with certain premises (see, *inter alia*, the Constitutional Court’s Decision on Admissibility and Merits No. AP 323/04 of 17 February 2004, published in the *Official Gazette of Bosnia and Herzegovina* No. 34/05). The Constitutional Court concludes that the

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apartment at issue cannot be considered the appellant's "home" within the meaning of Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 paragraph 1 of the European Convention.

33. Further, it is undisputable that the challenged decision ordering the eviction of the appellant from the apartment at issue constitutes "the interference" with the appellant's right to "home".

34. In order to establish whether the interference has been justified, the Constitutional Court must primarily establish whether it has been done "in accordance with the law", which notion, in accordance with the European Convention, sublimates several elements in a sense that: a) the interference must be based on a national or international law, b) the law concerned must be properly accessible so that an individual can be familiarized with the law to be applied to the particular case, and c) the law must, also, be phrased with appropriate accuracy and clarity so as to allow an individual to adjust one's actions (see, European Court of Human Rights, *Sunday Times v. United Kingdom*, judgment of 26 April 1979, Series A-30, paragraph 49).

35. Thus, first and foremost, the Constitutional Court must establish whether the interference with the appellant's home was done "in accordance with the law". To this end, the Constitutional Court recalls that the challenged judgment, through the application of relevant provisions of the Law on Ownership Relations and the Law on Housing Relations, ordered the appellant to move out of the apartment at issue since the appellant, according to the conclusion of the Supreme Court, held possession of the apartment at issue without legal grounds, as opposed to the plaintiff as the owner, i.e. presumed owner. Thus the appellant did not acquire the occupancy right over the apartment at issue as he did not move into the apartment in accordance with Article 11 of the Law on Housing Relations "*on the basis of a contract on the use of apartment entered into on the basis of an appropriate act or other act established by the mentioned law, which constitutes a legally binding basis for the movement into apartment.*". Therefore, the appellant has a status of an illegal occupant of the apartment at issue, as he is not using it on the basis of the act issued by the owner, nor does he have a contract on the use of apartment.

36. It follows from the aforementioned that the interference with the appellant's home is based on the law, as the plaintiff's claim was granted through the application of provisions of the Law on Ownership Relations since the plaintiff is the owner, i.e. the presumed owner of the apartment at

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issue (since no land book on condominium ownership has been established in Tuzla). The Constitutional Court recalls that the Law on Ownership Relations was enacted in 1998, that the provisions regulating the matter at hand have not been amended ever since, that the law at issue was published in the official gazettes, that the mentioned provisions of the law were sufficiently clear and precise. To this end, the Constitutional Court recalls that the Law on Basic Property Relations, which was in force at the time of occurrence of the disputed relationship between the plaintiff and the Mine (entry into an agreement on joining funds), i.e. between the appellant and the Mine, contained almost identical provisions. On the other hand, as far as the status of the appellant is concerned, the Constitutional Court observes that the Law on Housing Relations regulating the acquisition of occupancy right, was enacted almost 25 years ago and that the provisions of the law relating to the acquisition of the occupancy right, have not been amended ever since, with an exception taking place on 6 December 2000 whereby a possibility to acquire occupancy right ceased to exist regarding relevant provisions of the Law on the Sale of Apartments with Occupancy Right (Article 46). Therefore, the Constitutional Court finds that the mentioned laws were “appropriately accessible”, and that the appellant was “familiarized with the law to be applied to the case at hand”.

37. Taking into account that the Constitutional Court has concluded that interference with the appellant’s right to home was in accordance with the law, the task of the Constitutional Court is to determine whether the interference pursued a legitimate aim. The Constitutional Court holds that in the instant case the interference with the right to home was justified and legitimate, since the challenged judgment ordering the eviction of the appellant was rendered in accordance with the provisions of the Law on Ownership Relations and Law on Housing Relations. The Constitutional Court outlines that this judgment is considered necessary in a democratic society to protect lawful owner of the apartment, i.e. such interference has been provided for by the law and constitutes necessary measure in a democratic society in order to protect the rights and freedoms of others.

38. Finally, the Constitutional Court must establish whether the interference with the appellant’s right to home has been a necessary measure in a democratic society, which implies the need to determine the balance between the individual rights and public interest through the application of the principle of proportionality.

39. In this context, the Constitutional Court holds that the challenged decision did not place on



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the appellant excessive burden, that is, it did not violate the principle of “proportionality” between the interest of the appellant and the general interest. Namely, the mentioned provisions of the Law on Ownership Relations also meet the requirement of “proportionality”, for on one hand, they offer to conscientious possessors the protection of their respective rights arising from that status, and on the other hand they provide to the persons who have the priority right (owner or presumed owner) the protection of their rights arising from ownership, or the “right to property” so as to ensure the right to “free enjoyment of property” guaranteed by Article 1 of Protocol No. 1 to the European Convention. This being the case in particular when bearing in mind that the procedure for eviction of the appellant had been instituted before administrative bodies as far back as 1992 (that is to say right after the appellant had moved into the apartment), and then in 1996, and that the appellant, according to his own statement, learned of the cancellation of the agreement between the plaintiff and the Mine back in 1992. On the other hand it is undisputable that the very appellant, given the knowledge that the agreement on joining funds was cancelled, and the fact that back in 1992 the procedure for his eviction was instituted, was aware of the fact that he was not bound by any type of obligation to the plaintiff, that is that there was no obligation on the part of the plaintiff to provide him with an apartment. Namely, the appellant had filed a lawsuit against the Mine as far back as 15 December 1992 with the Basic Court in Tuzla, under No. P-1426/92, for the cancellation of the court settlement (on the compensation for expropriated real estate), whereby the appellant requested from the Mine, with which he had entered into an obligation, to hand over another appropriate apartment into his possession. Given the aforementioned, it is undisputed that the appellant persisted in using the apartment at hand, despite being aware that he did not have legal grounds to use the apartment at hand under the relevant provisions of the Law on Ownership Relations and the Law on Housing Relations.

40. Thus it follows from the aforementioned that the principle of proportionality between the interest of the appellant and the general interest of the community is not violated, which is reflected in the protection of property rights of the plaintiff so as to provide for legal certainty, or providing guarantees that the third persons, with whom the owners are in no way related, cannot, at the expense of other people’s property, acquire rights arising from obligations arising from relations between such persons and persons who are not the owners of the property at issue and who are not entitled to it on the basis of the law. Contrary interpretation of the provisions of relevant regulations would lead to encouraging potential illegal occupants to consciously “usurp” other people’s

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property thereby hoping to exercise, on the basis of such use, a position stronger in legal terms from that of the very owners.

41. In view of the aforementioned, the Constitutional Court holds that no violation of the appellant's right to home under Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention has occurred.

### **VIII. Conclusion**

42. There is no violation of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 paragraph 1 of the European Convention in the case where the appellant complained of erroneous application of the substantive law whereby the Supreme Court adopted a decision on revision-appeal on the basis of legal competences, and whereby there are no indications whatsoever that the law was applied arbitrarily, and the Constitutional Court has not established that there are other elements suggesting that the procedure has been unfair.

43. Also, the Constitutional Court concludes that there is no violation of the right to home under Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention, since the interference with the appellant's right to home was based on the law and constituted a necessary measure which was proportionate in a sense that there was a fair balance between the general interest of the community and the respect for the rights of an individual.

44. Having regard to Article 61, paragraphs 1 and 3 of the Rules of the Constitutional Court, the Constitutional Court decided as set out in the enacting clause of this Decision.

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

Prof. Dr. Miodrag Simović  
President  
Constitutional Court of Bosnia and Herzegovina

