

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), Article 59(1), (2) and (3) 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:

Ms. Valerija Galić, President

Mr. Mirsad Ćeman, Vice-President

Mr. Zlatko M. Knežević, Vice-President

Ms. Helen Keller, Vice-President

Ms. Seada Palavrić,

Ms. Angelika Nußberger, and

Mr. Ledi Bianku

Having deliberated on the appeal of Mr. **Sabahudin Ahatović** in the case no. **AP-581/21**, at its session held on 13 July 2023, adopted the following

DECISION ON ADMISSIBILITY AND MERITS

The appeal lodged by **Mr. Sabahudin Ahatović** is hereby partially granted.

A 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, in respect of taking a decision within a reasonable time in the proceedings concluded with the judgment of the Cantonal Court in Sarajevo, no. 65 0 Mal 299084 20 Gž 2 of 6 January 2021, is hereby established.

Pursuant to Article 74(1) of the Rules of the Constitutional Court of Bosnia and Herzegovina, the Government of the Sarajevo Canton is ordered to pay **Mr. Sabahudin Ahatović**, within a time limit of three months from the date of service of this decision, the compensation for non-pecuniary damage in the amount of BAM 500.00 for the failure to adopt a decision within a reasonable time, with the obligation to pay statutory default interest on any unpaid amount of compensation or any portion of the amount of compensation determined in this decision upon the expiry of the given time limit.

Pursuant of Article 72(5) of the Rules of the Constitutional Court of Bosnia and Herzegovina, the Government of the Sarajevo Canton is ordered to inform the Constitutional Court of Bosnia and Herzegovina, within a time limit of three months from the date of

service of this decision, of the measures taken with a view to enforcing this decision.

The appeal of **Mr. Sabahudin Ahatović** lodged against the judgment of the Cantonal Court in Sarajevo, no. 65 0 Mal 299084 20 Gž 2 of 6 January 2021, with respect to other aspects 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 dismissed as ill-founded.

REASONING

I. Introduction

1. On 22 February 2021, Mr. Sabahudin Ahatović (“the appellant”) from Sarajevo lodged an appeal with the Constitutional Court of Bosnia and Herzegovina (“the Constitutional Court”) against the judgment of the Cantonal Court in Sarajevo (“the Cantonal Court”), no. 65 0 Mal 299084 20 Gž 2 of 6 January 2021 and the judgment of the Municipal Court in Sarajevo, Low Value Disputes Department in Ilidža (“the Municipal Court”), no. 65 0 Mal 299084 20 Mal 3 of 21 September 2020. Upon the request of the Constitutional Court, the appellant supplemented the appeal on 3 March 2021. On 17 March 2022, the appellant submitted a request for an interim measure.

II. Procedure before the Constitutional Court

2. The Constitutional Court rendered Decision on Interim Measure no. *AP-581/21* dated 24 March 2022 dismissing the appellant’s request for an interim measure.

3. Pursuant to Article 23 of the Rules of the Constitutional Court, the Cantonal Court, the Municipal Court and the plaintiff JP Hrvatske telekomunikacije d.d. Mostar (the Croatian Telecommunications Public Enterprise), Grude Legal Affairs Section (“the plaintiff”), were requested in the period from 23 to 25 March 2022 to submit their respective replies to the appeal.

4. The Cantonal Court submitted its reply to the appeal on 29 March 2022, and the Municipal Court did so on 6 April 2022. The plaintiff failed to submit its reply to the appeal within the given time limit.

5. On 10 May 2022, the replies to the appeal were communicated to the appellant for possible observations. On 17 May 2022, the appellant submitted his observations on the replies within the given time limit.

III. Facts of the Case

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

Introductory remarks

7. On 31 August 2011, the plaintiff filed a lawsuit with the Municipal Court against the defendant Muhidin Ahatović ("the appellant's father") for the payment of claims.

8. The appellant's father passed away on 17 April 2012.

9. The Municipal Court rendered a ruling dated 23 November 2017 and terminated the proceeding due to the death of the appellant's father.

10. On 26 March 2018, the plaintiff made a submission to the Municipal Court, wherein it corrected the name of the appellant's father and proposed for the terminated proceeding to continue, given that the probate proceeding after the death of the appellant's father had been finalised and the appellant was declared his legal heir.

11. The Municipal Court rendered a ruling dated 21 May 2018 resuming the terminated proceeding, and it summoned the appellant, as a legal heir, to accept the proceeding in this legal matter.

12. The Municipal Court made a submission on 26 March 2019 communicating a lawsuit to the appellant for his reply to the lawsuit.

13. The Municipal Court rendered a judgment dated 16 September 2019, obliging the appellant to pay to the plaintiff the amount specified in the operative part of the judgment, in respect of a debt. However, adjudicating on the appellant's appeal, the Cantonal Court issued a ruling dated 26 February 2020 granting the appeal, quashing the first instance judgment and referring back the case to the first instance court for a retrial and new decision-making.

Challenged decisions

14. Proceeding in a retrial, the Municipal Court rendered a judgment no. 65 0 Mal 299084 20 Mal 3 dated 21 September 2020 obliging the appellant to pay to the plaintiff the amount of BAM 443.84 with the statutory default interest and the costs of the proceeding.

15. In the reasoning for the judgment, the Municipal Court pointed to the provisions of Article 17, paragraph 1 of the Law on Obligations, Article 143 of the Law on Inheritance of Bosnia and Herzegovina and Articles 7 and 123 of the Civil Procedure Code and concluded that the statement of claim was well founded. Next, the Municipal Court concluded that the objection raised to the lack of standing to be sued was not well founded. In that connection, it was reasoned that it is correct that the plaintiff specified in the lawsuit the appellant's father as Muhidim Ahatović, but that in the course of 2014 it addressed submissions to the court stating the correct name. The Municipal Court assessed this as the rectification of the allegations made in the lawsuit. Furthermore, the Municipal Court assessed as ill-founded the appellant's objection that he was not the sole heir of his late father and that a testamentary heir existed. In that connection, it was pointed out that it follows based on the ruling on inheritance dated 5 December 2014 and the supplementary ruling that the appellant was declared a legal heir of his father and that he inherited certain real property and monetary claims with the bank.

16. The Municipal Court stated that the appellant's father had used the plaintiff's services and that, by failing to pay the bills for a certain period, he had incurred a debt in the amount specified in the lawsuit. Further, it was mentioned that a decision concerning the appellant was rendered in accordance with Article 143 of the Law on Inheritance. Next, it was reasoned that it is deemed that the person who has accepted the inheritance of the testator, by means of a declaration of inheritance, also accepts the testator's debts up to the value of the inherited property, within the meaning of Article 143 of the Law on Inheritance. It was indicated that the appellant was declared the heir, and that he had not contested during the proceedings the existence of debt, or the amount thereof. Therefore, the Municipal Court was able to conclude with certainty that the debt in the amount claimed in the lawsuit is the debt that does not exceed the value of the inherited property. The Municipal Court obliged the appellant to pay the statutory default interest from the due date of each individual bill to the payment date, in accordance with Articles 277 and 324 of the Law on Obligations, as he was late with the payment of the debt.

17. The Cantonal Court rendered a judgment no. 65 0 Mal 299084 20 Gž 2 dated 6 January 2021 dismissing the appellant's appeal and upholding the judgment of the Municipal Court. In the

reasoning for the judgment, the Cantonal Court stated that the allegations stated by the appellant in the appeal were ill-founded. In that connection, it was indicated that the first instance court neither violated the provisions of civil procedure, nor erroneously applied the substantive law. Next, it was assessed that the first instance court had correctly established that the appellant is obliged to pay the debt of his father, which was incurred in an obligation-related relationship with the plaintiff. In addition, it was indicated that the first instance court correctly assessed that the appellant had the standing to be sued concerning the payment of the debt, as he inherited the real property and money based on a ruling on inheritance. Therefore, the appellant is obliged to pay the debt concerned in accordance with Article 143 of the Law on Inheritance. The Cantonal Court concluded that the first instance court rendered a decision on the payment of the statutory default interest through correct application of Articles 277 and 324 of the Law on Obligations.

IV. Appeal

I. Allegations stated in the appeal

18. The appellant alleges that the challenged decisions violated 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 (“the European Convention”). He claims that the mentioned right was violated because of arbitrary application of the substantive law and procedural law, and that the right to a trial within a reasonable time was violated, including the violation of the principle of impartiality of the court. In that connection, the appellant alleges that the Municipal Court conducted the proceedings for five years and a half after the death of his father and was receiving the plaintiff’s submissions instead of terminating the proceedings within the meaning of Article 378 (1) of the Civil Procedure Code. In addition, he indicates that the Municipal Court received the plaintiff’s submissions without undertaking a single legal action in that period to establish that the person had passed away. He alleged that he had the obligation to pay the statutory default interests to the plaintiff applicable from the day the lawsuit had been filed, and the lawsuit was won eight years after. The appellant claims that he has been hurt mentally, as the court was biased and paid no attention to the allegations in his appeal.

II. Reply to the appeal

19. The Cantonal Court stated that the appellant’s allegations about the violation of the right to a fair trial are ill-founded. Next, it stated that it rendered the challenged decision through correct application of the substantive law and procedural law. It pointed out the dates when it received the case to address the appeals and that the case was included in the Plan for solving old cases.

20. The Municipal Court essentially deems that there was no violation of the appellant's right to a fair trial within a reasonable time, as the proceeding against the appellant was conducted only from 26 March 2018, when the plaintiff informed the court of the appellant being a heir. In that connection, the Municipal Court stated that the civil procedure had been initially conducted against the appellant's father, but that the litigation had never started since the appellant's father had passed away. Therefore, the Municipal Court rendered a ruling terminating the proceeding, which could continue only upon the request of authorised persons. It indicated that it had no influence on the fact whether the plaintiff was going to inform the court about the heirs and whether probate proceedings had been conducted. The Municipal Court indicated that, from the day of learning about the appellant willing to continue the proceeding, it undertook promptly legal actions with a view to bringing the proceeding to a timely conclusion. The Municipal Court also regards as ill-founded the appellant's allegations about the partiality of the court. It indicated that the appellant was afforded a possibility to participate in the proceeding and that it rendered a decision under the applicable rules of the substantive and procedural law.

21. In the observations about the replies, the appellant reiterated the allegations made in the appeal and deemed the allegations of the Municipal Court to be ill-founded and general. He indicated that the plaintiff sent submissions to the Municipal Court during 2014, which was mentioned in the first instance judgment. Therefore, he considers that the Municipal Court undertook legal actions two years after the death of the appellant's father.

V. Relevant law

22. The **Civil Procedure Code** (*Official Gazette of FBiH*, 53/03, 73/05, 19/06 and 98/15). Unofficial revised text prepared at the Constitutional Court shall be used for the purpose of this decision, which reads as follows:

Article 10

(1) A party shall have the right for a court to decide on their requests and motions within a reasonable time.

(2) The court shall be obliged to conduct the proceedings without any delay, with the lowest possible costs, and to prevent any abuse of rights, which the parties to the proceedings are entitled to.

Article 378, paragraph (1) item 1)

The proceedings shall be stayed when:

1) A party dies or loses litigation capacity;

Article 381, paragraph (1)

(1) The proceedings stayed due to reasons stated in Article 378, paragraphs 1 to 4 of this Law, shall resume when an heir or a trustee of hereditary property, a new legal representative as provided by law, trustee in bankruptcy, or legal successors of a legal person takes over the proceedings, or when the court, at the motion of the adverse party, calls them to do so.

23. **The Law on Inheritance - Revised text** (*Official Gazette of SRBiH, 7/80 and 15/80*)

Article 143, paragraph (1)

An heir shall be responsible for the debts of a testator up to the value of the inherited property.

24. **The Law on Obligations** (*Official Gazette of SFRY, 29/78, 39/85, 45/89 and 57/89, Official Gazette of SRBiH, 2/92, 13/93 and 13/94, and Official Gazette of FBiH, 29/03 and 42/11*). Unofficial revised text prepared at the Constitutional Court shall be used for the purpose of this decision, as published in official gazettes as it has not been published in all official languages and alphabets, which reads in so far as relevant as follows:

When owed

Article 277, paragraph (1)

(1) The debtor, who is late with fulfilling his/her capital commitments, owes the default interest at the rate stipulated by federal law, along with the principal sum.

When debtor is considered delayed

Article 324

(1) A debtor shall be considered delayed in the event that he does not fulfil the obligation within the deadline stipulated for fulfilment.

(2) If the deadline for fulfilment is not stipulated, the debtor shall be considered delayed when the creditor invites him to fulfil the obligation, verbally or in writing, by extrajudicial warning or initiating a procedure the purpose of which is to accomplish the fulfilment.

VI. Admissibility and Merits

25. The Constitutional Court has established that the appeal meets the requirements prescribed under Article VI(3)(b) of the Constitution of Bosnia and Herzegovina and Article 18(1) of the Rules of the Constitutional Court and that it was lodged within the given time limit. The appeal also meets other admissibility requirements under Article 18(3) of the Rules of the Constitutional Court, and it is not manifestly (*prima facie*) ill-founded within the meaning of the provision of Article 18(4) of the Rules of the Constitutional Court.

26. The appellant alleges that the contested decision has been in violation of his 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, including the right to a trial within a reasonable time as an element of the right to a fair trial.

27. Article II(3)(e) of the Constitution of Bosnia and Herzegovina, in so far as relevant, 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:

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

28. Article 6 (1) of the European Convention, in so far as relevant, 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. [...]

As to the challenged decision

29. In essence, the appellant deems that the substantive law and procedural law were applied arbitrarily in the present proceeding and that the right to an impartial tribunal was violated. In connection with these allegations, the Constitutional Court indicates that, according to the case law the European Court of Human Rights (“the European Court”), it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation. The European Court should not act as a fourth-instance body and will therefore not question under Article 6 (1) the national courts’ assessment, unless their findings can be regarded as arbitrary or manifestly unreasonable (see ECtHR, *Aščerić v. Bosnia and Herzegovina*, decision of 17 December

2019, paragraph 23 with further references). The Constitutional Court has consistently followed that case law in a number of its decisions (see, *inter alia*, Decision on Admissibility and Merits, no. AP-20/05, of 18 May 2005, published in the *Official Gazette of Bosnia and Herzegovina*, 58/05, paragraph 23).

30. As to the allegations presented in the appeal about the violation of the principle of impartiality of a court, the Constitutional Court observes that the appellant failed to provide the reasoning for these allegations, or to offer evidence indicative of subjective or objective partiality of ordinary courts. In addition, the case file for the appeal carry no objective evidence indicative of a reasonable suspicion that ordinary courts were partial during the decision-making on the appellant's rights. In view of the above, the Constitutional Court deems that the appellant's allegations, in the absence of other arguments and evidence, themselves don't call into question the respect for the principle of impartiality of a tribunal under Article II (3) (e) of the Constitution of Bosnia and Herzegovina and Article 6 (1) of the European Convention. Therefore, it deems these allegations to be ill-founded.

31. Furthermore, the Constitutional Court deems that ordinary courts provided clear and relevant reasoning about why the appellant, as an heir, was obliged to pay the plaintiff's claims against the appellant's father along with the statutory default interest (see paragraphs 15-17 of this decision). In doing so, the ordinary courts referred to the relevant provisions of the Law on Inheritance and the Law on Obligations, and the Constitutional Court does not find such reasoning to be arbitrary or manifestly unreasonable since answers were given to all the questions that were relevant for decision-making. As to the appellant's allegations pointing to the omission on the part of the Municipal Court to terminate the proceedings immediately after the death of the appellant's father, the Constitutional Court observes that it does not follow from the facts of the case at hand that the Municipal Court was informed about the death of the appellant's father in the period before the adoption of the ruling on the termination of the proceeding at hand. The appellant himself failed to submit any piece of evidence to substantiate his allegations. Therefore, the Constitutional Court deems these allegations ill-founded. Finally, the Constitutional Court indicates that the appellant did not manage to call into question, by any single allegation he made, the fairness of the proceeding in the present case. Likewise, he failed to prove that the proceeding was conducted in any way procedure-wise to his detriment; rather he is only dissatisfied with the result of the proceeding.

32. In view of all the aforementioned, the Constitutional Court concludes that the contested decision of the Cantonal Court has not violated the appellant's 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 in relation to other aspects of that right.

As to the length of the proceedings

33. The Constitutional Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the appellants and the relevant authorities and what was at stake for the appellants in the dispute (see ECtHR, *Mikulić v. Croatia*, judgment of 7 February 2002, application no. 53176/99, paragraph 38, and *Delić v. Bosnia and Herzegovina*, judgment of 2 March 2021, application no 59181/18, paragraph 18).

34. As to the appellant's allegations pointing to the length of the proceedings before the ordinary courts, the Constitutional Court recalls that, regarding the relevant period taken into consideration in cases where the appellant, as an heir, assumed a position of an applicant, it considered in its hitherto case law the overall length of the proceedings. It considers the period starting from the day when the appellant's predecessor initiated a proceeding (see, e.g., the Constitutional Court, Decisions on Admissibility and Merits nos. *AP-859/21* of 6 April 2022, paragraph 32, and *AP 146/21* of 6 April 2022, paragraph 28, available at www.ustavnisud.ba). On the other hand, in its Decision no. *AP-3368/16*, wherein the appellant joined the proceeding as the defendant, the Constitutional Court took, as the beginning of the relevant period, the date when the appellant joined the proceedings (see, the Constitutional Court, Decision on Admissibility and Merits no. *AP 3368/16* of 11 October 2018, paragraph 39, available at www.ustavnisud.ba). In the case at hand, it is indisputable that in the proceeding, the appellant assumed the position of his father, who had a procedural position of a defendant in the proceeding. However, the Constitutional Court recalls also that the appellant was obliged, in accordance with the relevant provisions of the Law on Obligations, to pay the statutory default interest from the day of maturity of each individual invoice. Bearing in mind that the contested invoices dated from 2010 and 2011, the mentioned beginning of the period for the application of the statutory default interest and the circumstance that the appellant essentially has to pay the interest for the entire length of the proceeding, the Constitutional Court deems that, in the specific circumstances of the appellant's case, when examining the standard of a "reasonable time limit", it is necessary to consider the period of the length of the proceedings in entirety. In view of the aforementioned, the Constitutional Court will consider, in relation to the length of the proceedings, the period starting from 31 August 2011, when the plaintiff had filed a lawsuit against the appellant's father, to the adoption of the judgment of the

Cantonal Court dated 6 January 2021, as the final decision. In doing so, the Constitutional Court will take into account that the first instance proceeding was stayed during the period of around six months and that during that period the Municipal Court was unable to take action objectively (see, the Constitutional Court, Decision on Admissibility and Merits no. *AP-3397/20* of 20 April 2022, paragraph 48, available at www.ustavisud.ba). Therefore, the subject matter of assessment is the period of around eight years and 11 months. Next, the Constitutional Court observes that this is not a complex case and that the appellant did not affect, by his actions, the length of the proceedings.

35. The Constitutional Court observes that the first instance proceeding, after the lawsuit had been filed with the Municipal Court until the stay thereof, lasted for over six years and that it does not follow that during the said period of time the Municipal Court had undertaken any procedural actions whatsoever. After the stayed proceeding resumed, the Constitutional Court observes that the Municipal Court rendered a first instance decision within one year and four months. Next, the appellate proceeding before the Cantonal Court lasted for a relatively short period, for around five months. The case was then referred back to the first instance court for a retrial and decision-making. Retrials before the Municipal Court and the Cantonal Court were concluded within the period of around 11 months in total. In addition, the Municipal Court made observations in the reply to the appeal only concerning the length of the proceeding after the appellant had joined the litigation. However, the Municipal Court did not make any observations as to the period before the stay of the proceeding, during which, as mentioned, it had not undertaken any procedural actions whatsoever. Bearing in mind the aforementioned, the Constitutional Court deems that the mentioned conduct on the part of the Municipal Court is not in conformity with the standards of the right to a fair trial within a reasonable time, i.e. the obligation to undertake efficiently and cost-effectively available procedural actions with a view to concluding the proceeding. Therefore, considering the proceeding as a whole, the Constitutional Court deems that the length of the proceeding was excessive in the circumstances of the present case, and that the main responsibility for such excessive length of the proceeding lies with the Municipal Court.

36. In view of the aforementioned, the Constitutional Court deems that there has been a violation of the appellant's to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention in the segment of adoption of a decision within a reasonable time.

The issue of the compensation for non-pecuniary damage

37. Considering the decision in this case and its hitherto case law (see, e.g., the Constitutional Court, Decision on Admissibility and Merits no. *AP-2975/21* of 7 September 2022, paragraphs 32-34), the Constitutional Court deems that the appellant should be paid, within the meaning of Article 74 of the Rules of the Constitutional Court, the amount of BAM 500.00 in respect of the compensation for damage for the failure to adopt a decision within a reasonable time.

38. The Government of the Sarajevo Canton shall have the obligation to pay the abovementioned amount to the appellant within three months from the date of service of this decision. As to the part relating to the compensation for non-pecuniary damage, this decision of the Constitutional Court shall constitute an enforceable document.

VII. Conclusion

39. The Constitutional Court concludes that there has been a violation of the appellant's right to a "trial within a reasonable time" as one of the elements 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. The Constitutional Court found the violation as in the relevant period the civil proceedings had lasted approximately eight years and 11 months. The Municipal Court bears the responsibility with respect to that as it had failed to present any objectively acceptable reason for such a lengthy proceedings.

40. On the other hand, there has been no violation of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention in relation to other aspects of the said right. In the contested decision, the Cantonal Court gave clear and satisfactory reasons for its decision and the Constitutional Court does not deem that reasoning arbitrary.

41. Pursuant to Article 59(1), (2) and (3) and Article 74 of the Rules of the Constitutional Court, the Constitutional Court has decided as stated in the enacting clause of this decision.

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