MONITORING

Analysis of Administrative and Legal Cases Referring to the Laws on Citizenship, Laws on Refugees and Displaced Persons and Law on Movement and Residence of Foreigners and Asylum of BiH[1)]

The purpose of this material is to give an insight into the actual administrative practice and case law that refer to the application of the law on citizenship (on the entity and state level), the law on refugees and displaced persons (on the entity and state level) and the Law on Movement and Residence of Foreigners and Asylum of BiH.

This Monitoring Analysis… does not include information about the existing solutions in the above-mentioned laws but, with reference to them, we point out special analytical materials that refer to the contents of the three outlined laws, which were drawn up within the activities of BiH ATF.

The purpose of this document is to draw a conclusion from the presented case law and administrative practice about the compliance with the relevant international standards relating to the application of the existing domestic legal framework and to evaluate the level of their anticipation by the judicial and executive (administrative) bodies when resolving individual rights of citizens. With regard to that, one can analyze the affect of the presented practice in relation to the Agreement on Succession entered in Vienna by the republics (today independent countries) of former SFRY. This Agreement on Succession (hereinafter: the Agreement) was ratified by all former Yugoslavian republics, including the Republic of Croatia, whose ratification became effective in 03 June 2004.

This material is also a result of the need to at least partly consider the practice of judicial and administrative bodies relating to the fact that a huge number of citizens that once had the citizenship of SFRY now have the refugee status on a bigger part of the territory of our former common country, along with the legal repercussions resulting from the same.

From the point of methodology, the Monitoring Analysis.. has been drawn up so as to present a total of 20 different cases taken from the practice[2).] Each individual case consists of the adequate case (decision), along with the explanation of the decision, and short comments to the decision given by the author of the analysis.

CASE NO. 1

Constitutional Court of Bosnia and Herzegovina

DECISION ON ACCEPTABILITY

The request of the Federal Ministry of Interior Affairs for the dismissal of case relating to the cessation of nationality (citizenship) of J. K. and others, between the Federal Ministry of Interior Affairs and (the previous) Ministry of Civil Affairs and Communications of Bosnia and Herzegovina, is hereby rejected.

From the reasoning

Appeal

On the 4 September 2002, the Federal Ministry of Interior Affairs (hereinafter: Federal Ministry) submitted to the Constitutional Court of Bosnia and Herzegovina (hereinafter: Constitutional Court) certain cases relating to the cessation of nationality of M. S., J. K., Lj. V., and M. T. and asked the Constitutional Court to render a decision upon the dispute between the Federal Ministry and the previous Ministry of Civil Affairs and Communications of Bosnia and Herzegovina (hereinafter: Ministry of Civil Affairs), quoting the Art. 33 paragraph 2 of the Law on Citizenship of the Federation of Bosnia and Herzegovina (hereinafter: Law on Citizenship).
The Federal Ministry requests from the Constitutional Court to resolve the dispute between that Ministry and the Ministry of Civil Affairs. According to the opinion of the Federal Ministry, the aforementioned persons live on the territory of the Federation of Bosnia and Herzegovina and they registered for the loss of their nationality (citizenship of Bosnia and Herzegovina) in a regular manner. On the other hand, the Ministry of Civil Affairs is of the opinion that the aforementioned persons live abroad and that they should have repudiated their nationality.
…

Acceptability
…

The question being raised in the specific case is whether the Federal Ministry has locus stand to submit to the Constitutional Court the dispute inflicted between the country and one of its entities. The request for the existence of locus stand is limited. Namely, in line with the Art. VI/3 (a) of the Bosnia and Herzegovina Constitution, proceedings before the Constitution Court can only be initiated by an authorized subject from the Art. VI/3 (a). According to the wording of the mentioned article, the Federal Ministry is not an authorized subject to initiate proceedings before the Constitutional Court in accordance with the Art. VI/3 (a).
The Constitutional Court indicates that the Federal Ministry can initiate, via authorized persons mentioned in the Art. VI/3 (a) of the Bosnia and Herzegovina Constitution, proceedings before the Constitutional Court in accordance with this article.
According to the above-mentioned, the Federal Ministry is not one of the subjects that are entitled to initiate proceedings of this type before the Constitutional Court.

Conclusion

Taking into account the provisions of the Art. 16 par 2 clause 5 of the Rulebook of Constitutional Court, according to which a request is to be rejected as unlawful if submitted by an unauthorized person, the Constitutional Court unanimously decided as in the ruling of this decision.

U 66/02
30.01.2004. President

Comment to case no. 1

In the specific case it is about a dispute between the Federal Ministry of Interior Affairs and the (previous) Ministry of Civil Affairs and Communications of Bosnia and Herzegovina referring to the cessation of nationality of J. K. and other persons. Namely, Bah Constitutional Court came to the conclusion that the Federal Ministry of Interior Affairs is unauthorized to submit this type of

requests. Namely, according to four decisions of the Vienna Governmental Department, Austrian citizenship has been guaranteed to certain persons if those persons register for the repudiation of their nationality (citizenship of Bosnia and Herzegovina). In these four decisions the federal Ministry decided on the repudiation of nationality. The Ministry of Civil Affairs and Communication opposed this (?), claiming that those persons are abroad and that they should have repudiated their nationality and not ask for the loss of their nationality. Namely, according to the provision of the Art. 33 of the Law on Citizenship of the Federation of Bosnia and Herzegovina ("F BiH Official Papers", No. 43/01), decisions on obtaining, cessation, etc of citizenship (nationality) are to be submitted to the Ministry of Civil Affairs and Communications, which should make a decision upon the same within 2 months. If it does not decide upon them, the decisions will be regarded as valid, and the Ministry can, as in this case, oppose those decisions. If it opposes the decisions, the final decision is to be rendered by the BiH Constitutional Court. This has been stipulated by the Law on Citizenship of Bosnia and Herzegovina ("BiH Official Gazette", No. 4/97, 13/99, 41/02, and 6/03), by the Art. 31; however, the deadline of 2 months have been shortened to three weeks.

Quoting the provisions of BiH Constitution, according to which the competencies of BiH Constitutional Court of BiH have been determined relating to the disputes that they can decide upon between the country and entities, unfortunately, the Constitutional Court of BiH rejected this request for reasons regarding the processing issue, taken the view that the Federal Ministry of Interior Affairs is not authorized to submit this type of request to the BiH Constitutional Court. Namely, this issue is very interesting because the legality of such a Ministry is put into question basically whenever its decisions are sent for revalidation to a state Ministry without the possibility of having the court resolve the dispute.

Therefore, articles 33 of the Federal, i.e. 31 of the state law are debatable and because of such a revalidation the cases have no access to the court, and this is unacceptable and, according to the European Convention Art. 6, the rights of such applicants are being violated.

Regulation of nationality (citizenship) is a joint responsibility of the state and its entities, and the Constitution of Bosnia and Herzegovina enables a certain minimum of criteria when regulating the issue of citizenship. Citizenship is a very important element that determines the belonging to Bosnia and Herzegovina as an independent country. Therefore, there is no doubt that the dispute on citizenship between the country and one of its entities is an issue contained in the Constitution of Bosnia and Herzegovina, and that it would be very good if the constitutional court could take a standpoint in the merit on this issue.

Concerning the application and standpoints of courts and the case law, it should be stressed that very few disputes relating to the citizenship (from obtaining them to losing them) ends up at all at the court and the reason for that is that it is being resolved during the administrative procedure envisaged by the Law on Citizenship, so the cases never come to the court. The court could only resolve these disputes in the administrative dispute at the Supreme Court of the Federation of Bosnia and Herzegovina or upon the appeal with the Human Rights Chamber, i.e. now the Constitutional Court of Bosnia and Herzegovina.

Case No. 2

Supreme Court of the Federation of BiH

A person whose citizenship of RBiH has been acknowledged and against whom criminal charges have been filed with the competent prosecutor's office due to a founded doubt that he/she has committed a criminal act cannot be the basis for depriving them of their citizenship of BiH and FBiH, because that fact does not present a legal basis for a denaturalization.

From the reasoning

In the process of making the disputable decision it was determined that a criminal charge was filed against the plaintiff with the competent prosecutor's office due to a founded doubt that the plaintiff committed a criminal act (international terrorism). The competent body came to the conclusion that there are legal conditions, according to the Art. 23 clause 1 of the Law on Citizenship of BiH and Art. 24 clause 1 of the Law on Citizenship of FBiH, to denaturalize the plaintiff. The competent body's reason for that is the fact that, while applying for citizenship, the plaintiff stated that he would respect the constitution and other regulations of BiH.
The court finds that by the disputable decision the law was violated to the damage of the plaintiff. According to the aforementioned regulations, there can be a denaturalization only if citizenship was obtained by a fraud while applying for the same. The competent body was of the opinion that, when applying for the citizenship, there was a hidden intention of the plaintiff not to respect the constitution and other regulations of BiH, and such a conclusion is based on the criminal charges. However, such a standpoint of the aforementioned body is unacceptable due to the fact, according to the domestic legislation and European Convention on the Protection of Human Rights and Fundamental Freedoms, everyone is considered innocent until otherwise proved. Therefore, the above-mentioned denaturalization is not founded.
Due to the above-mentioned reasons, the court annulled the disputable decision and sent the case back for a reopening.

Judgment No. U-4565/01
19.12.2002. President of the Council

Comment to Case No. 2

The standpoint taken by the Supreme Court of F BiH in its judgment No. U-4565/01 dated 19.12.2002, published in the Newsletter of the Supreme Court of F BiH 2002/2003 indicates that a person whose citizenship of R BiH has been acknowledged and against whom criminal charges have been filed with the competent prosecutor's office due to a founded doubt that he/she has committed (attempted) a criminal act cannot be deprived of his/her citizenship of BiH and F BiH, because that fact does not present a legal basis for denaturalization.

Namely, the situation is such that the Federal Ministry of Interior Affairs made a decision on denaturalization to a certain person for the reason that the person, when giving his/her statement upon applying for citizenship, confirmed that he/she will respect the Constitution and laws of the country for which citizenship he/she is applying and that he/she will not endanger the international reputation of the country by his/her conduct. As criminal charges were filed against that persons for international terrorism and the same has been indicted for an attempted criminal act, this body was of the opinion that the conditions from the Art. 23 clause 1 of the Law on Citizenship of BiH and Art. 24 clause 1 of the Law on Citizenship of F BiH have been fulfilled and therefore made a decision on denaturalization.

Contrary to that, the Supreme Court of F BiH is of the view that when a citizenship has been obtained upon the old law on citizenship in R BiH, there is no possibility of depriving that person of citizenship (nationality) upon the aforementioned basis, since the same was not envisaged by the old law but introduced only with the new Law on Citizenship. Further on, the reasons were not precisely given in the decision nor were they logically explained and are not based on facts, especially since, according to the provision of the Art. 6.2. of the European Convention, every person is considered innocent until proved otherwise.

In line with the above-mentioned, since this person obtained the citizenship according to the regulations that were then valid, and that was the Law on Citizenship of R BiH, the following numbers: 18/92, 11/93, 27/93, 13/93, and 15/94, certain conditions envisaged by that law, to which he/she obligated himself/herself when getting the citizenship, have to be fulfilled in order to deprive a person of citizenship.

Case No. 3

Human Rights Chamber for Bosnia and Herzegovina

DECISION ON ACCEPTANCE AND MERIT

F. U.
versus
Bosnia and Herzegovina

Appeal

The applicant is a Turkish citizen. On 30 November 2001, the Ministry of Human Rights and Refugees of Bosnia and Herzegovina issued a decision according to which the temporary stay is being terminated to the applicant and the same is being ordered to leave the territory of Bosnia and Herzegovina within 3 days upon the validity of the decision. Furthermore, according to the decision, the applicant is being ordered to stay outside the territory of Bosnia and Herzegovina for 5 years. The applicant is of the opinion that his human rights and fundamental freedoms have been violated, thus he requires the HR Chamber to determine the aforementioned violation.

Merit

According to the Art. XI of the Agreement, the Chamber has to determine whether the above-mentioned determined facts reveal a violation of obligations upon the Agreement done by the defendant.

The decision of 30 November 2001 basically consists of two decisions: first, the decision on termination of residence to the applicant, and secondly, decision on banishment. Due to the fact that both decisions, decision on termination of residence and decision on banishment, were made at the same time and drawn in the same document, the Chamber finds that at the moment when the decision on banishment was made, the applicant must still have been regarded as a foreigner with legal residence on the territory of Bosnia and Herzegovina in terms of the Art. 1 of the Protocol No. 7 along with the Convention.
The provisional measure of the Chamber, according to which the applicant was not to be banished, was effective as of 31 January 2002 until 11 March 2002. The applicant left Bosnia and Herzegovina on 23 March 2002 by his own will and he was not forcefully banished. By the decision of 30 November 2001 the applicant was ordered to leave the territory of BiH within 3 days starting from the day when the decision was put into force, along with the threat of forceful execution… Apart from that, the decision dating from 30 November 2001 is to be final in the administrative procedure.
The applicant saw the decision of 30 November 2001 as an order for him to leave Bosnia and Herzegovina within three days upon receiving the decision or he would be forcefully banished.

Therefore, the applicant addressed the Chamber in order to protect himself from forceful banishment with a request for provisional measure.
Due to all the circumstances of this case, the Chamber cannot tell when exactly the defendant would execute the threat of forceful banishment of the applicant. Anyway, when the applicant received the decision on banishment on the 29 January 2002, according to the Art. 1 of the Protocol No. 7 along with the Convention, he was entitled to protection.
The Chamber draws the conclusion that the applicant did not have the possibility to efficiently submit the reasons against his banishment, since his reasons were never considered by any of the competent institution. Moreover, he could not use his right to have his case reconsidered. Actually, there was no mechanism for reconsidering the banishment of applicants. The court of Bosnia and Herzegovina outlined in the decision did not function in the relevant period nor did the appeal council of the Council of Ministers that is being mentioned in the Law on immigration and asylum. Therefore, the Chamber finds that the rights of the applicant have been violated according to the clause 1(a) and (b) Art. 1 of the Protocol No. 7 along with the Convention.
Considering the arguments of both sides and taking into account the freedom of decision-making by the defendant when deciding whom to give the permission to reside and for what period, the Chamber does not find that the separation of the applicant from his family is inadequate to the legitimate goal.
Therefore, there was no violation of the Art. 8 of the Convention.

Conclusion

For these reasons, the Chamber decides as follows:

with 13 votes "for" and 1 "against", it declares the appeal to be acceptable upon the Art. 8 and 13 of the European Convention on Human Rights and Art. 1 of the Protocol No. 7 along with the European Convention on Human Rights;

with 13 votes "for" and 1 "against", that Bosnia and Herzegovina violated the right of the applicant to submit reasons against his banishment and to have his case reconsidered, as guaranteed by the Art. 1 of the Protocol No. 7 along with the European Convention on Human Rights, according to the which the defendant violated the Art. I of the Agreement on Human Rights;

with 12 votes "for" and 2 "against", that this decision presents a sufficient satisfaction for the removal of determined violation.

President of the Chamber

No. CH/02/8767

Comment to Case No. 3

In the specific case, one administrative body-Ministry of Refugees and Displaced Persons of Bosnia and Herzegovina issued a decision on banishment of a foreigner with a temporary stay in BiH, to whom the temporary stay is being cancelled and who is being ordered to leave the territory of Bosnia and Herzegovina within 3 days starting from the day when the decision enters into force. The Decision on cancellation of the temporary stay of the applicant based on internal regulations of BiH – law on Immigration and Asylum. However, the foreigner justifiably got

legal protection for two reasons: because the internal regulations of BiH have not been coordinated with the standards of the European Convention and because there was no possibility to reconsider the decision of the Ministry regarding the banishment of a foreign citizen; this was concluded also by the Human Rights Chamber of BiH.

Case No. 4

Constitutional Court of Bosnia and Herzegovina

DECISION

The Decision on Amendments to the Law on Travel Certificates of Bosnia and Herzegovina ("BiH Official Gazette", No. 27/00) is in accordance with the Constitution of Bosnia and Herzegovina.

From the Reasoning

Appeal

On 12 October 2000, thirty-four deputies of the National Assembly of Republika Srpska filed a request with the Constitution of Bosnia and Herzegovina for the evaluation of compliance with the Decision on Amendments to the Law on Travel Certificates of Bosnia and Herzegovina passed by the High Representative on 29 September 2000.

Facts

On 29 September 2000, the High Representative for Bosnia and Herzegovina, Mr Wolfgang Petrich, issued the Decision on Amendments to the Law on Travel Certificates of Bosnia and Herzegovina, published in the "Official Gazette of Bosnia and Herzegovina", No. 27/00 dated 27 October 2000.
By this decision the Law on Travel Certificates of Bosnia and Herzegovina, published in the "Official Gazette of Bosnia and Herzegovina" No. 4/97, is being changed and supplemented, with the amendments published in the "BiH Official Gazette", No. 1/99 and 9/99.
The High Representative issued the Decision on Amendments to the Law on Travel Certificates of Bosnia and Herzegovina on 29 September 2000, after the proposal of the Law on Amendments to the Law on Travel Certificates of BiH got the majority of votes of the present deputies during the voting in the House of Representatives of the Parliamentary Assembly, but did not get the majority of votes in the House of People.
With regard to the competency of High Representative to pass the laws and the competency of Constitutional Court of BiH to decide on compliance of those laws with the Constitution of BiH, the Constitutional Court has earlier given its standpoint in its Decision No. U-9/00, published in the "BiH Official Gazette", No. 1/01, that the authorizations of the High Representative resulting from the Annex 10 of the General Framework Agreement, relevant resolutions of the United Nations Security Council and Bohn Declaration, do not depend upon the Constitutional Court, nor does the execution of those authorizations. The High Representative, being an international body, intervened in the legal system of Bosnia and Herzegovina, and replacing domestic bodies in doing so. In that light, therefore, he acted as the Government of BiH, and the law passed by him is regarded as domestic law, thus has to be considered as the law of Bosnia and Herzegovina. The competency to protect the Constitution was allocated to the Constitutional Court of Bosnia and Herzegovina already in the first sentence of the Art. VI/3 of the Constitution, according to which

the Constitutional Court will support this Constitution. Moreover, the Art.1/ 2 of the Constitution has to be taken into account, which says:
"Bosnia and Herzegovina is a democratic country that functions on the principle of the Rule of Law and upon free and democratic elections!"
The principle of effective protection of the Constitution is based on these constitutional provisions as the Court has already decided in a previous case No. U-1/98 ("Official Gazette of Bosnia and Herzegovina", No. 22/98). Hence, the Constitutional Court does have the power to control the compliance with the Constitution of all documents, regardless of the body that passed them, as long as that control is based on one of the competencies outlined in the Art. VI/3 of BiH Constitution. Constitutionality of the decision on amendments to the Law on Travel Certificates of BiH dated 29 September 2000 was disputed by thirty-four deputies of the National Assembly of Republika Srpska, which is more than a quarter of members deputies of the National Assembly of Republika Srpska, which according to the Constitution of Republika Srpska, consists of 83 members (the Art. 71 of RS Constitution).
However, it should be emphasized that the request was filed with the Constitutional Court on 12 October 2000, and the Decision of High Representative was published in the "BiH Official Gazette", No. 27/00 on 27 October 2000. Pursuant to the Art. 14 of the Rulebook on the Constitutional Court, a request for the beginning of proceedings mentioned in the Art. VI/3 (a) of the Constitution, has to contain, among other things, the name of the by-law that is subject to the dispute, along with the name and number of the official gazette in which it was published, and according to the Art. 27 of the Rulebook, the Court can evaluate the compliance only of those by-laws that are effective.
The Constitutional Court estimates that the request of the group of deputies, even though filed with the Constitutional Court before the contested Decision was published in the "Official Gazette of BiH", can be accepted, since according to the Art. 27 of the Rulebook, the day on which the Court is making a judgment is relevant, and not the day when the request was filed.
Due to the above-mentioned reasons, the Constitutional Court concludes that the request is acceptable.

Conclusion

According to the applicant's request, the following constitutional-legal issues are being raised:
- is the High Representative competent to not only pass but also change laws;
- is the "erasing of the mark entity" in compliance with the Art. 1/7 (a) and (b) of the Constitution of BiH, i.e. is it in compliance with the Art. 34 of the Law on Citizenship of Bosnia and Herzegovina;

Was it necessary for the High Representative to issue the Decision, when a Law on Travel Certificates of BiH already existed, is now the question of legislative activities of parliament institutions of BiH. Therefore, the High Representative, by issuing the decision by which the law is changed and supplemented, substituted the domestic authorities within its constitutional authorizations. The Constitutional Court already gave its viewpoint on this issue when it accepted the appeal.
The Art. 3 of the Decision that refers to the issue of "erasing the mark entity" says as follows:
The Constitution clearly separates the arrangement of passports from the issuance of passports; the BiH is in charge of the arrangement of passports. That is just one more example, as the Court has already mentioned in its second Partial Decision in the case 5/98 ("BiH Official Gazette", No. 17/00) in the item 12, that the Art. III/1 of the BiH Constitution does not contain itself a list (specification) of competencies of the different institutions of BiH, but that the competencies of different institutions of BiH have also been outlined in other provisions of the Constitution. Therefore, BiH Parliament Assembly has an exclusive competency to prescribe the design of the

passport within the constitutional limitations, while the entities are in charge of issuing the passports only in the mode prescribed by the BiH Parliamentary Assembly.
Neither the Art. 1/7 (a) and (b) of BiH Constitution nor any other provision of the Constitution holds the Parliamentary Assembly liable for securing that the passports of BiH can serve as evidence of citizenship of both entities. Therefore, erasing the marks of entities does not violate the Constitution.
Regarding the issue of the Decision of High Representative that is in accordance with the Art. 34 of the Law on Citizenship of Bosnia and Herzegovina, it is enough to point out that the Law on Citizenship is not included in the constitutional rank. Therefore, that law cannot serve as a standard for the control implemented by the Constitutional Court of Bosnia and Herzegovina. Otherwise the Constitution of Bosnia and Herzegovina would be interpreted on the basis of the regular law, which would put the whole legal system hierarchy, which results from the provision of the Art. III/3 on the supremacy of BiH Constitution, up and down.
For the mentioned reasons, the Constitutional Court concludes that the Decision on amendments to the Law on Travel Certificates of Bosnia and Herzegovina is in compliance with the Constitution of Bosnia and Herzegovina.

No. U-25/00
Date: 23 March 2001 President

Comment to Case No. 4

Two relevant views were taken in this decision of the Constitutional Court of BiH: authorizations for the High Representative for BiH are not liable to the control of the Constitutional Court, nor is the execution of those authorizations, however, the law being passed by him is considered to be intervention in the legal system of BiH and presents a domestic law that is liable to the control of the Constitutional Court; the second view taken in this decision confirms the rule that decisions issued by the High Representative for BiH cannot be brought before the Constitutional Court and questioned in order to evaluate the adjustment to legal provisions and the Law on Citizenship of Bosnia and Herzegovina.

CASE NO. 5

Constitutional Court of Bosnia and Herzegovina

DECISION

The request filed by M.D. from Zavidovici for the evaluation of constitutionality of the Article 1 of the Law on Amnesty (“BiH Official Papers”, No. 48/99) is hereby rejected due to the fact that an unauthorized persons filed the same.

From the reasoning

Appeal

On 5 December 2001, M.D. (hereinafter: the claimant), from Zavidovici, filed a request with the Constitutional Court of Bosnia and Herzegovina (hereinafter: the Constitutional Court) for the

evaluation of constitutionality of the Article 1 of the Law on Amnesty ("BiH Official Papers", No. 48/99). The claimant is of the opinion that by staying of the criminal proceedings due to a violent conduct his basic right to protection of life and body, guaranteed by the international convention and Constitution of Bosnia and Herzegovina, was violated.
Furthermore, the claimant stresses that violators charged for penal offences against life and protection of citizens' bodies cannot receive amnesty, and that no democratic country can pass laws of such nature, because its duty is to protect lives and bodies of its citizens. The claimant suggests that the Constitutional Court should make a decision according to which the Art. 1 of the Law on Amnesty would not be in compliance with the Constitution of Bosnia and Herzegovina.

Acceptability

The contested provision of the Art. 1 of the Law on Amnesty reads as follows:
"By this law all persons who committed any of the penalty offences envisaged by the adequate criminal codes that were being applied on the territory of the Federation of Bosnia and Herzegovina (hereinafter: the Federation) in the period between 1 January 1991 and 22 December 1995 are being relieved from the prosecution for penal offence or given complete acquittal from punishment inflicted or non-executed part of offence (hereinafter: the amnesty), except those charged for the criminal offences against the mankind and international law mentioned in the chapter XVI of the Criminal Code taken over from SFRY, penal offences defined by the Statute of the International Court for Former Yugoslavia, as well as the following penal offences: murder from the Art. 36, rape from the Art. 88, offences against the dignity of a person and moral from the Art. 90, 91, and 92, severe cases of banditry and robbery from the Art. 151, as well as the Art. 186 clause 2 relating to the Art. 182 of the Criminal Code of the Republic of Bosnia and Herzegovina, if by these laws or any other adequate law that was being applied on the territory of the Federation the penalty of those persons have been stipulated for their penal offences".
According to the Art. VI/3 (a) of the Constitution of Bosnia and Herzegovina "the Constitutional Court has an exclusive competency to decide upon all disputes resulting from this Constitution between two entities, or between Bosnia and Herzegovina and one or both entities, or between the institutions of Bosnia and Herzegovina, including, but limiting itself to the following:
-whether a decision of an entity to establish separate parallel relations with the neighboring country is in compliance with this Constitution, including the provisions relating to the sovereignty and territorial integrity of Bosnia and Herzegovina;
-whether a provisions of the constitution or law of one entity is in compliance with this Constitution.
Disputes can be initiated by the member of Presidency, chairman of the Council of Ministers, chairman or deputy of one of the houses of Parliamentary Assembly; a quarter of members/deputies of one of the houses of Parliamentary Assembly, or a quarter of members of one of the houses/councils of a legislative body of an entity".
The Art. 55 clause 2 of the Rulebook on the Constitutional Court, in the relevant part, reads as follows:
"… The Court is rendering a decision by which it is rejecting the request. The Court will render such a decision when it determines that the request was filed by an unauthorized person;"
according to the marked constitutional provision, a dispute can be initiated before the Constitutional Court only by the subject determined by the Constitution, and the claimant is not one of them. Therefore, the request is unacceptable.

Conclusion

Due to the fact that the claimant is not authorized to begin proceedings before the Constitutional Court, according to the Art. 55 clause 1 item 2 of the Rulebook on Constitutional Court, the Constitutional Court unanimously decided as outlined in the ruling of this decision.

U 40/03
Date: 24.09.2003. President

Comment to Case No. 5

The regulations referring to the amnesty to people that during the hostilities committed certain penal offences are of great significance to the process of reintegration of refugees to their previous homes in BiH. The legislation relating to amnesty can speed up the process of return of refugees and displaced persons. It is in the competency of the lawmaker to decide which penal offences are to be included in the amnesty and for which period of time. In this case the physical person – citizen of BiH is of the opinion that the Law on Amnesty of one entity is not in compliance with the entity Constitution. However, the Constitutional Court considers such an appeal to be justifiably unacceptable because, according to the Constitution of BiH, the citizen is not authorized to initiate proceedings for the evaluation of constitutionality, and on the other hand, such a possibility would not be in the interest of the process of return of refugees.

CASE NO. 6

District Court in Banja Luka

JUDGMENT

The Decision of the Civil Court in Geneva, file-No. 503/02 dated 14.10.2002, has been valid since 10.03.2003:
E. F. B. adopts D.Z. born on 13 January 1989.
The adoptive (foster) daughter will from now on carry her own name D. instead of D.
The applicant will be charged with the costs of the proceedings.
It is hereby acknowledged that the aforementioned decision produces an act of law and that the finality of decision is determined in the Republika Srpska; the same is regarded as a valid certificate that can be used when entering data in the Register of Births.

From the reasoning

On 13 May 2003, the applicant filed a proposal for the acknowledgement of the Decision issued by an international court mentioned in the ruling of this judgment in order to do some adequate changes in the Register of Births. While considering the proposal and decision enclosed to the proposal,- original copy in French language and certified translation into the Serbian language along with a valid certificate, - this Court found that the legal conditions from the Art. 86 to 96 of the Law on Conflict Resolution of the Law on Regulations of Other Countries in Certain Relations ("SFRY Official Paper", No. 43/82), which is being applied upon the Art. 12 of the Constitutional Court for the implementation of the Constitution of Republika Srpska ("RS Official Gazette", No. 21/92), have been fulfilled and that there are no legal obstacles for the acknowledgement of the aforementioned decision to produce an act of law in the Republika

Srpska and that the same can be regarded as a valid certificate that can be used when entering data in the Register of Births.
Due to the outlined reasons, and pursuant to the Art. 101 of the above-mentioned Law, a judgment has been made as outlined in the ruling.

No. R-187/03
Date: 13.05.2003. Judge

Comment to Case No. 6

The foreign court decision, according to which a foreign citizen has adopted a minor child of a citizen of Bosnia and Herzegovina, is recognized by this judgment. The domestic court did not find any obstacles that would indicate that there is a need to protect the domestic citizen nor any obstacles in the fact that for the adoption, according to the domestic law, it is the administrative body that is competent and not the court.

CASE NO. 7

The Municipal Court in Prnjavor

DECISION

The request of the defendant that the plaintiffs provide for the legal expenses in this case is hereby rejected.

From the reasoning

The plaintiffs lodged a complaint against the defendants in order to have the invalidity of contract on property exchange, which was concluded on 04.08.1995 and certified by the Municipal Court in Prnjavor under the file number Ov. 1330/95 dated 17.05.1995, determined.
The defendants filed a written request via their proxy that, pursuant to the provisions of the Art. 169-171 of the Law on Legal Proceedings, the plaintiffs provide for the legal expenses to the amount of 3000 KM, for the reasons that the plaintiffs are foreign citizens and in case that they do not get a court decision in their favour, the defendant might get into the situation in which he will not be able to collect the legal costs.
They suggested that the Court should render a decision upon the filed request for the providing of legal expenses.
In order to make a decision upon the aforementioned legal case, the court investigated the certificate on citizenship issued to the plaintiff V. A. by the (civil) registar in Prnjavor under the file number 02-204-157/2001 dated 10.04.2001, and the copy of ID card of the second plaintiff V. F. issued by the police station in Prnjavor under the file number 28/81 dated 23.01.1981, as well as the official letter of the Public Security Centre Banja Luka, Public Security Station Prnjavor under the file number 10-6/03-1-207-267/01 dated 16.09.2001, thus after having had an insight into the aforementioned documents, the court rendered the decision as outlined in the ruling for the following reasons:
By investigating the above-mentioned certificate issued to V. A. daughter of M, it was determined that the same was born on 27.03.1936 in Babanovci, Prnjavor municipality and that

she was entered in the Register of Citizens that is being kept for the settlement Prnjavor-Okolica Prnjavor municipality, page 58, under the ordinal number 574 for the year 1948. Therefore, it was undoubtedly determined that the first plaintiff V. A. is not a foreign citizen, but a citizen of BiH and Republika Srpska, thus the allegations of the defendants that they might not realize their right to reimbursement are not founded.

Also, by investigating the identification papers of the second plaintiff, i.e. the copy of ID card, it was determined that the same was issued to the second plaintiff on 23.01.1981. under the file number 28/81 by the Police Station Prnjavor, which can also be seen from the official letter of the Public Security Station Prnjavor dated 17.09.2001, and that the aforementioned person was born on 22.02.1934 in Belgrade, PIN: 2202934103520.

Taking into consideration the fact that the plaintiffs in this legal case are identical rivals and the fact that the first plaintiff V. A. is a citizen of BiH and RS, according to this court, the legal presumptions for obligating the plaintiffs to pay in advance the amount required by the defendants for the above-explained reasons were not fulfilled, because in case the plaintiffs are to be charged with the legal costs, the defendant could claim it from the first plaintiff since, as previously explained, she is a citizen of BiH and RS.

According to the evaluation of this court, the defendant wrongly quotes and refers to the provisions of the Art. 169 of the Law on Legal Proceedings, because those provisions, as well as the following provisions of this article to the Art. 171, ceased to be valid when the Law on Conflict Resolution of the Law on Regulations of Other Countries in Certain Relations ("SFRY Official Paper", No. 43/82), which pursuant to the Art. 12 of the Constitutional Court for the implementation of the Constitution of RS, is being applied in this procedure, and according to which this issue has been basically resolved in an identical way.

According to the provision of the Art. 82 of this Law, "when a foreign citizen or stateless person who does not have an address in SFRY (in this specific case, in the Republika Srpska) initiates proceedings before the court, he or she is obliged to provide for the legal expenses to the defendant upon his or her request".

Due to the fact that the court determined that the first plaintiff is not a foreign citizen or a stateless person but, on contrary, a citizen of BiH and RS and that the plaintiffs are identical rivals, the court rejected the request of the defendants for obligating the plaintiffs to provide for the legal expenses, since the legal presumptions, from the previously quoted provision of the Law, for that have not been fulfilled, and even if the court did not make a decision in favour of the plaintiffs, the defendants could direct their request for reimbursement towards the first plaintiff.

No. P-350/2000
Date: 25.02.2002. President of the Council

Comment to Case 7.

Provisions that basically present certain benefits or impose certain obligations to persons who are not citizens of this country have been integrated in many regulations of BiH. In practice it is being very often misused. Thus it has been stipulated by the Law on Legal Proceedings (that was valid in the period when the decision was made) that the court can obligate a foreign citizen to pay in advance the legal expenses for the mere reason of not being a citizen of BiH. In the specific legal case, the court offered protection to a person who was not determined to be a citizen of this country.

CASE NO. 8

Cantonal Court in Sarajevo

DECISION

The complaint is hereby accepted, the contested and first-instance decision are being annulled and sent back to the first-instance body for a reopening of the case.

From the reasoning

The appeal of the plaintiff filed against the decision of the Office for Housing Issues of Canton Sarajevo file no. 23/1-372-1555/98 dated 07.06.2002 by which the claim of the plaintiff T.J. for the repossession of apartment located in the street Antuna Hangija 13/3 (former name: Mitra Trifunovica 31) was rejected, is hereby dismissed by the contested decision no. 27/02-23-3295/02 dated 17.01.2003, as unfounded. The plaintiff suggests that the court should annul both decisions and accept his claim for the repossession of apartment in Antuna Hangija 13/3. In his explanation he points out that the facts were not completely determined and that an inaccurate conclusion was made and the substantial law wrongly applied.

…

The complaint is founded.

According to the evaluation of this court, the defendant did not act correctly when accepting the first-instance decision as legal and accurate, to which the allegations from the complaint refer.

Namely, during the decision-making, neither the defendant nor the first-instance body took into consideration the Constitution of BiH, and especially the Art. 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Art. 1 of the Protocol item 1 of the Convention, which pursuant to the Art. U/2 of the Constitution are the integral parts of BiH legal system and have priority over all other laws and have to be applied, thus in line with the existing laws, they have the preferential right in terms of application, to which the allegations from the complaint accurately and justifiably refer.

The first-instance body and the defendant are obliged to apply the Constitution of BiH and European Convention that have priority (advantage) over domestic law, thus they had to interpret the Law on Cessation of Application of the Law on Abandoned Apartments in the mode that would be in compliance with the Constitution and European Convention and the decision of the Constitutional Court of BiH No. 14/01 and decision of the Human Rights Chamber of BiH in the judgment CH 96/22.

At the same time, according to the Annex VII of the General Framework Agreement for Peace in BiH, one of the main goals is the return of people to their homes as of 30.04.1991 that should be a starting point, from which all legal disputes will be considered, with the goal of returning the property to their previous occupants, in accordance with the decision of the Constitutional Court of BiH No. 14/01 dating from 04.05.2001.

Furthermore, pursuant to the Art. 8 of the European Convention, everyone is entitled to the respect of home, while the Art. 1 of the Protocol No. 1 of the Convention refers to the principle of peaceful enjoyment of property, which presents an economic value – which in this specific case is an apartment-, and to fair trial according to the Art. 6 of the Convention.

Hence, in this specific case, the first-instance body was supposed to determine whether the contested apartment was the claimant's home on 30.04.1991, and whether he was using it in a legal way, i.e. whether he has the status of a displaced person in terms of the Art. 3 par. 1 and 2.

Therefore, the competent bodies had to have the obligation to apply the Constitution of BiH and European Convention for the Human Rights and Fundamental Freedoms as the law that has supremacy, thus the competent bodies had to interpret the Law on Cessation of the Application of

the Law on Abandoned Apartments in the mode that would be in compliance with the Constitution and European Convention.
According to the aforementioned and by the application of the Art. 38 par 1 and 3 of the Law on Administrative Procedures, a decision was made as outlined in the ruling.
In a reopened case, and taking into account the above-mentioned, the first-instance body is to act again upon the claim for the repossession of apartment filed by the plaintiff, and depending of the determined facts, - whether the contested apartment was the occupancy right holder's home on 30.04.1991,- to decide on his right to repossess the apartment, and especially taking into consideration the view taken in the decision of the Constitutional Court of F BiH No. 14/2001, i.e. whether the contested apartment was the claimant's home in terms of the Art. 8 of the European Convention, and will so make a legal and accurate decision along with adequate reasoning.

No. U-94/03
Date: 13.02.2004. President of the Council

Comment to Case No. 8

In this court decision the Cantonal Court in Sarajevo, in the administrative dispute, reconsidered the decisions of the administrative bodies of F BiH. By those decisions the administrative bodies have determined that the plaintiff (who was a citizen of Sarajevo before the war and who left the town during the hostilities) is not entitled to repossess the apartment that he bought before the war from the former YNA, because his status of refugee, i.e. displaced person is not being recognized. The administrative bodies based their decisions on the provision of the Art. 3a of the Law on Cessation of the Application of the Law on Abandoned Apartments of F BiH. The aforementioned regulation does really allow the administrative bodies to, in the procedure of returning the so called military apartments, determine under certain conditions that the pre-war occupant has lost the status of refugee and therefore the right to repossess the apartment. That is regarded as a non-principal aberration from legal provisions by which the status of refugees is regulated on the level of BiH and its entities. However, the Cantonal Court annulled the decisions made by the administrative bodies because the aforementioned decisions of administrative bodies were made on the basis of regulation that has not been adjusted to the European Convention.

CASE NO. 9

Constitutional Court of Bosnia and Herzegovina

DECISION

The Art. 152 of the Labour Law of Republika Srpska ("Official Gazette of Republika Srpska", No. 38/00) is in compliance with the Constitution of Bosnia and Herzegovina.

From the reasoning

Appeal

On 19. February 2001, Dr H. G., then a member of Presidency of Bosnia and Herzegovina, filed, in accordance with the Art. U1/3 a) of the Constitution of Bosnia and Herzegovina, a request with the Constitutional Court of Bosnia and Herzegovina (hereinafter: the Constitutional Court) for the determination of constitutionality of Art. 152 of the Labour Law of Republika Srpska (hereinafter: RS Labour Law), published in the "Official Gazette of Republika Srpska", No. 38/00.

…

Merit

First the court investigated whether the Art. 152 of the Labour Law violated the Art. II/4 of the Constitution of Bosnia and Herzegovina and the Art. 14 of the European Convention on Human Rights so as to have discriminated against the former non-Serb employees of the companies and institutions in terms of their right to return to work. Hence, it is necessary to investigate whether the Art. 152 of the Labour Law is discriminatory, regardless of the fact that the formulation of the same does not distinct between an individual and a group.

The court is of the opinion that in the reality the contested article contains inherent distinctions of ethnic nature, if considered in the historical context. Distinctions were made in the past between the individual and group when the employees were being fired or put on lay-off because of the ethnic affiliation. The discriminatory acts were in place all the time until the Art. 152 of the Labour Law was adopted, and discriminations, inflicted in the past, have not been eliminated. The goal of the contested article is to find a definite solution for such cases. The purpose of the same is to exclude the regular legal remedies (which would recess the possibility of returning to work) against illegal employment terminations in exchange for a dismissal wage. However, due to the discriminatory circumstances of the above-mentioned employments terminations to which the contested article refers, this article will most often be used on the fired Bosnian and Croatian employees with no further specification of these groups in the legislative text. On the other hand, those who could remain on their positions in the Republika Srpska during the war and after the war mainly belonged to the Serb ethnic group. Thus, the natural consequence is that those employees were generally not damaged by the contested article. The contested provision, thus, makes an implicit difference between members of certain ethnic groups.

Therefore, it is necessary to investigate whether the difference that is inherent to the Art. 152 of the Labour Law can be objectively and reasonably justified.

The goal of the contested article could be the stabilization of working positions of those employees who in the meantime replaced the fired employees. That could be a reasonable goal. However, the Court is of the opinion that their interests are in opposition to the interests of the fired employees. If one takes into account the fact that the fired employees were victims of discrimination, the Court is of the opinion that their right should be transferred to the right of those who replaced them, especially since the first ones are now unemployed.

However, another goal of the contested article is to create legal security for those companies that completely stopped or significantly decreased their business operations due to the war, and that after the war faced the problem as to how to continue with the work under the conditions of market economy. This security could also be important to investors who would like to invest in such companies and to the general development of economy in Bosnia and Herzegovina.

On the other hand, there is the right of the illegally fired employees or those sent on lay-off to get their old positions back. This could not be possible in all cases, and it depends to a large extent on the economic conditions of their former employers. Even though this individual interest is of great importance, the Court is of the opinion that the previously pointed out public interest is of greater importance.
The goal of the contested provision is to reach a proportional solution of these dilemmas by offering the possibility of severance wage depending on the length of service with the employer. In relation to that, the contested provision does not completely neglect the individual economic interest that the employee had at his former job.
The court is of the opinion that the implicit distinction in the Art. 152 of the Labour Law has an objective and reasonable justification. In relation to that, the contested provision is not in opposition to the Art. P/5 in relation to the Art. 11/5 of the Constitution of Bosnia and Herzegovina or Art. 6 par 1 of the European Convention.
Furthermore, the Court will investigate whether the contested provisions has violated the right to return envisaged by the Art. P/5 of the Constitution of Bosnia and Herzegovina.
This provision of the Constitution of Bosnia and Herzegovina reflects a specific situation in Bosnia and Herzegovina as the result of the war, as well as the intention of the framer of the Constitution to remove the consequences of "ethnic cleansing" and reestablish a multiethnic and multicultural society. Apart from the specific right to repossession of property, this article contains the general right to return to their homes. The Art. 11/5 of the Constitution of Bosnia and Herzegovina protects the right of refugees and displaced persons to freely return to their places, i.e. to their cities and villages.
The enjoyment of this right can be violated when the respective person does not have the possibility to return to his work, which is the basis for his decision to live at a certain place. Since the Art. 152 of the Labour Law can make it difficult for refugees and displaced persons to return to their pre-war homes, it can be considered as having a direct impact on the right to return, which has been guaranteed by the Art. 11/5 of the Constitution.
However, the Constitutional Court has determined above that the Art. 152 serves an important public interest and can therefore not be regarded as limiting in a disproportional way the right to return, guaranteed by the Art. 11/5 of the Constitution.
In that light, the contested article did not violate the Art. 11/5 of the Constitution of Bosnia and Herzegovina.

Conclusion

The Court hereby draws the conclusion that the Art. 152 of the Labour Law of Republika Srpska is in compliance with the Constitution of Bosnia and Herzegovina.

No. U 19/01
Date: 2 November 2001 President

CASE NO. 10

Constitutional Court of Bosnia and Herzegovina

DECISION

The Art. 54 of the Law on Amendments to the Labour Law ("Official Papers of the Federation of Bosnia and Herzegovina", No. 32/00) is in accordance with the Constitution of Bosnia and Herzegovina.

From the reasoning

Appeal

On 5 February 2001, the Municipal Court in Cazin filed a request with the Constitutional Court of Bosnia and Herzegovina so that the same, according to the Art. U1/3 c) of the Constitution of Bosnia and Herzegovina, determines whether the Art. 54 of the Law on Amendments is in compliance with the Constitution of Bosnia and Herzegovina.
…

Merit

The question that the Constitutional Court has to answer in this case is whether the provision of the Art. 54 of the Law on Amendments, according to which the application of provisions referring to the amount of severance wage, which are more favourable to the employees and which were being applied until this law became effective (Art. 143 of the Labour Law), and was excluded in the unfinished proceedings of realizing and protecting the employees' rights that started before this law entered into force, violates the provisions of the Constitution of Bosnia and Herzegovina.
The Constitution of Bosnia and Herzegovina, in the Art. 11/1, determines that Bosnia and Herzegovina and both entities will secure the highest level of internationally recognized human rights and fundamental freedoms and that, according to the Art. 11/2, the rights and freedoms, determined by the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the European Convention) and by its protocols, will be directly applied in Bosnia and Herzegovina. In this specific case, taking into account the fact that the question refers to the legal provision regarding the realization of rights to severance wage of employees that are on "lay-off", the Constitutional Court has to consider primarily the compliance of this provision with the Art. 1 of the Protocol No. 1 of the European Convention.
The Art. 1 of the Protocol No. 1 of the European Convention consists of three principles: the first principle, regulated already in the first sentence of the first paragraph, is the general principle of peaceful enjoyment of property. The second principle, defined in the second sentence of the first paragraph, indicates that dispossession of property can happen under specific conditions. The third principle, contained in the second paragraph, refers to the control of the state over the use of private property, which is allowed under conditions described in the second paragraph.
In line with the second sentence of the first paragraph of the Art. 1 of the Protocol No. 1, no one can be deprived of their property, except when it is in the public interest and under conditions envisaged by law and general principles of international law. Even if the above-mentioned conditions were fulfilled, the dispossession of property is in accordance with this provision only when there is a fair balance between the public interest and the individual's interest who has been

deprived of his/her property. This means, with certain exceptions, that the individual is entitled to a reasonable compensation for the dispossession of property.
However, the Constitutional Court is of the opinion that the state has a certain possibility of determining which economical and social policy would be the best and most adequate to serve the general interest of the population.
The Constitutional Court is aware of the difficult economic situation in the Federation of Bosnia and Herzegovina. Based on that, the Constitutional Court has to accept that the amount, which should be paid out to the former employees in accordance with the previous legal provision, presents, without any doubt, a huge burden to the whole economy of the Federation of Bosnia and Herzegovina. Therefore, it is clearly in the public interest to reduce this amount.
According to the Art. 14 of the European Convention, discrimination has been forbidden only in terms of the rights and freedoms stipulated by the European Convention. However, this does not exclude the possibility that this article could be violated, even when the right to which it refers, when considered in isolation, was not violated. This right, even though justified, has to be limited in a non-discriminatory mode. A by-law or regulation is discriminatory if it makes a difference between people or groups that are in a similar situation, and if there is no objective and reasonable justification in the same, or if there was no reasonable relation of proportionality between the used means and goals.
The Constitutional Court points out that the issue of discrimination is inflicted only when people or groups are treated differently when being in the same or similar situation. In this case, all the employees that are on lay-off, who were entitled to the severance wage when the Law on Amendments was passed and became effective, but who have still not received their severance, were treated identically. The Constitutional Court is of the opinion that such employees are in a different situation than those employed. The Constitutional Court is of the opinion that they differ from those employed because they have already received their severance pursuant to the previous law. When there is a change of law, very often a difference inflicted between those affected by the previous law and those whose rights have been regulated by the new law cannot be avoided. These two categories of people cannot be regarded as being in an analogous situation, nor can the law be regarded as being discriminatory.

Conclusion

In line with the above-mentioned, there is no discrimination in this case.

No. U 26/00
Date: 21 December 2002. President

CASE NO. 11

Constitutional Court of Bosnia and Herzegovina

DECISION

The request filed by I. S. for the determination of constitutionality of the Art. 143 of the Labour Law (“Official Papers of the Federation of Bosnia and Herzegovina”, No. 43/99 and 32/00) is hereby rejected due to the fact that the same was filed by an unauthorized person.

From the reasoning

Appeal

On 10 July 2003, I. S. (hereinafter: the claimant), from Breza, filed a request with the Constitutional Court of Bosnia and Herzegovina (hereinafter: the Constitutional Court) for the determination of constitutionality of the Art. 143 of the Labour Law.
The claimant requests from the Constitutional Court to begin proceedings for the determination of constitutionality of the Art. 143 of the Labour Law, emphasizing that there was a violation of the Constitution of Bosnia and Herzegovina and the Constitution of the Federation of Bosnia and Herzegovina by a retroactive application of the Law on Amendments to the Labour Law, in the part referring to the status of employees of 1991. Furthermore, the claimant points out that the amendments to the Law dating from 2000 do not envisage any legal protection in disputes mentioned in the Art. 143, thus the existence of the Cantonal Commission is in no capacity of a court.

Acceptability

In determining the acceptability of this request, the Constitutional Court referred to the provision of the Art. U1/3 a) of the Constitution of Bosnia and Herzegovina and the Art. 55 par 1 clause 2 of the Rulebook on the Constitutional Court.
The Art. U1/3 of the Constitution of Bosnia and Herzegovina reads as follows:
"The Constitutional Court has the exclusive competency to decide in disputes that are, according to this Constitution, inflicted between entities, or between Bosnia and Herzegovina and one or both entities, or between the institutions of Bosnia and Herzegovina, including but not limiting itself to whether a decision of an entity to establish a special parallel relationship with some of the neighbouring countries is in compliance with this Constitution, also including the provisions that refer to sovereignty and territorial integrity of Bosnia and Herzegovina. Whether an article of the constitution or law of one of the entities is in compliance with this Constitution. Disputes can be initiated only by the members of Presidency, chairman of the Council of Ministers, president or deputy of any council of the Parliamentary Assembly, one quarter of members of any council of the Parliamentary Assembly or one quarter of members of any legislative council of an entity."
The Art. 55 par 1 clause 2 of the Rulebook on the Constitutional Court reads as follows:
"At the session, which can be attended only by the respective judge and persons keeping the minutes, the Court renders the decision by which it rejects the request. Such a decision will be made by the Court when it determines that the request was filed by an unauthorized person."
Taking into account the aforementioned constitutional provisions, the Constitutional Court draws the conclusion that the claimant is not authorized to begin proceedings regarding the competency of the Constitutional Court from the Art. U1/3 a) of the Constitution of Bosnia and Herzegovina. Therefore, the request is to be rejected as unacceptable. Moreover, the conclusion of the claimant on the leading of his proceedings before the Cantonal Commission in Zenica, according to the opinion of the Constitutional Court, does not affect the acceptability of this request from the Art. U1/3 of the Constitution of Bosnia and Herzegovina.

Conclusion

Pursuant to the Art. 54 and Art. 55 par 1 clause 2 of the Rulebook on the Constitutional Court, the Constitutional Court decided as outlined in the ruling of this decision and rejected the request.

No. U 1/03
Date: 26 September 2003 President

Comment to Cases 9, 10 and 11

In the three presented cases, the Constitutional Court of BiH was considering the constitutionality of entity provisions that regulate the right to employment. As well-known, there was a massive termination of employment contracts during the war and directly after the war. Most often the above-mentioned referred to the employees that belonged to the minority population in the companies, thus ethnic cleansing was done upon that basis too. After the war, courts and other bodies in charge of the employment issues were faced with numerous requests of employees who wished to return to their pre-war working places, which also included the linking of years of service and refunding (as compensation). The legislators in both entities of BiH passed the Labour Laws by which, among other things, they regulated the rights of employees who were left without their jobs during the war. The two entities regulated this issue in different ways, but basically the goal of the legislators was to, by the aforementioned legal provisions, make the return of those employees to their previous positions impossible, along with very low severance wages.
In its two decisions (case no. 9 and 10), the Constitutional Court determined that the aforementioned laws were not in favour of the former employees of the companies and that those laws in a certain way also violate their right to property, but it anyway, unfortunately, determined that the passing of those laws did not violate the Constitution of BiH and European Convention.
The reasons can be found primarily in the bad economic capacity of companies and entities, and the Constitutional Court took the standpoint that it was in the public interest to limit certain rights, as was the case in these specific case-scenarios.
In the third decision (case no. 11) the Constitutional Court again takes the standpoint that the constitutionality of a certain regulation cannot be determined upon individual appeals of citizens.

CASE NO. 12

Constitutional Court of Bosnia and Herzegovina

DECISION

Appeal of C. E. and Z. E. from Mostar against the decision of the Cantonal Court in Mostar file no. GZ-87/99 dated 17 October 1999 and file no. GZ-85/99 dated 21 October 1999 is hereby adopted.
The decisions of the Cantonal Court in Mostar file no. GZ-87/99 dated 14 October 1999 and file no. GZ-85/99 dated 21 October 1999 are hereby annulled.

In accordance with the existing legal provisions, the case is to be sent back to the Municipal Court in Mostar for a decision-making in merit.

From the reasoning

Appeal

The claimants state that they have acquired the right to pension for a certain period but that they have never received any. They claim that by issuing the disputed decisions their rights to legal protection indicated in the Art. 6 paragraph 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the European Convention) and the Art. II/3 (e) of the Constitution of Bosnia and Herzegovina (hereinafter: the Constitution) were violated, because the lower instance courts did not render a decision according to which they were to receive the realized pension, but instead were of the opinion that the administrative bodies were in charge of resolving this dispute. Furthermore, they claim that their rights as refugees and displaced persons were violated according to the Annex VII of the General Framework Agreement for Peace in Bosnia and Herzegovina. They emphasize that these rights also include the right to repossess all their property they were deprived of during the hostilities, thus they require to be compensated for the loss of the aforementioned property. Moreover, they emphasize that those rights to property have been guaranteed by the Art. 1 of the Protocol No. 1 of the European Convention and Art. II/3 (k) of the Constitution of Bosnia and Herzegovina. Finally, the claimants are of the opinion that the disputed decisions also violated the rights guaranteed by the Art. II/5 of the Convention and items 3, 7, and 8 of the Annex of the Constitution.
…

Merit

This specific case refers to the payment of pensions that became due during the period when the claimant lived outside Bosnia and Herzegovina. Therefore, this is an issue of financial claim of the same. The Institute did not dispute the right of claimants to their pension, however, it determined in its informal official letter (correspondence) that their rights did not refer to the period when they had lived outside Bosnia and Herzegovina. The issue being raised here is whether this informal rejection by the Institute, along with the subsequent court decisions on non-competency, is actually denying the rights of the claimants to a free access to courts, guaranteed by the Art. 6 paragraph 1 of the European Convention and Constitution.
The Art. 6 (1) of the European Convention, in relevant parts, reads as follows:
“Everyone has the right to have the independent and impartial Tribunal established by law decide on his or her civil rights and obligations fairly, publicly and in a reasonable time period…”
The Constitutional Court concludes that the dispute on the implementation of rights relating to the pension insurance must be regarded as a dispute on “civil rights and obligations: within the meaning of the Art. 6 (1).
According to the Art. 200 of the Law on Administrative Procedures, the Institute was obliged to issue a formal decision upon the claimant’s request. Moreover, the Institute was obliged to issue a decision in a special form and include certain elements in accordance with the Art. 200 of the Law on Administrative Procedures. Thereafter, according to the Art. 204 paragraph 3 and Art. 208 of the Law on Administrative Procedures, the decision of the Institute should contain the precept in case they wish to appeal the same. The Institute did not act in accordance with the rules, but only replied to the claimants with an unofficial letter by which it informed them that they had no rights to pension for the period in question*

The effect of this informal letter of the Institute was that the claimants were deprived of the formal decision which they could have disputed in a procedure before the court.
The Municipal and Cantonal Court then declared themselves not competent to consider the case of the claimants, and did not remove the inadequacies that appeared in the administrative procedure.
As the consequence of no formal decision of the Institute and the declaration of the courts of being incompetent to consider the case, the claimants were deprived of their right toa free access to court, which has been guaranteed to them by the Art. 6 paragraph 1 of the European Convention and Art. II/3 (e) of the Constitution.
The Art. 1 of the Protocol no. 1 of the European Convention (Art. II/3 (k) of the Constitution) reads as follows:
"Every physical or legal person has the right to a peaceful enjoyment of their property. No one can be deprived of their property, except if it is in the public interest and under conditions envisaged by law and general principles of the international law.
The previous provisions, however, do not influence in any way the right of the state to apply the laws it considers necessary in order to regulate the collection of taxes or any other duties and penalties."
According to the case law of the European Court for Human Rights, the Art. 1 of the Protocol No. 1 contains three different principles. The first one, stated in the first sentence of the first paragraph, is of general character, and establishes the principle of peaceful enjoyment of property. The second one, stated in the second sentence of this paragraph, refers to the property dispossession that can be inflicted under certain conditions. The third one, contained in the second paragraph, acknowledges the right of countries signatories to control the use of property in accordance with the general interests, by applying the laws they consider necessary.
The Constitutional Court is of the opinion that the right to pension referring to a certain period presents (relates to) the property in terms of the Art. 1 of the Protocol No. 1.
In the specific case, the claimants are of the opinion that they have the right to pension, i.e. the rights guaranteed by the Art. 1 of the Protocol No. 1, and that they have the right to have their request be considered and resolved by the court. The rejection of the courts to consider the merit of their requests did not only violate their right to a free access to court, as above-determined, but has also deprived them of an effective protection of their right to the enjoyment of their property, guaranteed by the Art. 1 of the Protocol No. 1 of the Convention.
Since the Constitutional Court has already determined that the claimants' rights to property have been violated by the decisions rendered by courts, the Court does not consider it necessary to determine whether there was a violation of their right guaranteed by the Art. II/5 of the Convention.

Conclusion

According to the previous considerations, the non-issuance of a formal decision by the Institute, in line with the conclusions on the incompetence of the Municipal Court and Cantonal Court in Mostar, caused a violation of the constitutional right of the claimants to have free access to courts and their right to a peaceful enjoyment of property. Their appeal is therefore being adopted. The Constitutional Court considers it adequate to send the case back to the Municipal Court, which is to decide in merit upon the request of the claimants in accordance with the existing regulations.

No. U 5/00
Date: 29 September 2000 President

CASE NO. 13

Constitutional Court of Bosnia and Herzegovina

DECISION

The request of Dj. Lj., refugee from Bosnia and Herzegovina, now residing in Sweden, for the determination of constitutionality of the Law on Retirement and Disability Insurance ("Official Papers of the Federation of Bosnia and Herzegovina", No. 29/98 and 49/00) is hereby rejected.

From the reasoning

Appeal

Dj. Lj., refugee from Bosnia and Herzegovina, now residing in Sweden, filed with the Constitutional Court in Bosnia and Herzegovina a request for the determination of constitutionality of the provisions of the Law on Retirement and Disability Insurance of the Federation of Bosnia and Herzegovina and regulations passed on the basis of this law, "according to which citizens of the Federation that reside abroad as refugees are being deprived of the right to pension".

…

Acceptability

The Art. 107 paragraph 2 of the Law on Retirement and Disability Insurance ("Official Papers of the Federation of Bosnia and Herzegovina", No. 29/98 and 49/00) reads as follows:
"Pension is being paid out to citizens of the Federation residing abroad if there is such an obligation upon the international agreement. If there is no such obligation upon the international agreement, the allocation insurance holder can approve the payment if for family or health reasons the citizen of the Federation is leaving the country in order to permanently reside abroad."
Pursuant to the Art. U1/3 a) of the Constitution of Bosnia and Herzegovina, the Constitutional Court is the only competent body to decide upon any dispute inflicted upon this constitution between two entities, or between Bosnia and Herzegovina and one or both entities, including but not limiting itself on whether the decision of an entity is to establish a special parallel relationship with a neighbouring country is in accordance with constitution, including the provisions relating to the sovereignty and territorial integrity of Bosnia and Herzegovina; whether any provision of the constitution or law of one of the entities is in accordance with this constitution. According to the same constitutional provision, disputes can be initiated only by a member of Presidency, chairman of the Council of Ministers, president or deputy of any of the councils (houses) of the Parliamentary Assembly, one quarter of members/deputies of any council (house) of the Parliamentary Assembly or one quarter of members of any legislative council of an entity.

Conclusion

The citizen who filed the request does not belong to the category of people that are authorized to begin a dispute before the Constitutional Court regarding the compliance of a law with the Constitution. His request must therefore be rejected.

With regard to the proposal of the claimant that the Constitutional Court should "for humanitarian reasons" initiate the proceedings itself for the determination of constitutionality of the Law on Retirement and Disability Insurance, the Constitutional Court emphasizes that the Rulebook on the Constitutional Court does not envisage that the Court should initiate the proceedings ex officio.

No. U 43/01
Date: 2 November 2001 President

Comment to Cases No. 12 and 13

These two decisions of the Constitutional Court basically deal with the question regarding pensions- whether they can be paid out retroactively to persons who have left BiH during the war and are not getting any pension in the country in which they currently live. This is an issue which should be regulated by the entity regulations on retirement and disability insurance. This issue is of great importance to the pre-war pensioners who do not reside in BiH and it has been regulated by internal entity provisions. Those regulations have not been entirely harmonized on the level of BiH but are completely in compliance when referring to the retroactive payment of pensions. They do recognize the right to a retroactive payment of pensions but only for a short term prior to filing the claim (6 months in the Republika Srpska). Therefore, there is a need to determine the constitutionality of these regulations in merit, since the issue is very important, especially for refugees. In the decision of the case 12, the Constitutional Court took the standpoint of considering the pensions the property of pensioners and thereby they have the right to receive those pensions from the competent funds to the amount that has not been paid out. Any other act would violate the right to a peaceful enjoyment of property that has been protected by the Constitution and European Convention. Naturally, the authorized persons can file an appeal for the same.

CASE NO. 14

Constitutional Court of Bosnia and Herzegovina

DECISION

The request of the Association for assistance to refugees and expelled persons in SR Yugoslavia, branch in Budva, department in Lukavac, for the determination of constitutionality of the Law on Privatization of the State Housing Fund in the Federation of Bosnia and Herzegovina is hereby rejected due to the fact that an unauthorized person filed the same.

From the reasoning

Appeal

On 19 December 2001, the Association for assistance to refugees and expelled persons in SR Yugoslavia, branch in Budva, department in Lukavac (hereinafter: the claimant), filed with the Constitutional Court of Bosnia and Herzegovina (hereinafter: the Constitutional Court) for the determination of constitutionality of the Law on Privatization of the State Housing Fund in the

Federation of Bosnia and Herzegovina. The claimant requires that the Constitutional Court puts the disputed law out of force, annul all the contracts concluded pursuant to this law, and, in order to protect the property of Bosnia and Herzegovina, pass a law that will enable each citizen to realize their right based on contributions to the housing funds, without discrimination, or any religious and ideological affiliation.

Facts

The facts of the case, resulting from the allegations of the claimant and documents submitted to the Constitutional Court, could be summarized in the following way.
The claimant has requested that the Constitutional Court determines the constitutionality of the disputed law because it is of the opinion that by that law the rights of employees who were not beneficiaries of the state-owned apartments have been violated. It stresses that the disputed law is unconstitutional, because it enables the buy-off of state-owned apartments that were allocated to occupants (users) according to the criteria of the ruling structures, proving the same with an example of an employee of Koksara Lukavac.
The claimant also states that the buy-off of apartments by certificates led to a non-equal position of employees who were not beneficiaries (occupants) of the state-owned apartments.

Acceptability

The claimant requested from the Constitutional Court to determine the constitutionality of the Law on Privatization of the State Housing Fund in the Federation of Bosnia and Herzegovina.
Privatization of state-owned apartments in the Federation of Bosnia and Herzegovina has been regulated by the Law on Sale of Apartments over which there is a tenancy right ("Official Papers of the Federation of BiH", No. 27/97, 11/98, 22/99, 27/99, 7/00, 32/01, 61/01, and 15/02).
According to the content of the request, the claimant disputes the substantial regulation by which the sale of apartments over which there is a tenancy right has been stipulated, which name (title) he did not specify, adequate name to the positive regulation from this field in the Federation of Bosnia and Herzegovina. However, since the processing presumptions for the determination of constitutionality of the disputed law were not fulfilled, pursuant to the Art. VI/3 a) of the Constitution of Bosnia and Herzegovina, the Constitutional Court finds that it is not necessary to further investigate upon the request.
The Art. VI/3 a) of the Constitution of Bosnia and Herzegovina, in its relevant part, reads as follows:
"The Constitutional Court is the only competent body to decide upon any dispute inflicted upon this constitution between two entities, or between Bosnia and Herzegovina and one or both entities, or between the institutions of Bosnia and Herzegovina, including but not limiting itself to the fact of:
-whether the decision of an entity is to establish a special parallel relationship with a neighbouring country is in accordance with this constitution, including the provisions relating to the sovereignty and territorial integrity of Bosnia and Herzegovina;
-whether any provision of the constitution or law of one of the entities is in accordance with this constitution.
Disputes can be initiated only by a member of Presidency, chairman of the Council of Ministers, president or deputy of any of the councils (houses) of the Parliamentary Assembly, one quarter of members/deputies of any council (house) of the Parliamentary Assembly, or one quarter of members of any legislative council of an entity."

According to the above-mentioned, the Constitutional Court, among other things, is competent to decide whether the law is in line with the Constitution of Bosnia and Herzegovina, however the proceedings can be initiated before the Constitutional Court only by subjects defined by the Constitution of Bosnia and Herzegovina.

Conclusion

Since the Association for assistance to refugees and expelled persons in SR Yugoslavia, with the branch in Budva, and department in Lukavac, is not included in the subjects that are entitled to begin disputes of this type before the Constitutional Court, according to the Art. 55 paragraph 1 item 2 of the Rulebook on the Constitutional Court, the request is being rejected as unacceptable.

U 3/03
Date: 26.09.2003. President

Comment to Case No. 14

An association of a foreign country is certainly not a body authorized to begin proceedings before the Constitutional Court of BiH for the determination of constitutionality of by-laws, however the case is interesting because it refers to the very important issue of privatization of socially-owned apartments and the mode in which these apartments are being bought off. The first question is whether citizens of former SFRY who are no longer citizens of BiH have the right to buy off the state-owned apartments in BiH of which they were occupancy right holders before the war. Another interesting question is whether two completely different modes in which apartments are being bought off in BiH in the two entities can be seriously criticized when taking into account the fact that the apartments were allocated under the same conditions. Finally, the appeal raises the question of whether citizens are being discriminated against since all citizens of BiH have been setting apart their funds for apartments and only one category of citizens is entitled to buy of the apartments.

CASE NO. 15

Commission for Real Property Claims of Refugees and Displaced Persons

DECISION

The request of A. N. for a reconsideration of the decision issued by the Commission for Real Property Claims of Refugees and Displaced Persons No. R-705-132-1/1-90-162 of 1 May 2001 is hereby rejected as unfounded.

From the reasoning

By the decision of the Commission for Real Property Claims of Refugees and Displaced Persons No. R-705-132-1/1-90-162 of 1 May 2001 the request of B. B. for a reconsideration of the decision issued by the Commission for Real Property Claims of Refugees and Displaced Persons No. 705-132-1/1 of 12 September 2000 was accepted, and the decision was put out of force and the request of A. H. for the confirmation of occupancy right of the flat located in Banja Luka,

Skendera Kulenovica Str. 3, floor 11. apartment no. 47, consisting of 66m2, two-room apartment (new address of the apartment: Majke Knezopoljke No. 3).
A.N., the previous occupant of the apartment, filed a request for a reconsideration of the decision. According to the content of the request, A. H. concluded a contract on use of the apartment, and pursuant to the Art. 19 of the Law on Housing Relations, as the spouse of A. H., she is considered to be the occupancy right holder. She emphasizes that only A.H. signed the power of attorney for the repossession of the contested apartment on behalf of T.S. and that it was the will of both spouses to authorize the proxy to represent them. She emphasizes that it is not disputable that the power of attorney was given on 20 March 1998, that A. H. passed away on 15 August 1998, and that he had filed the claim for repossession of apartment with the Commission on 17 November 1998. She is of the opinion that the conclusion of the Commission, according to which the power of attorney seized to be valid by the death of A. H., cannot be accepted as legal. She also believes that the proceedings before the Commission could be regarded as administrative procedure.
She claims that the Art. 14 of the Rulebook on confirmation of tenancy rights of refugees and displaced persons prescribes the form of power of attorney and not the cessation of the same. She stresses that by accepting the standpoint of the Commission according to which the power of attorney seizes to be valid by the death of A. H. she would forever lose the contested apartment, since it is no longer possible to file a request for the repossession of apartment due to the fact that the respective deadline has expired.
She explains that the procedure was finalized by the repossession of apartment, and by the disputable decision the legal basis on which the apartment was returned was put out of force, thus she has no possibility to realize her right on the apartment before an administrative body. Along with the claim she is submitting as evidence the excerpt from the register of marriages, decision on inheritance rendered by the Municipal Court in Banja Luka No. 0-478/01 of 22 March 2001, claim for the repossession of apartment to the rightful occupancy right holder filed on 25 February 1999 with the competent body, conclusion/decision of the Ministry of Refugees and Displaced Persons of Republika Srpska Banja Luka Branch No. 1-08-2358/2000 of 21 December 2000 on approval of the execution of the Commission's decision, and the Minutes taken from the Ministry of Refugees and Displaced Persons of Republika Srpska Banja Luka Branch taken during in the procedure of administrative enforcement No. 05-050-02-02-293/99 of 21 March 2001.
Due to the aforementioned, A. N. suggests that the Commission should reconsider the disputable decision. The request of A. N. for a reconsideration of the Commission's decision is not founded.
Pursuant to the provisions of the Art. 36 of the Rulebook on confirmation of tenancy rights of refugees and displaced persons, the person to whom the decision upon the request for the confirmation of occupancy right refers, as well as the temporary/current occupant of the apartment or allocation right holder, has the right to file a request for the reconsideration of decision, provided that they submit new evidence or give statements on new evidence that the Commission never considered when making a decision, which can have a significant impact on the decision of the Commission.
Along to the request for a reconsideration of the decision made by the Commission, A. N. did not enclose any evidence that could significantly influence the decision. The allegation of A. N. that, according to the provision of the Art. 19 of the Law on Housing Relations, she is to be considered the rightful occupancy right holder and that the power of attorney given by A. H. in order to authorize the proxy to file the claim with the Commission for the repossession of apartment was the will of both spouses has not impact on the decision of the Commission.
In the procedure preceding the issuance of the disputable decision of the Commission it was determined that on the 20 March 1998 A.H. authorized T. S. to file a claim for the repossession of the contested apartment on his behalf, that A. H. passes away on 15 August 1998, and that T. S., as his proxy, filed a request with the Commission for the confirmation of tenancy right on the 17 November 1998.

According to the provision of the Art. 14 paragraph 1 item c) of the Rulebook on confirmation of tenancy rights of refugees and displaced persons, if an authorized representative is filing a request for the confirmation of tenancy right on behalf of the person who was the occupancy right holder on 1 April 1992, it is necessary that he submits a certified power of attorney along with the request. The power of attorney that T.S. submitted on 17 November 1998 along with the claim for the confirmation of occupancy right was terminated by the death of A.H. on 15 august 1998, thus the Commission concluded that conditions for filing the claims prescribed by the aforementioned rulebook were not fulfilled.
In accordance with the provisions of the Art. 26 paragraph 1 item b) of the Rulebook on confirmation of tenancy rights of refugees and displaced persons, by the disputed decision of the Commission the request of A.H. for the confirmation of tenancy right over the contested apartment was rejected. The objection that the procedure before the Commission can be regarded as administrative procedure, and that the conclusion of the Commission that the power of attorney ceases to be valid after the death cannot be considered legal is not founded. According the Rulebook of the Commission, the provisions of the Law on Legal Proceedings are to be applied for the rules of the procedure that have not been regulated by the Rulebook.
According to the above-outlined, and in line with the provisions of the Art. 37 paragraph 3 of the Rulebook on confirmation of tenancy rights of refugees and displaced persons, it was decided as as outlined in the ruling of this decision.

No. R-705-132-1/1-90-491
Date: 27.11.2001. Chairman

Comment to Case No. 15

In the specific case, CRPC acted as a special body constituted by the General Framework Agreement for Peace in BiH. By the aforementioned decision the spouse of the occupancy right holder who passed away (also a refugee) lost her right to the apartment. The reason for that is that CRPC acts upon its own rules that can be in contrast to all other regulations in BiH regulating the same issue. CRPC took the standpoint that a power of attorney ceases to be valid by the death of the party. Such a decision has no grounds in the regulations of BiH and by this decision it probably violated the right of the claimant to home, which has been guaranteed by the European Convention.

CASE NO. 16

District Court in Banja Luka

JUDGMENT

The complaint is hereby accepted and the disputed document is annulled.

From the reasoning

By the disputed document the objection of the plaintiff stated against the decision v.p. 1050 Banjaluka Int. No. 07/4-6 of 19.05.2003. by which the decision of the Office for Garrison Affairs

Banja Luka Int. No. 10-45 of 31.10.1989 was declared invalid, and by which the plaintiff was defined as the occupancy right holder over the two-room apartment located in Banja Luka in Brace i sestara Kapor Str. No. 38/P flat NO. 7 is being rejected.

…

The complaint is founded.

By investigating the legality of the disputed document pursuant to the provision of the Art. 39 of the Law on Administrative Procedures ("Official Gazette of Republika Srpska", No. l2/94) it was decided as outlined in the ruling of the judgment for the following reasons:

According to the document file, the plaintiff was defined as the occupancy right holder over the two-room apartment located in Banja Luka in Brace i sestara Kapor Str. No. 38/P flat NO. 7 after the death of the occupancy right holder S. F. (decision of the Office for Garrison Affairs Banja Luka Int. No. 10-45 of 31.10.1989), and that the contested apartment is from the housing fund of YNA (now the Army of RS) Garrison Banja Luka, with whom the plaintiff concluded a contract on use of the apartment (contract No. 17-1147 of 4.1.1990).

According to the provision of the Art. 22 of the Law on Housing Relations ("Official Papers of SR BiH", No. 14/84 and 12/87), which was valid during the issuance of the aforementioned decision, the allocation right holder is to issue a decision on transfer of occupancy right after the death or permanent moving out of occupancy right holder to the member of his or her household and, according to the Art. 26 of the same law, conclude a contract on use of the apartment with that member.

Since the contested apartment is owned by YNA (now the Army of RS), the aforementioned decision, by which the plaintiff was defined as the occupancy right holder of the contested apartment, is in harmonization with the aforementioned legal provision, document of the allocation right holder that is in no capacity of an administrative document mentioned in the Art. 6 of the Law on Administrative Procedures because the competent body was not deciding as a state body in its performing of public authorizations on rights and obligations of the plaintiff in the administrative case.

According to the Art. 253 of the Law on General Administrative Procedures, the decisions issued in the administrative procedure can be declared invalid, i.e. the decisions that are in the capacity of an administrative document.

In line with the above-mentioned, since the aforementioned decision is in no capacity of an administrative document it could not have been declared invalid in the administrative procedure, regardless of the fact that the body which issued the document is an administrative body.

The wrong application of the substantial law and violation of rules of the proceedings are the reasons for the annulment of the disputes document prescribed by the Art. 10 paragraph 1 item 3 of the Law on Administrative Procedures, which is the reason why the plaintiff's complaint was accepted and the disputed document annulled, pursuant to the Art. 38 paragraph 2 in relation to the Art. 41 paragraph 2 of the same law.

In a reopening of proceedings the defendant is to act upon the above-mentioned instructions of this court.

No. U-208/03
Date: 22.04.2004. President of the Council

Comment to Case No. 16

It is not rare that military bodies illegally cancel the contracts on use of the apartments to persons who during the war lost these apartments. It is almost a regular thing that those bodies illegally

present themselves as administrative bodies and that they deal with administrative proceedings (they give wrong legal instructions, they quote provisions that they cannot apply and they initiate administrative disputes). In the specific case, the military body acted illegally as an administrative body, and annulled the decision on allocation of the apartment to the applicant and caused the administrative dispute that the District Court correctly decided upon, being of the opinion that it was not about an administrative document.

CASE NO. 17

Ministry of space arrangement, construction engineering and ecology of Republika Srpska

DECISION

The decision of the Department of Communal and Housing Affairs of the City of Banja Luka, No. 05-372-386/2001 of 10.09.2003. is hereby annulled and it is hereby determined that K. A. from Banja Luka is entitled to, after the death of the occupancy right holder, her grandmother K. Z., continue with a permanent and undisturbed use of the apartment located in Banja Luka, Skendera Kulenovica No. 43, ground floor, flat bb (old name of the street: AVNOJ-a No. 43).

From the reasoning

By the disputed decision the claim of K. A. from Banja Luka for the making of a decision that would replace the contract on use of the apartment located in Banja Luka, Skendera Kulenovica No. 43, ground floor, flat bb (old name of the street: AVNOJ-a No. 43) after the death of the occupancy right holder, her grandmother K. Z., of which the allocation right holder is the company "Zeljeznice RS", with the seat in Doboj, was rejected as unfounded.

…

According to the reasoning of the disputed decision, the first-instance body rejected the request of the applicant K. A. for the acknowledgement of rights mentioned in the Art. 21 paragraph 2 of the Law on Housing Relations ("SR BiH Official Papers", No. 14/84 and 36/89, and the "RS Official Gazette", No. 19/93 and 31/99), as the person mentioned in the Art. 6 paragraph 2 of that Law, due to the fact that the same was, by the entrance into force of the revised Law on Housing Relations ("RS Official Gazette", No. 19/93), which became effective on 10.10.1993, no longer a member of the household on the basis of means, since the aforementioned Law excludes the grandchildren as being members of the household strictly outlined in the Art. 2 of the changed Law on Housing Relations, and that she never acquired the disputed status on the basis of a legal obligation to care for the aforementioned person, and that the aforementioned law did not stipulate the possibility of acquiring the status of being member of the household upon an economic community in the duration longer than 10 years. Furthermore, she explains her decision by the fact that the provision which was valid during the death of the occupancy right holder K. Z., who passed away in 1995, should be applied to the specific legal relation, when the changed provisions of the Art. 6 paragraph 2 of the Law on Housing Relations were valid; however, the latter canceling of those provisions (28.10.1999.) does not envisage their retroactive application.

On the other side, in her appeal against the disputed decision of K. A., among other things, she points out the provision of the Art. 237 of the Family Law of Republika Srpska, which was valid until 2002 which stipulates the obligation to support (care) for the kinship in relation to minor children, and that the same obligation exists in the currently valid Family Law, in the Art. 239, whereupon she insists on the determination of the existence of obligation to support the

occupancy right holder – her grandmother in relation to her as the minor grandchild, since she is her kinship that she was obliged to support.

By investigating the complete status of files of the aforementioned administrative case, this Ministry still has the standpoint that, regarding the specific relationship, provisions of the Art. 2 of the Law on Amendments to the Law on Housing Relations ("RS Official Gazette", No. 19/93), that were in force in the period of death of K. Z., grandmother of the applicant, or the occupancy right holder of the contested apartment, should be applied, and that the Law on Amendments to the Law on Housing Relations ("RS Official Gazette", No. 31/99), which later on entered into force, after the death of the occupancy right holder, no longer have any provisions on its retroactive ness.

However, since it has been stipulated by the provision of the Art. 2 of the Law on Amendments to the Law on Housing Relations that persons that are regarded as members of the household of the occupancy right holder are also those persons that by law the occupancy right holder is obliged to support, and who permanently live with the same; this is something the plaintiff particularly insists on in her appeal. After having investigated the submitted evidence in the procedure before the first-instant body, the Ministry draws the conclusion that, during the entrance into force of the revised Law on Housing Relations, the plaintiff K. A. was the member of the grandmother's K.Z's household with whom she lived during that period in a joint household as her minor grandchild, which the grandmother was obligated by law to support (Art. 239 of the Family Law "RS Official Gazette", No. 54/02). This has been proved by the written evidence enclosed to the case file (certificates of the Ministry of Interior Affairs, Public Security Centre Banja Luka on registration of address for K. A. dated 16.04.2002, certificates of "Zmaj Jova Jovanovic" Primary School in Banja Luka, copies of postage certificates on the receipt of cash deliveries from the grandfather (from the father's side) M. M. from Bosanski Novi, to the address of K. J., and since 1991 K. Z. AVNOJ-a Str. 43 Banja Luka, as well as the statements of the heard witnesses, especially statements of the witness M. B. the habitant of the building in C. Kulenovica Str. 45, who confirmed that K. A. has constantly lived with her grandmother, that her mother, who lived in Gradiska, came to visit her from time to time, that during her studies she was with her grandmother and that, later on (in September 1993), in the rationalization of housing space, they moved out from the apartment and continued to live together as subtenants.

By the aforementioned evidence, this Ministry, in the procedure upon the appeal against the disputed decision, came to the conclusion that the plaintiff K. A. has acquired the status of being a member of the grandmother K. Z's household upon the legal obligation to support the occupancy right holder in relation to the minor grandchild who lived with her in the contested apartment (Art. 2 of the Law on Amendments to the Law on Housing Relations) and who, until she got to her legal age and later on, shared the destiny with her grandmother, while her mother was living and working in Gradiska and was visiting he periodically.

According to the above-outlined, in terms of the Art. 228 of the Law on General Administrative Procedures ("RS Official Gazette", No. 13/02), it was decided as outlined in the ruling of this decision.

No. 01-372-1175/2001
Date: 10.02.2004. Minister

Comment to Case No. 17

By the decision of the competent ministry legal protection was given to the grandchild who lived with her grandmother in a joint household until 1995 as the member of her household. What is interesting here is that the body found as the basis for legal protection the obligation of the grandchild to by law support the occupancy right holder and not on the basis of the kinship and joint living in the apartment.

CASE NO. 18

Constitutional Court of Bosnia and Herzegovina

DECISION

The appeal of L. A. from Banja Luka is hereby accepted, and the decisions of the Supreme Court of Republika Srpska No. Rev.206/2000 of 19 October 2000, of the District Court in Banja Luka No. GZ-442/99 of 24 January 2000 and the Municipal Court in Banja Luka No. P-2976/97 of 10 March 1999 are hereby annulled due to the violation of constitutional rights to a fair procedure according to the Art. 6 paragraph 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, rights to the respect of her home according to the art. 8 of the Convention and her right to peaceful enjoyment of her property pursuant to the Art. 1 of the Protocol No. 1 of the Convention.
L. R. is being ordered to vacate and hand over the one-room apartment located in Banja Luka, Cara Lazara Str. 21, vacated from persons and personal belongings, to L. A., within 60 days upon the publishing of this decision in the "Official Gazette of Bosnia and Herzegovina" under threat of forceful execution.

From the reasoning

Appeal

The applicant seeks for legal protection of her rights before the Constitutional Court of Bosnia and Herzegovina because she is of the opinion that the regular court of Republika Srpska and the Supreme Court of Republika Srpska have by the disputed decisions severely violated not only the provisions of the Law on Administrative Procedures (provision of the Art. 7 paragraph 1), but also her constitutional rights according to the Art. II paragraph 2 of the Constitution of Bosnia and Herzegovina and the Art. 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the Art. 1 of the Protocol No. 1 of the Convention.
…

Merit

The Constitutional Court is considering whether the decision of the Supreme Court of Republika Srpska dated 19 October 2000 has violated the rights of the applicant contained in the Art. 6 paragraph 1 of the European Convention, Art. 8 of the European Convention, and Art. 1 of the Protocol No. 1 of the European Convention.

The Art. 6 paragraph 1 of the European Convention reads as follows: "Everyone is entitled to have an independent and impartial tribunal defined by law decide on his or her civil rights and obligations fairly, publicly and within a reasonable time period."
The Constitutional Court indicates that the right to free access to court presents an element that is inseparable from the right outlined in the Art. 6 paragraph 1 of the European Convention.
The Constitutional Court concludes that the applicant had the right, according to the Art. 6 of the European Convention, to have the court decide upon her case and she is of the opinion that the courts in the Republika Srpska were therefore obliged to enter the merit of the thing and resolve the specific case in accordance with the Art. 10 and 17 of the Law on Housing Relations of Republika Srpska.
The courts should have been familiar with the fact that the apartment was not allocated in a legal way. The status from 1997, when the complaint was first lodged, remained even today, because L. R. is still occupying the contested apartment. The Court is of the opinion that the decision of the Supreme Court, confirming the decisions of the District Court and Municipal Court, made it impossible for the applicant to have access to the competent court to decide in the dispute regarding her apartment. Therefore, the aforementioned decision violates the right of the applicant to a free access to the court in accordance with the Art. 6 paragraph 1 of the European Convention.
Pursuant to the case law (jurisprudence) of the European Court for Human Rights, the Art. 1 of the Protocol No. 1 of the European Convention contains three different principles. The first principle, regulated already in the first sentence of the first paragraph, is the general principle of peaceful enjoyment of property. The second principle, defined in the second sentence of the first paragraph, refers to the dispossession of property that can happen under specific conditions. The third principle, contained in the second paragraph, allows the countries signatories to be entitled to, among other things, control the use of private property in accordance with the general interest by implementing the laws they consider necessary for that specific purpose.
The Court again concludes that the decision of the Supreme Court of Republika Srpska dates 19 October 2000 made it impossible for the applicant to repossess her apartment in a legal way. By the decision of the Supreme Court, thus, there was an interference in an unproportional way in her rights as the occupancy right holder, which means that there was a violation of her rights according to the Art. 1 of the Protocol No. 1 of the European Convention referring to the respect of property.

Conclusion

The Constitutional Court concluded that there was a violation of the rights contained in the Art. 6 and 8 of the Convention, as well as the Art. 1 of the Protocol No. 1 of the Convention. The Court is of the opinion that the only efficient remedy for such violations would be to have the applicant repossess her apartment. Therefore, the Constitutional Court annuls the decisions of the Supreme Court of Republika Srpska No. rev. 206/2000 of 19 October 2000, the District Court in Banja Luka No. GZ-442/99 of 24 January 2000, and the Municipal Court in Banja Luka No. P-2976/97 of 10 March 1999. The Constitutional Court orders L. R. to vacate and hand over the one-room apartment located in Banja Luka, Cara Lazara Str. 21, vacated from persons and personal belongings, to L. A., within 60 days upon the publishing of this decision in the "Official Gazette of Bosnia and Herzegovina" under threat of forceful execution.

No. U 24/00
Date: 31 August 2001 President

CASE NO. 19

Constitutional Court of Bosnia and Herzegovina

DECISION

Appeal of F. H. is hereby accepted, and:
a) the decision of the Supreme Court of Republika Srpska No. U-422/97 of 18 August 1999 is being annulled, as well as the decision of the Ministry of Refugees and Displaced Persons of Republika Srpska No. 05-136/97 dated 3 June 1997, and the decision of the Commission for accommodating refugees managing the abandoned property Banja Luka No. 08-476-676/96 of 21 January 1997.
b) the Constitutional Court orders the competent bodies of Republika Srpska to return the house of F. H., located in Banja Luka in Brace Jugovica Str. 6, vacated from persons and belongings and for free disposal.

From the reasoning

Appeal

The claimant complains that by the decisions of the first-instance and second-instance administrative body, as well as the decision rendered by the Supreme Court of Republika Srpska, her right to home, according to the Art. 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, has been violated, as well as the right to a peaceful enjoyment of property mentioned in the Art. 1 of the Protocol No. 1 of the Convention, and implications of the right to a fair procedure, pursuant to the Art. 6 of the aforementioned Convention. She states in her appeal that the decisions of these bodies are illegal, and that they made it impossible for the to dispute any of the facts determined in the decisions issued by the above-mentioned bodies.
…

Merit

It is not disputable that F. H is the rightful owner of the housing object located in Brace Jugovica Str. 6 in Banja Luka. The claimant has lived in Banja Luka since 26 September 1995, but now she lives on another address, i.e. Maglajlica sokak 5. Moreover, it was determined that Mrs. F. H. has tried to repossess her house via the court, in an administrative procedure and administrative dispute, but these bodies have decided the claimant's complaints, i.e. appeals, are unfounded and they rejected her claims.
Pursuant to the case law (jurisprudence) of the European Court for Human Rights, the Art. 1 of the Protocol No. 1 of the European Convention contains three different principles. The first principle, regulated already in the first sentence of the first paragraph, is the general principle of peaceful enjoyment of property. The second principle, defined in the second sentence of the first paragraph, refers to the dispossession of property that can happen under specific conditions. The third principle, contained in the second paragraph, allows the countries signatories to be entitled to, among other things, control the use of private property in accordance with the general interest by implementing the laws they consider necessary for that specific purpose.
The Court reminds on the conclusions relating to the art. 6 and 8 of the European Convention, i.e. that the decisions of the first-instance administrative body in Banja Luka dated 21 January 1997, the second-instance administrative body dated 3 June 1997, and the Supreme Court of Republika

Srpska of 18 August 1999, made it impossible for the claimant to enter her house again in a legal way.
It is true that the right allocated to Mr. C. M. by the decisions of the administrative bodies (the last one dating from 21 January 1997) was the right to a temporary use of the house. Even then, the claimant has been de facto deprived of all her property rights for several years now, thus can be considered to have been deprived of the property in terms of the second sentence of the first paragraph of the Art. 1 of the Protocol No. 1 of the European Convention. According to this provision, the depriving can be justified only if in the public interest and under conditions stipulated by law. However, the Constitutional Court has already determined that the proceedings that ended with decisions and a judgment of the Supreme Court, were not led in accordance with the Law on Legal Proceedings and Law on Administrative Procedures, i.e. dispute. Thus, the mixing of the two was not justified. Therefore, the judgment and decisions violated the claimant's right to a peaceful enjoyment of property in accordance with the Art. 1 of the Protocol No. 1 of the Convention.

Conclusion

By determining the violation of the claimant's rights in accordance with the Art. 6 and 8 of the European Convention and Art.1 of the Protocol No. 1 of the Convention, the Constitutional Court decided to annul the decision of the Commission for accommodating refugees managing the abandoned property Banja Luka of 21 January 1997, the decision of the Ministry of Refugees and Displaced Persons of 3 June 1997, and the judgment of the Supreme Court of Republika Srpska of 18 August 1999.
The Constitutional Court orders the competent bodies of Republika Srpska to act as outlined in the Decision.

No. U-7/00
Date: 19 August 2000 President

Comment to Cases No. 18 ad 19

In the process of reintegration of refugees, the returning of the pre-war homes is one of the important issues because it is about the protection of the right to home and the right to a peaceful enjoyment of property. By these two decisions the Constitutional Court of BiH annulled the unacceptable practice of regular courts in the Republika Srpska that were basically dismissing the legal cases in which there was a claim for the repossession of apartment or private property. The reason for that was justified by the fact that the repossession of apartment was at the same time also claimed in the administrative procedure before the Ministry of Refugees and Displaced Persons. Such a practice violate the Art. 6 and 8 of the European Convention, and the only remedy for that is the return of apartment or house in legal proceedings, as correctly being applied by the Constitutional Court.

CASE NO. 20

Constitutional Court of Bosnia and Herzegovina

DECISION

The appeal of C. Z., born B., is hereby accepted, thus the Constitutional Court:
1. Annuls the judgment of the Supreme Court of Republika Srpska, No. Rev.91/98 of 26 May 1999, the decision of the District Court in Banja Luka No. Gz 474/97 of 25.09.1997, and the decision of the Municipal Court in Prijedor No. P-61/96 of 27 December 1996.
2. declares the contract on exchange of property, concluded on 10 August 1995 between C. Z. and V. B. invalid.

From the reasoning

Appeal

On 21 October 1999 C. Z. filed an appeal with the Constitutional Court of Bosnia and Herzegovina against the judgment of the Supreme Court of Republika Srpska. Mrs. C. Z. claimed that the disputed judgment, as well as the first-instance and second-instance decisions, based on the wrong application of substantial law, because the court did not take into account the war conditions in which she concluded the contract on exchange and the difficulties with which she was faced as someone belonging to the Croatian minority in Prijedor. She thinks that in that way there was a violation of the right to a peaceful enjoyment of property, respect of home and the right to a fair procedure- rights guaranteed by the Constitution of Bosnia and Herzegovina, as well as the European Convention on Human Rights − violated by the aforementioned decisions that confirmed the validity of contract.
…

Merit

In this case the Municipal Court in Prijedor determined that the contract on exchange between C. Z. and V. B. is legally valid according to the Law on Obligatory Relations, and that C. Z. is therefore obliged to vacate her house in Prijedor and give it to V. B. as the new owner of the house. This decision was confirmed by the District Court in Banja Luka and the Supreme Court of Republika Srpska. C. Z. disputed these court decisions in he appeal before the Constitutional Court.
It is not the task of the Constitutional Court to investigate the specific case on the basis of provisions of the Law on Obligatory Relations or other rules of civil law, but the Constitutional Court is to determine whether the court decisions and the final judgment of the Supreme Court of Republika Srpska violated the Constitution of Bosnia and Herzegovina and especially the Art. 8 of the European Convention on Human Rights and the Art. 1 of the first Protocol of the Convention, that according to the Art. II/2 of the Constitution, are a part of the laws of Bosnia and Herzegovina and have priority over all other laws.
The art. 8 of the Convention envisages the following:
“1. Everyone has the right on respect of their private and family life, home and correspondence.
2. The public authorities will not interfere in the realization of this right, except if such an interference has been stipulated by law and if it is an inevitable measure in the democratic society in the interest of national security, public security, economic benefit of the country, prevention

from riots or prevention of crimes, health and moral protection, and the moral or protection of rights and freedoms of others."

It is clear that the owner of the house who sells the house to another person under normal conditions cannot seek for protection of his or her rights regarding that house, just after having sold the same, claiming it is his or her home and property. However, such a protection doe no longer exist only when the transaction is done by their own will and the validity is recognized by law. A free will during the entering of a sales agreement can be questioned if it was done in urgent situations or if the seller was under duress or in danger, whereupon these elements have to be taken into consideration when determining whether he or she had transferred their rights to another person in a valid mode.

In the specific case, it is not being claimed that K. V. was subject to C. Z's threats or that he forced her in any other way to conclude this contract on exchange with him. Moreover, the allegations of C. Z. that she was before the conclusion of contract being threatened by over the phone are undefined and general. No person has been identified as responsible for those threats and the allegations were in no way supported.

However, there are other circumstances that also have to be taken into consideration when evaluating the transaction with K. V.

Firstly, what has to be taken into consideration is the fact that the house which C. Z. exchanged was the house in which she had lived for 60 years, all her life and that she inherited it from her father. Therefore, she must be especially connected to that house and there are no reasons to believe that she would under normal circumstances be willing to leave it in order to go and live in a remote place with which she has no special connections. Furthermore, what she got in exchange on the island Brac was described as an unfinished weekend/holiday house and she did not visit that house prior to concluding the contract.

Most probably the house on Brach island is much less valued than the house of C. Z. in Prijedor, and that, taken from the economic view, the contract on exchange therefore was not in favour of C. Z. Because of all those factors, the contract seams to be an abnormal transaction that would never have taken place under normal circumstances.

Indeed, the transaction did take place during the war and while C. Z., who is a Croat, was under duress and as she explained, she felt very exposed to danger for her life in Prijedor. There is no doubt that V. B. was aware of the vulnerable and difficult position of C. Z. and he was certainly aware of the fact that it was the reason why she was ready to conclude the contract on exchange with him.

The contract is dating from 10 August 1995, but C.Z. stated that it was antedated and that it was actually concluded on 4 September 1995. She stated that "it was a couple of days after the majority of the house was occupied, in accordance with the decision of the local authorities, by Serbian refugee families and due to that C. Z. felt forced to temporarily leave her house and go and live somewhere else in the neighbourhood. Which ever date is the true one, there is no doubt that the contract on exchange was concluded in the period when the right of C. Z. to remain in her house and keep her future in Prijedor was uncertain." She explained that she had planned and even tried to leave Prijedor, but that it did not happen as she had planned. Therefore, she stayed in Prijedor even when the K family had vacated her house after having spent eight and a half months in it. C. Z. returned to live in it despite of the contract on exchange she concluded. She had been living there for several years.

One of the main goals of the General Framework Agreement for Peace in Bosnia and Herzegovina and the Constitution of Bosnia and Herzegovina, which presents the Annex 4 to this Agreement, is a fight for the eliminating of ethnic cleansing inflicted during the war period and which caused a situation in which many people belonging to ethnic minorities on different territories of Bosnia and Herzegovina had to leave their homes and go and go and live somewhere else, abroad or other parts of Bosnia and Herzegovina. One important goal, reflecting in the Art.

II/5 of the Constitution, among other things, is the return of refugees and displaced persons to their pre-war homes.
According to the Annex 7 of the General Framework Agreement, Art. NII/3, when determining the rightful owner of a property, the Commission for Refugees and Displaced Persons will not recognize as valid any of the illegal transactions of the property including the transfer done under duress, in exchange for exit permits or documents, or in another way related to the ethnic cleansing. This indicates that, in the context of the General Framework Agreement, the goal of eliminating the effects and traces of ethnic cleansing is of such a big importance that it in certain cases affected the validity of legal transactions that would otherwise satisfy the presumptions of civil law.
In the specific case, the Constitutional Court is of the opinion that it was clearly determined that C. Z. had concluded a contract on exchange under the influence of her vulnerable position as member of the ethnic minority in the period when the ethnic cleansing politics was led in most parts of Bosnia and Herzegovina. It is also clear that the contract is not in compliance with what would have been her wishes under normal circumstances and one has to suppose that B. V., at least in a general way, was aware of the reasons that forced her to accept the contract.

Conclusion

Under such circumstances, the Constitutional Court has to make a conclusion that the implementation of the contract on exchange would not be in compliance with the rights of C. Z. with respect to her home indicated in the Art. 8 of the Convention and Art. II/3 (f) of the Constitution, as well as her right to the respect of her property indicated in the Art. 1 of the Protocol No. 1 and Art. II/3 (k) of the Constitution. The judgments of the Supreme Court of Republika Srpska, District Court in Banja Luka, and the Municipal Court in Prijedor therefore have to be annulled and the agreement on exchange declared to be without legal act.
Since now the Court decided o the violation of the Art. 8 of the Convention and Art. 1 of the Protocol No. 1, the Constitutional Court does not find necessary to consider whether the right of C. Z. to a fair trial was violated, according to the Art. 6 of the Convention in the actions before the courts.

No. U-15/99
Date: 15 December 2001 President

Comment to Case No. 20

Due to the war circumstances, many members of the minority in BiH were forced to leave their homes, and very often they were concluding contracts on exchange of their property before departure. Those contracts were mainly incorrect because the exchange was in most cases done without the actual wish to do the same. After the war, the courts in BiH had a huge caseload of complaints in which claimants were requesting the aforementioned contracts to be cancelled. The precedents went in an unacceptable direction because they tried in a non-critical way to keep those contracts valid. By this very important decision of the Constitutional Court in the so called “Prijedor case” such practice was stopped and such contracts are being considered to be legally valid.

1) This document is the result of the activities of the Advocacy Task Force, ATF BiH. ATF BiH consists of a group of local non-governmental organizations- members of the Network for Aid to Refugees in the South-eastern Europe (SEE-RAN): International Lex Banja Luka, Job22 Sarajevo, Bospo Tuzla, and Zena BiH Mostar. Through its activities, the team is identifying the needs and advocates changes in the domestic legislation or precedents at all levels in the interest of refugees and displaced persons in the region.
2) The decisions were selected by lawyer Zoran Bubic, "International Lex" Banja Luka.