

USTAVNI SUD
BOSNE I HERCEGOVINE



УСТАВНИ СУД
БОСНЕ И ХЕРЦЕГОВИНЕ

CONSTITUTIONAL COURT
OF BOSNIA AND HERZEGOVINA

COUR CONSTITUTIONNELLE
DE BOSNIE-HERZÉGOVINE

The Constitutional Court of Bosnia and Herzegovina, pursuant to Article VI(1)(c) and II(3)(e) of the Constitution of Bosnia and Herzegovina, Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 101 paragraph 2 in conjunction with paragraph 1 line 5 of the Rules of the Constitutional Court of Bosnia and Herzegovina (*Official Gazette of Bosnia and Herzegovina*, Nos. 60/05, 64/08 and 51/09), deciding on the Proposal for Dismissal of the Judge of the Constitutional Court of Bosnia and Herzegovina, Mr. Krstan Simić No K-I-15/10 of 4 March 2010 and sitting in the following composition:

Mr. Miodrag Simović, President
Ms. Valerija Galić, Vice-President
Ms. Constance Grewe, Vice-President
Ms. Seada Palavrić, Vice-President
Mr. Tudor Pantiru, Judge
Mr. Mato Tadić, Judge
Mr. David Feldman, Judge
Mr. Mirsad Ćeman, Judge

at its Extraordinary plenary session held on 8 May 2010, unanimously adopted the following

DECISION

It is hereby established that Judge **Krstan Simić** violated Article 94 paragraph 2 of the Rules of the Constitutional Court of Bosnia and Herzegovina by deliberately undermining the reputation and dignity of the Constitutional Court of Bosnia and Herzegovina and dignity of a judge.

Pursuant to Article VI(1)(c) of the Constitution of Bosnia and Herzegovina and Article 101 paragraph 1 line 5 of the Rules of the Constitutional Court of Bosnia and Herzegovina, Judge **Krstan Simić** is hereby dismissed from the office of the Judge of the Constitutional Court of Bosnia and Herzegovina.

This Decision shall enter into force on the date of its adoption.

Pursuant to Article VI(5) of the Constitution of Bosnia and Herzegovina, this Decision shall be final and binding and shall not be subject to review before any legislative, judicial or administrative authority.

Pursuant to Article 101 paragraph 2 of the Rules of the Constitutional Court, this Decision shall be transmitted to the National Assembly of the Republika Srpska, as the authority that elected Judge Krstan Simić, so that it may, in accordance with Article VI(1)(a) of the Constitution of Bosnia and Herzegovina, elect a new member of the Constitutional Court of Bosnia and Herzegovina instead of the dismissed Judge Krstan Simić.

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

REASONING

I. Introduction

1. Based on the Conclusion of the Constitutional Court of Bosnia and Herzegovina (the “Constitutional Court“) reached at the Extraordinary plenary session held on 29 January 2010, the President of the Constitutional Court, on behalf of the Constitutional Court, submitted on 4 March 2010 a Proposal for Dismissal of the Judge of Constitutional Court Krstan Simić No. K-I-15/10 on account of a violation of Article 94 paragraphs 1 and 2 of the Rules of the Constitutional Court.

II. Procedure before the Constitutional Court

2. On 30 November 2009, the Constitutional Court received a letter from the Parent's Forum of RS-BiH from Banja Luka, accompanied by another letter (pages 1, 2 and 4) composed by Mr. Krstan Simić, Judge of the Constitutional Court of BiH, addressed to the President of the Independent Social-Democrats Coalition political party (“SNSD“) and the Prime-Minister of the Republika Srpska, Mr. Milorad Dodik.

3. After the contents of the referenced letter were published in the media, the President of the Constitutional Court had consultations with the national judges of the Constitutional Court. It was concluded that the issue of the public appearance of Judge Krstan Simić is to be discussed at the separate plenary session in terms of Article 95 of the Rules of the Constitutional Court. It was also concluded that it should be requested from Judge Krstan Simić to submit his written statement on the Parent's Forum letter and the letter he had addressed to the President of the SNSD Political Party and the Prime-Minister of the Republika Srpska.

4. Based on the previous conclusion, on 3 December 2009, the Constitutional Court requested Judge Krstan Simić to submit his written statement concerning the Parent's Forum letter and the

controversial letter addressed to the President of the SNSD and the Prime-Minister of the Republika Srpska.

5. On 14 January 2010, Judge Krstan Simić submitted his written statement.

6. On 29 January 2010, the Constitutional Court held an Extraordinary plenary session and preliminary deliberation about the following item of the Agenda: "The Information and Taking a Position on the Public Appearances of Mr. Krstan Simić, Judge of the Constitutional Court of Bosnia and Herzegovina". The Constitutional Court concluded that before it resumed its extraordinary plenary session, all relevant evidence, materials and documentation should be obtained and, based on that, a proposal for the conceivable dismissal of Judge Krstan Simić drafted, to enable the Constitutional Court to deliberate and decide whether there are any reasons for his dismissal. In addition, the Constitutional Court concluded that the Proposal for Dismissal, together with the copies of all the evidence, materials and documentation should be communicated to Judge Krstan Simić to respond to, with an invitation to do so within 14 days at the latest.

7. On 4 February 2010, pursuant to Article 33 of the Rules of the Constitutional Court, the Constitutional Court requested from the Prime-Minister of the Republika Srpska to submit a copy of the third page of the aforementioned letter. The Prime-Minister of the Republika Srpska failed to respond to the request of the Constitutional Court.

8. Also, on 4 February 2010, pursuant to Article 33 of the Rules of the Constitutional Court, the Constitutional Court requested from *Alternative Television* Banja Luka and the Radio-Television of the Republika Srpska and, on 12 February 2010, from the Public Broadcasting Service of Bosnia and Herzegovina and Public Broadcasting of the Federation of Bosnia and Herzegovina, to submit the complete recording of the press-conference held by Judge Krstan Simić in Banja Luka on 8 January 2010.

9. On 4 February 2010, pursuant to Article 33 of the Rules of the Constitutional Court, the Constitutional Court requested from the weekly magazine *Slobodna Bosna* published in Sarajevo, to submit the complete recording of an interview with Judge Krstan Simić, which was the subject of articles of this magazine dated 31 December 2009 and 7 January 2010 and, in case of unavailability of this tape recording, a written statement by the journalist on the authenticity of the quoted statements of Judge Krstan Simić.

10. Within the period 12 February through 25 March 2010, *Alternative Television* Banja Luka, Radio-Television of the Republika Srpska, and the Public Broadcasting Services of Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina submitted their available materials broadcast in their respective programs.

11. On 16 February 2010, the Constitutional Court received a written statement by a journalist of *Slobodna Bosna* N. D., confirming the authenticity of the quoted statements of Judge Krstan Simić which were published in the articles of this magazine of 31 December 2009 and 7 January 2010.

12. The Proposal for Dismissal was communicated to Judge Krstan Simić on 8 March 2010. However, Judge Simić failed to submit his written statement within the given time-limit of 14 days.

13. On 25 March 2010, the Constitutional Court resumed its Extraordinary plenary session at which it deliberated about the item of the Agenda: "Consideration of the Proposal for Dismissal of Mr. Krstan Simić, Judge of the Constitutional Court of Bosnia and Herzegovina". The Constitutional Court established that the procedure for dismissal of a judge of the Constitutional Court may be defined as an *ad hoc* procedure of a *sui generis* nature, for which there are no detailed rules on how to conduct the procedure. For that reason and by application of Article 79 of the Rules of the Constitutional Court, the Constitutional Court concluded that a fair hearing must be guaranteed to Judge Krstan Simić, including all the principles stipulated under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the "European Convention"). Furthermore, the Constitutional Court afforded an opportunity to Judge Simić to state his position in respect of all the allegations contained in the Proposal for Dismissal before all the judges of the Constitutional Court during the proceedings at the session. The Constitutional Court then proceeded to discuss the preliminary issues, arriving at the conclusion to adjourn the session until 8 May 2010, so that the Constitutional Court could communicate, in the meantime, to Judge Krstan Simić, upon his request, the documentation he requested, render him an opportunity to access and inspect specific documents of the Constitutional Court and afford him enough time to engage a legal representative of his choice. A time-limit of 15 days was set to Judge Simić to submit his written statement in response to the Proposal for Dismissal. Also, the Constitutional Court concluded that it should resume its deliberations on 8 May 2010 even in case Judge Simić fails to hire a legal representative, submit his written statement or attend the scheduled session. Judge Simić was notified of these conclusions orally and he agreed to them.

14. By letters No. K-I-16/10 of 26 March and 5 April 2010 respectively, the aforementioned conclusions were also communicated to Judge Simić in writing.

15. On 4 May 2010, Judge Simić submitted his written statement in which, amongst other things, he informed the Constitutional Court that he would not be attending the resumed extraordinary plenary session for private reasons. He also failed to hire a legal representative or examine the case-files of the Constitutional Court.

16. The Constitutional Court resumed its extraordinary plenary session on 8 May 2010 in the absence of Judge Simić.

III. Facts

17. On 30 November 2009, the Constitutional Court received a letter from the Parent's Forum of RS-BiH from Banja Luka, accompanied by pages 1, 2 and 4 of the letter composed by Mr. Krstan Simić, addressed to the President of the SNSD and Prime-Minister of the Republika Srpska. The letter was not dated. However, according to its contents and an estimate given by Judge Simić himself, the letter was sent somewhere in May 2009, prior to the election of the current President of the Constitutional Court. At the session held on 25 March 2010, in deliberations under the Agenda item "Consideration of the Proposal for Dismissal of Mr. Krstan Simić, Judge of the Constitutional Court of Bosnia and Herzegovina" as well as in his written statement of 4 May 2010, Judge Simić confirmed that he was the author of the concerned letter.

18. In the aforesaid letter Judge Simić, *inter alia*, describes his position within the Constitutional Court, the decision-making process within the Constitutional Court and makes comments about specific cases decided before the Constitutional Court or still pending. Amongst other things, Judge Simić, states in his letter as follows:

[...]

I am not certain when it comes to the strategic (political) decisions that the international judges cannot be influenced by the OHR, but the individual judges are in no position to carry out any kind of lobbying as concerns the international judges, while in the disputes such as Malibasic, the Bosniacs or Croats are not to be lobbied either, as they only have the Federation interest on their mind and so on.

[...]

In any event, I am always at your disposal but in the hassle and bustle that surrounds you I am afraid that you do not use my experience and opportunities sufficiently enough. My attitude is not to impose as I am aware of the problems you are in [...] (page 2, paragraph 7).

19. At the end of the letter Judge Simić comments the work of one official of the Government of RS and a member of the SNSD party by recommending that person, member of the SNSD party for a certain office in the Government of RS, stating that this person consults with him. This was expressed in the letter as follows:

[...] high average, passed the bar exam, computer proficient, possesses knowledge of English and is a member of the SNSD party.

However, in the systematization of the work duties, it should be foreseen that she retains her present duties (statements on the lawsuits, has significant experience, has raised that position to high level in the Government, when she has any major problem she consults me) and also receives new assignments along with the present duties.

[...]

(page 4, paragraphs 1 and 2)

20. After 30 November 2009, Judge Krstan Simić gave several interviews to the electronic and written media. Thus he, *inter alia*, gave interviews for the weekly magazine *Slobodna Bosna* from Sarajevo on 31 December 2009 and 7 January 2010. In the article of 31 December 2009 entitled "Badger before the Constitutional Court, Case Simić", on page 18, Judge Simić stated as follows:

I will share, when the time comes, with the readers of Slobodna Bosna whatever I have learned during my term which could seriously compromise the work of the Constitutional Court, its judges and also certain high-level politicians.

21. The article of *Slobodna Bosna* published on 7 January 2010, on page 47, entitled "Long Fingers, Longer Tongue" by journalist N.D., contains, *inter alia*, the following quotes of Judge Simić:

I shall explain who and in what manner works in the Constitutional Court of BiH and to what extent the crime has settled within the highest judicial instance of the state. And I have evidence for everything.

I am tired of keeping quiet on someone else's criminal activities, tired of talking about how the Constitutional Court operates, which always ends up with corruption, tired of interference of the crime and politics with our work.

There is no state in the world like BiH. We have no other institution, except the one in which I work, to protect the law and justice. Unfortunately, it has failed to do so.

22. In addition to the aforementioned, on 8 January 2010, Judge Simić organized a press-conference in Banja Luka, without the knowledge or approval of the Constitutional Court. At the press-conference he presented, *inter alia*, certain positions concerning the letter addressed to Mr. Milorad Dodik, decision-adoption procedure in the Constitutional Court as well as some specific decisions, the independence of the Constitutional Court and other issues.

IV. Proposal for Dismissal

23. In the Proposal for Dismissal of Judge Simić No K-I-15/10 of 4 March 2010, it is stated that Judge Simić has acted unconscientiously as a judge and severely undermined the reputation of the Constitutional Court, the reputation and dignity of the Judges of the Constitutional Court and his own reputation and dignity as one of the Judges of the Constitutional Court, thereby violating Article 94 paragraphs 1 and 2 of the Rules of the Constitutional Court.

24. In the Proposal for Dismissal, Judge Simić has been charged that by the very fact of writing a letter to the President of the SNSD party and Prime-Minister of Republika Srpska, particularly by the contents of that letter, by giving interviews to the weekly magazine *Slobodna Bosna* of 31 December 2009 and 7 January 2010 and by organizing the press-conference of 8 January 2010 in Banja Luka, he violated Article 94 paragraphs 1 and 2 of the Rules of the Constitutional Court.

25. It is stated in the Proposal that it is inappropriate for a Judge of the Constitutional Court to maintain written communications with the representatives of political parties and executive authorities in the manner as done by Judge Simić. Such manner of communication amounts to "inappropriate relations of a judge with the representatives of the political parties [creating] an effect of possible preferential treatment of one of the parties to the proceedings and of erasing barriers between judicial and other authorities". It is, further, claimed in the Proposal for Dismissal that from the contents of the letter "an objective observer gets an inevitable impression that Judge Krstan Simić has not severed the bonds with his former political party and its president and that he is prepared to continue maintaining such contacts. As a matter of fact, he is even initiating them". In

addition, the Proposal states that Judge Simić gave his own opinion in respect of some specific cases of the Constitutional Court in a manner which “objectively brings into question his impartiality and exemption from such cases“.

26. In reference to the interviews for the weekly magazine *Slobodna Bosna* from Sarajevo dated 31 December 2009 and 7 January 2010, the Proposal states that Judge Simić “must have been aware that by accepting his judicial office he was also accepting certain restrictions when it comes to public appearances. Such restrictions are aimed at the protection of public interest – the public confidence in the judiciary, the protection of its independence and impartiality, integrity, reputation and honor of judges“. The Proposal states as follows:

Therefore, the self-initiated public appearance of a judge, as a member of the collective judicial body, through written media, with the purpose of seriously compromising and presenting accusations against other judges of the Constitutional Court of BiH and the Court as a whole and their disqualification - is completely inconsistent with high judicial standards of the conduct of judges. Such activities bring into question the confidence of the public in the judiciary as one branch of the power and the courts as institutions. Moreover, such activities have a negative impact on the public when it comes to its confidence in the judicial authority.

In addition, such public appearances, even if they were grounded, are fully unprofessional and inconsistent with the principles of the fair proceedings. Even if a judge claims that he/she is in possession of the evidence substantiating criminal activity of certain judges, he or she must not act outside the institution nor present his or her position in public thereby prejudging the conceivable outcome to be against them (presumption of innocence) but rather use the relevant state system, provided for by the positive legal regulations of Bosnia and Herzegovina which will examine such allegations, pursuant to its competences, relevant procedure and substantive-legal grounds.

Pursuant to the established facts, there are no reasons that would justify such conduct of Judge Krstan Simić.

27. Finally, it is claimed in the Proposal that the press-conference held on 8 January 2010 in Banja Luka, has been organized in contravention of the Rules of the Constitutional Court.

V. Response of Judge Krstan Simić to the Proposal for Dismissal

28. In his responses of 14 January and 4 May 2010, Judge Krstan Simić states that the letter to the President of the SNSD and the Prime-Minister of the Republika Srpska was sent to his friend, that it was a private letter and that he had not given his consent for that letter to be used. He, further,

finds that all the media articles relating to him and the letters addressed to the Constitutional Court concerning him, have been deliberately orchestrated with a view of his dismissal. He claims that the interview with journalist N.D. was not authorized and that he held the press-conference on 8 January 2010 because he was put under pressure. He also stated that all the statements given in public had been given within the scope of the freedom of expression.

29. Also, Judge Simić analyses in his response several requests for his exemption in certain cases before the Constitutional Court (*AP 751/09, AP 3368/07, AP 2017/07, AP 709/07, AP 1631/08 and AP 775/08*), rendering his perception of those requests. He also states that these numerous letters have been “ordered“ with the sole purpose of discrediting him as a judge.

VI. Relevant Law

30. Article VI (1) (b) of the Constitution of BiH reads as follows:

Judges shall be distinguished jurists of high moral standing.

31. Article VI(1)(c) of the Constitution of BiH reads as follows:

Judges may be removed for cause by consensus of the other judges.

32. Article 11 of the Rules of the Constitutional Court of BiH reads as follows:

1. The work of the Constitutional Court shall be public.

2. The proceedings before the Constitutional Court shall be made accessible to the general public by means of:

[...]

- providing information as to the course of the proceedings;

- issuing press releases to the media;

- holding press conferences;

[...]

- publishing decisions taken;

[...]

- in any other way determined by the Constitutional Court.

33. Article 89 of the Rules of the Constitutional Court of BiH reads as follows:

The President of the Constitutional Court shall organize, direct and supervise the activities of the Constitutional Court, convene and chair the sessions and public hearings, represent the Constitutional Court, sign the decisions of the Constitutional Court, be responsible for co-operation with other institutions, issue individual acts and carry out other duties specified in these Rules and other acts of the Constitutional Court.

34. Article 94 of the Rules of the Constitutional Court reads as follows:

1. The judges shall be obliged to perform the function of a judge conscientiously.

2. The judges shall uphold the reputation and dignity of the Constitutional Court and the reputation and dignity of a judge.

35. Article 101 paragraph 1 of the Rules of the Constitutional Court reads as follows:

1. Judge may be dismissed from office before the end of his/her term in the following cases:

[...]

- he/she fails to perform the function of a judge in accordance with Article 94 of these Rules.

2. The Constitutional Court shall establish the existence of reasons referred to in paragraph 1 of this Article and it shall dismiss the judge from office on the basis of a consensus of other judges and inform the body which elected that judge.

VII. Position of the Constitutional Court

36. During the course of its extraordinary plenary session, the Constitutional Court discussed the preliminary issues, examined all available evidence, materials and documentation, and afforded an opportunity to Judge Simić to state his position in respect of the allegations on the violation of the Rules of the Constitutional Court. It then conducted deliberations and reached a decision on the merits by consensus that Judge Simić had to be dismissed from the office of the Judge of the Constitutional Court pursuant to Article VI(1)(c) of the Constitution of Bosnia and Herzegovina in conjunction with Article 101 paragraph 1 line 5 of the Rules of the Constitutional Court due to the violation of Article 94 paragraph 2 of the Rules of the Constitutional Court for the following reasons:

VII.1. Contents of the letter of Judge Krstan Simić

37. In accordance with the constitutional principle of the rule of law, the Constitutional Court must be independent and impartial constitutional authority. That, in principle, primarily defines its relation to the executive authority. The independence and impartiality of the Constitutional Court implies that its judges are free, that they do not have to be accountable to anyone and that they are not bound by anyone's instructions (cf. the Judgment of the European Court of Human Rights *Ringeisen vs. Austria*, Series A, No. 13, of 16 July 1971, paragraph 95; *Schiesser vs. Switzerland*, Series A, No. 34, of 4 December 1979, paragraph 29). Furthermore, it is not only required that the judges of the Constitutional Court are truly independent but also to appear to be so, which is subject to an objective test (cf. the Judgment of the European Court of Human Rights, *Campbell and Fell vs. the United Kingdom*, Series A, No. 80, of 28 June 1984, paragraph 77 and ff).

38. It clearly follows from the contents of the letter that the President of the SNSD, Mr. Milorad Dodik, had been in contact with Judge Krstan Simić (first page of the letter) even before the controversial letter was ever written. Judge Simić responded to those contacts by written communication. Furthermore, Judge Simić states in his letter that he is "always at disposal" of the President of SNSD, offering him openly "his experience and opportunities" (page 2 paragraph 7). Moreover, his letter contains an unsolicited request for a higher degree of cooperation, which clearly follows from the statement: "I am afraid that you do not use my experience and opportunities sufficiently enough". In addition, Judge Simić openly discusses the possibility of employing someone from the SNSD personnel in the executive authorities of the Republika Srpska, giving his opinion and recommendations in respect of those persons and stating that those persons are in consultations with him whenever there appears any major problem (page 4, paragraph 2). According to this, Judge Simić is in the habit of giving advice to the officials of the executive authorities of one of the Entities.

39. Given the contents of the controversial letter and taking into account the fact that Judge Simić held the office of the first Vice-president of the SNSD, prior to taking the office of the judge of the Constitutional Court of BiH, an objective observer gets an inevitable impression that Judge Simić did not sever relations with his former political party and its president and that he is prepared to continue maintaining such contacts which are useful to that political party. As a matter of fact, he is even initiating them. That may be clearly concluded from the statements made in the letter, offering his expertise and experience, a higher degree of cooperation, and rendering his own

opinions and advice to one of the members of his former party “wherever he has a major problem“ in the Government of the Republika Srpska.

40. Such ties between a judge of the Constitutional Court and political parties, *i.e.* executive authorities of one of the Entities, may be defined as liaisons incompatible with the institutional and operative independence of the Constitutional Court, which all judges must endeavor to strengthen. In the public eye, such relations are damaging to the reputation of the Constitutional Court, in particular as concerns the perception of its independence and impartiality, *i.e.* the prohibition of preferential treatment of specific parties.

41. Accordingly, Judge Simić, by such statements, has deliberately endangered and inflicted damage on the independence of the Constitutional Court, thereby undermining both his reputation as a judge of the Constitutional Court and the reputation of the Constitutional Court itself, in terms of Article 94 paragraph 2 of the Rules of the Constitutional Court.

42. The fact that the controversial letter was not of business but of private nature does not affect this conclusion of the Constitutional Court and neither does the fact that Judge Simić and the President of SNSD and Prime-Minister of the Republika Srpska, Milorad Dodik, are friends as indicated by Judge Simić. The obligation of a judge of the Constitutional Court, as the holder of the judicial authority to safeguard independence of the court as an institution and his own independence in relation to the holders of the other authority, is in effect in both private and professional relations. Therefore, even if the letter was of private nature, it may still endanger the independence of a judge of the Constitutional Court and the Constitutional Court itself as an institution.

VII.2. Public appearances of Judge Krstan Simić

43. Furthermore, in the interviews given to the weekly magazine *Slobodna Bosna* on 31 December 2009 and 7 January 2010 and at the press conference held on 8 January 2010 in Banja Luka, Judge Simić presented serious accusations against the judges of the Constitutional Court and the Constitutional Court itself as an institution, associating them with (a) crime (b) corruption (c) interference of politics with the work of the Constitutional Court and (d) failure to perform the constitutional function it has been entrusted with. Moreover, Judge Simić claimed he had evidence to substantiate his allegations.

44. Judge Simić did not deny the quoted allegations, pursuant to the applicable Law on Protection from Defamation, or in any other manner. On the other hand, on 16 February 2010, the

Constitutional Court received a written statement by the journalist of the weekly magazine *Slobodna Bosna*, N. D., confirming the authenticity of the quoted statements of Judge Simić. The Constitutional Court, therefore, considers the statements given in public by Judge Krstan Simić to be accurately quoted.

45. Judge Simić invoked freedom of expression as guaranteed under Article II(3)(h) of the Constitution of BiH and Article 10 of the European Convention. In his opinion the freedom of expression allows him to express his opinion publicly and in the manner as he has done. Finally, he stated that pressure was applied on him as a judge, on account of which he found it necessary and justified to state his opinion in public.

46. The Constitutional Court emphasizes that freedom of expression is extremely important for democracy and democratic processes in a society. The state must pay special attention to this particular freedom. What is characteristic for Article 10 of the European Convention is that it protects expression which is exposed to endangerment or actually endangers the interests of others. This Article not only protects the information and ideas perceived as positive or considered harmless or those on which no position has been taken, but also those that offend, shock and disturb. That is what tolerance and pluralism require and without that there is no democratic society (cf. *AP 1819/07* of 11 November 2009, item 35 in conjunction with the judgment of the European Court of Human rights, *Handyside vs. the United Kingdom*, Series A, No 24, of 7 December 1976, paragraph 49). This is particularly the case when it concerns the public personalities or institutions of authority since the threshold of tolerance must be raised to a higher level (cf. judgment of the European Court of Human Rights, *Castells vs. Spain*, Series A, No 236, of 23 April 1992, paragraph 46).

47. Nevertheless, freedom of expression under Article II(3)(h) of the Constitution of BiH and Article 10 of the European Convention is not absolute. On the contrary, almost no human right and freedom in democratic and legal states, no matter how primary or significant, is and may be absolute or unlimited (cf. *AP 2457/06* of 18 December 2008, paragraph 32). Thus, according to Article 10 paragraph 2 of the European Convention, freedom of expression “may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests [...] or for maintaining the authority and impartiality of the judiciary “.

48. The Constitutional Court finds that sanction of dismissal of a judge from the office of the Judge of the Constitutional Court, under Article VI(1)(c) of the Constitution of Bosnia and Herzegovina in conjunction with Article 101 paragraph 1 line 5 of the Rules of the Constitutional Court, *i.e.* on account of a severe violation of Article 94 paragraph 2 of the Rules of the Constitutional Court, may be a justified measure for non-compliance with restrictions of the freedom of expression right.

49. Therefore, as previously stated, every judge of the Constitutional Court must be aware that by accepting his/her judicial office he/she also accepts certain restrictions in terms of public appearances. The goal of such restrictions is to protect public interest – the confidence of the public in respect of the judiciary, protection of its independence and impartiality, the integrity, reputation and honor of judges. When a judge appears in public, his/her main concern must be the protection of that public interest.

50. Judge Krstan Simić appeared in public on his own initiative, through written media and by organizing the press conference. Judge Simić was aware that organizing a press-conference in such a manner was unprecedented as far as the Constitutional Court is concerned, as he himself stated prior to the press-conference. He pointed out that his appearance was contrary to the position of the Constitutional Court concerning public relations. The Constitutional Court, further, holds that the purpose of those public appearances was to seriously discredit and raise charges against the other judges of the Constitutional Court and the Constitutional Court as an institution and their disqualification. Finally, Judge Simić publicly presented his claim that the Constitutional Court did not protect the law and justice, *i.e.* that it did not perform its duties in a proper and professional manner. Judge Simić publicly promised that these grave charges against the Constitutional Court and its judges would be substantiated by evidence, stating: “I have all the evidence”.

51. The Constitutional Court holds these appearances to be completely contrary to the high judicial standards of behavior of judges. Indeed, even if those statements of Judge Simić were founded, his conduct was completely unprofessional and inconsistent with the principles of a fair hearing. Namely, a judge, even if he or she claims to be in possession of evidence for the alleged criminal activity of individual judges, must not act outside the institution, present his or her position in public and prejudice a conceivable outcome to be against them (presumption of innocence) but must use relevant state system, provided for by the positive regulations of Bosnia and Herzegovina which makes possible the examination of such claims in accordance with its jurisdiction, relevant procedure and substantive legal grounds. Judge Simić, prior to presenting his positions and claims

in public, did not even attempt to tackle these issues within the Constitutional Court, although prior to his public appearance he knew that the Constitutional Court, sitting in plenary, would give him the opportunity to discuss the issue of his position in the Constitutional Court, where he could have presented his allegations and positions. Moreover, according to what the Constitutional Court learned about this matter, Judge Simić did not even attempt to submit any evidence to the competent prosecutor's offices in Bosnia and Herzegovina.

52. Due to aforesaid, the public appearances of Judge Simić have brought into question the confidence of the public in respect of the constitutional-judicial authority as well as the Constitutional Court as an institution. Moreover, these actions had a negative effect in public in terms of its confidence in respect of the constitutional-judicial authority; Judge Simić thereby inflicting damage to the dignity of the Constitutional Court and its judges. This is best illustrated by the introductory notes of the journalist of *Slobodna Bosna* in the article dated 31 December 2009: *The highest judicial institution of the state, the Constitutional Court of Bosnia and Herzegovina, is dangerously shaken up these days under the burden of insinuations, corruption charges, political set-ups and party conflicts!*

53. According to the established facts, it is not possible to find any reasons which could justify Judge Simić in his actions. The Constitutional Court does not find his claim of having been under pressure to be well-founded.

54. On the basis of the established facts, the Constitutional Court concluded that Judge Simić had consciously overstepped the allowed restriction on freedom of expression of a judge, thereby undermining the reputation and dignity of a judge of the Constitutional Court in contravention of Article 94 paragraph 2 of the Rules of the Constitutional Court. In that manner, Judge Simić inflicted damage to his own reputation and dignity as a judge as well the reputation of the other judges and the Constitutional Court as an institution.

55. On the other hand, the Constitutional Court concluded that the allegations presented in the Proposal for Dismissal No. No.K-I-15/10 of 4 March 2010 do not amount to a violation of Article 94 paragraph 1 of the Rules of the Constitutional Court.

VII.3. Conclusion

56. The Constitutional Court emphasizes first and foremost that it operates in highly complex legal and political circumstances. At this stage of the constitutional development of Bosnia and

Herzegovina, the role of the Constitutional Court is very important and difficult while, objectively, its decisions have a significant impact on political processes within the state. The Constitutional Court resolves, amongst other things, complicated constitutional issues with far-reaching implications, often involving legislative or executive authorities at the state- or entity-level as direct participants. This very fact shows that there exists an undeniable public interest for the Constitutional Court to build and maintain its reputation, independence and impartiality and not to allow these principles to be endangered or violated. Otherwise, the authority of the Constitutional Court as an institution and the authority of its decisions shall be lost. The Judges of the Constitutional Court, as the distinguished jurists of the highest moral standing, must be aware of these principles at any given moment.

57. The Constitutional Court finds that Judge Krstan Simić, by writing his letter to the President of the SNSD and Prime-Minister of the Republika Srpska with previously described contents and by his public appearances in the media, has deliberately and seriously violated Article 94 paragraph 2 of the Rules of the Constitutional Court, thereby inflicting damage upon the reputation and dignity of the Constitutional Court and the reputation and dignity of its judges, including his own in terms of the cited provision of the Rules of the Constitutional Court. By his actions, Judge Simić inflicted great damage on the Constitutional Court, reflected in undermining of the confidence of the public and the authorities in respect of the independence, impartially and professional work of the Constitutional Court as well as degrading of the achieved results.

58. The Constitutional Court holds that it will have to bear the consequences of the aforementioned actions of Judge Krstan Simić for a long time and that it will have to make an extra effort to regain the undermined confidence of the public and public authorities in its autonomy, independence, impartiality and professionalism.

59. With a view of the aforesaid, the Constitutional Court finds that it amounts to a deliberate and grave violation of Article 94 paragraph 2 of the Rules of the Constitutional Court. The Constitutional Court holds that the conditions have met to take the decision on dismissal of Judge Krstan Simić from his office, in pursuance of Article VI(1)(c) of the Constitution of BiH.

60. Having regard to Article VI(1)(c) of the Constitution of BiH and Article 101 paragraph 1 line 5 of the Rules of the Constitutional Court of Bosnia and Herzegovina, the Constitutional Court decided unanimously as in the enacting clause of this Decision.

61. Pursuant to Article VI(5) of the Constitution of Bosnia and Herzegovina, this Decisions of the Constitutional Court shall be final and binding and shall not be subject to any review before any legislative, judicial or administrative authority.

No: K-I-15/10
Sarajevo, 8 May 2010

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