



# Constitutional Court of Bosnia and Herzegovina 1964–2024

Sarajevo, 2025

# CONSTITUTIONAL COURT OF BOSNIA AND HERZEGOVINA 1964–2024





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CONSTITUTIONAL COURT  
OF BOSNIA AND HERZEGOVINA  
1964–2024



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**Publisher:**

CONSTITUTIONAL COURT OF  
BOSNIA AND HERZEGOVINA

**For publisher:**

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LANGUAGE SERVICES DEPARTMENT OF  
THE CONSTITUTIONAL COURT OF BiH

**Layout and Design:**

IT DEPARTMENT OF THE  
CONSTITUTIONAL COURT OF BiH

ISBN 978-9926-464-26-4

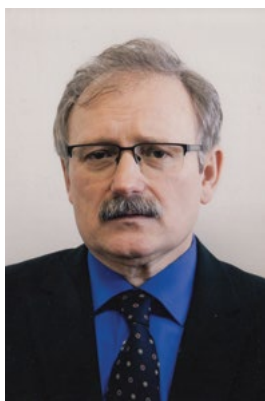
The CIP record is available in the COBISS  
system of the National and University  
Library of Bosnia and Herzegovina  
under ID number 65268742



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## Editor's Foreword

*Mirsad Ćeman*

*Judge*

*Constitutional Court of Bosnia and Herzegovina*

In 2014, the Constitutional Court of Bosnia and Herzegovina marked 50 years of constitutional justice in Bosnia and Herzegovina, and in 2017, it marked 20 years since the establishment and operation of the Constitutional Court of Bosnia and Herzegovina according to the current constitution, *i.e.* Annex IV of the General Framework Agreement for Peace in Bosnia and Herzegovina (also known as the Dayton Peace Agreement or Paris Peace Agreement). On that occasion, the Constitutional Court published the following profiles: “Constitutional Court of Bosnia and Herzegovina 1964-2014” (in local languages and scripts and in English) and “Constitutional Court of Bosnia and Herzegovina 1997-2017” (in local languages and scripts).

In addition to a solemn plenary session held in 2014, the Constitutional Court organised an International Conference on the topic “Constitutional Court between Negative Legislator and Positive Activism”. In 2017, along with the solemn plenary session presenting the 20-year work of the Constitutional Court in “post-Dayton” BiH. In addition, a retrospective exhibition of publications - the constitutions of Bosnia and Herzegovina - was presented on the official premises of the Constitutional Court. It covered different periods that Bosnia and Herzegovina went through in its historical, political and social development, and the publications with the Constitutional Court as the publisher or co-publisher (bulletins, digests, manuals, *etc.*).

Given the established tradition, 60 years of constitutional justice in Bosnia and Herzegovina should have been marked in a similar way in 2024. However, taking into account the circumstances in which the Constitutional Court finds itself (continuous pressure and attacks on the Court as an institution, primarily due to some of the decisions it has made, the fact that for a long time there have been three vacancies from amongst national judges as a result of the inability of the relevant authority in Federation of Bosnia and Herzegovina and the lack of will of the relevant authority in the Republika Srpska to fill the three judicial vacancies left by those who retired by “operation of law” or of their own free will, *etc.*), it was decided that the 60<sup>th</sup> anniversary in 2024 would be marked only with a commemorative publication under the standardized name<sup>1</sup>.

Together with the two previous profiles that presented, in a documentary manner, the establishment, history, functioning and development of constitutional justice, *i.e.* the Constitutional Court as an institution, the publication entitled “Constitutional Court of Bosnia and Herzegovina 1964–2024” - one could say it is an organic whole - is the third volume of the same sort of publication.

This edition, with its monographic nature and structure (along with the two previous ones), sheds more light on the constitutional justice in Bosnia and Herzegovina from the outset, especially the period from 2014 to 2024. However, in order to get a comprehensive view into the origin and development of the constitutional justice in Bosnia and Herzegovina, it is necessary to take into account all of them individually and together.

All three publications, as such, are not only a first-class and reliable historiographical source and material but also an educational resource (a handbook of sorts) for all those who wish to know more about the work of the Constitutional Court and this topic in general. To a certain extent,

<sup>1</sup> “Constitutional Court of Bosnia and Herzegovina 1964-2014”, “Constitutional Court of Bosnia and Herzegovina 1997-2017” and “Constitutional Court of Bosnia and Herzegovina 1964-2024”.



the publication purposefully contains identifiable reporting elements, which not only justify its factual nature but also emphasizes it. For this purpose, in addition to the printed editions, all three publications are made available in e-format on the website of the Constitutional Court ([www.ustavisud.ba](http://www.ustavisud.ba)). In this way, the general public, and especially the academic and legal professionals is provided with quick and simple insight into and use of the publications.

Following, for the most part, the previous commemorative editions in terms of methodology, structure and content, this publication also contains relevant data on the Constitutional Court, thematically classified and ordered (heritage, constitutional position, jurisdiction, and seat). It also contains data on the institutional position of the Constitutional Court in relation to other judicial and quasi-judicial authorities such as the Human Rights Chamber, the Human Rights Commission within the Constitutional Court of BiH (as a provisional body), the Commission for Real Property Claims of BiH, and on the relationship with the High Representative for Bosnia and Herzegovina. The historical overview (mainly taken from the two previous publications) is presented in chronological order according to identifiable periods starting from the foundation in 1964 and all the way up to 2024. Namely, in order to be sufficiently clear and illustrative in terms of historiography, it is necessary to present a period of six decades (1964–2024), at least approximately, in identifiable sections. First, it was necessary to outline the socio-political context of the introduction of the constitutional judiciary in the Socialist Federal Republic of Yugoslavia and the Socialist Republic of Bosnia and Herzegovina in the early 1960s. In addition, it was necessary to present in chronological order the identifiable periods and segments between 1964 and 1974, 1975 and 1990, 1991 and 1996, and the period after 1995 until the establishment and functioning of the first composition of the Constitutional Court under the Dayton Constitution (from 1997 to 2002). Finally, the period from 2003 to 2024 was presented, marking 60 years of constitutional justice in Bosnia and Herzegovina. As noted above, this publication together with the two previous ones (on the occasion of the 50<sup>th</sup> and 20<sup>th</sup> anniversaries respectively) forms a kind of organic whole; the historiographic contents related to all previous stages (with minor downsizing in certain places, *etc.*) were almost completely and in order transferred to this third one, which covers all six decades. For practical purposes, some examples of earlier case law, especially from the pre-Dayton period, have been omitted, but can be found in their previous print and electronic editions.

Following the idea that the publication, in addition to being commemorative, should be educational in nature, we would like to draw the attention of our esteemed readers to the fact that this time the process of work on cases was particularly addressed. This is starting from the receipt of a submission (request, appeal) in the Court, a professional analysis within the Office of the Registrar and finally to a judge's decision itself. The purpose of that chapter is primarily to indicate a professional, objective, impartial, committed and extremely responsible approach to the analysis of each constitutional issue (case), which is necessary for the preparation and decision-making at the Court session. A decision of the Constitutional Court is the decision supported and voted for by the judges. However, before the discussion and decision-making at the Court session, as one can see, a thorough professional analysis and verification is carried out in accordance with the highest professional standards and case law of the Constitutional Court and the European Court of Human Rights in Strasbourg.

With the aim of being as much of a documentary in nature as possible, this edition is enhanced to a significant extent with new content and factual information, especially those that were not previously known to us or were not available.

Other contents and attachments are designed and arranged in a standard manner, appropriate to the nature of publications of this type.

It should be noted that the attachments (textual part) are not written by a single author, but represent the joint contribution of a team composed of judges and professional staff of the Secretariat of the Constitutional Court, who worked devotedly on the preparation of this publication, as well as on the two previous ones.

Finally, the profile is published in the official languages and scripts in use in Bosnia and Herzegovina, as well as in English, which will certainly help the widest public concerned outside the BiH-speaking area to become familiar with the constitutional justice and the institution of the Constitutional Court of Bosnia and Herzegovina.



## Foreword

*Seada Palavrić*

*President*

*Constitutional Court of Bosnia and Herzegovina*

Nation-states have had different rises and falls in the modern legal history of their development, tailored their paths of development and used different means for success. Individual approaches notwithstanding, at least two bright tones can be clearly discerned. On the one hand, there is a clear European or global direction of development of the democratic world, with a clearly expressed consensus of accepted common values. On the other hand, some institutions have become pillars of justice and law, protecting democratic principles on which a modern country is built. There is no doubt that constitutional courts occupy a prominent place among those institutions, having been entrusted with a difficult and responsible task of permanent protection and upholding the constitution and its common and individual values.

It has been six decades since the Constitutional Court of Bosnia and Herzegovina has become a key institution that safeguards the foundations of the constitutional order and democracy in Bosnia and Herzegovina. Six decades of constitutional justice is a significant period. Ever since its establishment in 1964, the Constitutional Court of Bosnia and Herzegovina has played an irreplaceable role in the preservation of the constitutional order and its values. Not every democratic country can boast of decades-long continuity of constitutional justice, particularly the role played and continued to be played by the Constitutional Court of Bosnia and Herzegovina.

This publication is dedicated to an important jubilee – **60 years of existence and functioning of the Constitutional Court in Bosnia and Herzegovina**. This praiseworthy publication not only marks the work and development of this institution over many years but also represents an opportunity to contemplate on the role and influence of the Constitutional Court of Bosnia and Herzegovina on the constitutional system of Bosnia and Herzegovina and the society as a whole.

This is the third profile of the Constitutional Court of Bosnia and Herzegovina. As was the case with the previous two profiles, this one too is produced in tumultuous times, arguably unique for the European space. The publication bears witness to a difficult and challenging period that cannot be imagined without this court. On that note, it is quite clear that this profile, including its foreword, will include not only the usual solemn words of praise and possibly unrecognisable, mild criticism (which is typical of publications of this sort) but will also indicate what the Constitutional Court of Bosnia and Herzegovina is actually going through during these times. I feel a strong need and responsibility to do that.

The international community and the national stakeholders alike were aware that the Constitutional Court of Bosnia and Herzegovina would play a significant role in the institutional setting of the General Framework Agreement for Peace in Bosnia and Herzegovina. However, very few could have expected that the Constitutional Court of Bosnia and Herzegovina would be the principal advocate of the processes of defence and development of Bosnia's statehood almost three decades after the end of the war in Bosnia and Herzegovina. Probably from World War II until present day, no other constitutional court justified and used the "guardian of the constitution"

reference often found in the constitutions and without which a democratic country cannot come to be or survive in the modern age more than the Constitutional Court of Bosnia and Herzegovina. This is a result of an unwavering dedication to the need to protect not only the existence and legitimacy of the Dayton Constitutional Court of BiH but also the State of Bosnia and Herzegovina. As the guardian of the Constitution of Bosnia and Herzegovina, the Constitutional Court protects one of the key foundations without which the country cannot hope to survive or prosper.

Unfortunately, even nowadays, three decades after the new the Constitution of Bosnia and Herzegovina entered into force, the Constitutional Court of Bosnia and Herzegovina bears witness to the undermining of the State of Bosnia and Herzegovina in every sense of the word. The range of the activities used in this regard is broad and includes irresponsible and unacceptable interpretations of the constitutional order of Bosnia and Herzegovina, open and continuous unconstitutional activities the goal of which is erosion of the State and its prerogatives as well as marginalisation and inactivity of the State, and undermining of the State along the lines of, for example, obstruction of implementation of final and binding decisions of the Constitutional Court of Bosnia and Herzegovina. To all those who go along with such policies and views, the Constitution of Bosnia and Herzegovina clearly points out the four indisputable facts. These are: the State of Bosnia and Herzegovina is a republic that but changed its name from “Republic of Bosnia and Herzegovina” to “Bosnia and Herzegovina”, it enjoys modern continuity of legal existence under international law, with its internal structure modified (the Entities), and continues its legal existence as a state with its present internationally recognised borders.

As noted above, the Constitutional Court of Bosnia and Herzegovina itself has been the target of attacks. Specifically, retrograde policies have focused their energy (more vehemently than ever in the past two decades) to “expel” hard-working international judges from the Constitutional Court of Bosnia and Herzegovina. First of all, why did I use the phrase “retrograde policies”? In this modern time where the expressions such as “European law”, “federation of constitutional courts” or the institutions such as the European Court of Human Rights and the European Court of Justice have been given a special place in all the constitutional systems of democratic countries, the international judges should, first of all, be regarded as the reflection of the inevitable internationalisation of national law and institutional plurality and development of a modern European legal State. Instead of the Constitutional Court of Bosnia and Herzegovina boasting of its multinational, plural judicial composition and a multicultural approach, efforts are being made to eliminate the presence of the international judges under the guise of a symbolic protection of ethnic national interests. Yet, the normative drafts of the new composition of the Constitutional Court of Bosnia and Herzegovina (offered as an alternative) clearly indicate that the purpose of elimination of the international element from the Constitutional Court of Bosnia and Herzegovina is to render the Court dysfunctional by burdening its current unquestionable and defended autonomy and independence with unacceptable Entity and ethnic procedures with which almost all State institutions are afflicted.

Having worked as a judge of the Constitutional Court of Bosnia and Herzegovina for 19 years, I am sorry to say that not a single key decision involving abstract review of constitutionality – which is the fundamental jurisdiction for normative harmony of the legal order within which normative compatibility of acts with the Constitution of Bosnia and Herzegovina are decided – was adopted unanimously by the national judges. Therefore, statistically speaking, the fact that the national judges cannot take a uniform position on decisions falling within abstract review of constitutionality supports the argument that international judges need to be present and act. The international judges are often respectable judges with experience from the European Court of Human Rights or other recognised national or international setting. The impression is that the public is not familiar with the role of international judges that form part of the Constitutional Court. It is imperative to understand the rationale underlying the constitutional provision requiring that one third of the members of the Constitutional Court of BiH are international judges who may not be citizens of any neighbouring state. This provision seeks to bring in voices who do not think in the same way as judges from Bosnia and Herzegovina or the neighbouring states, and the value of those voices

needs to be appreciated in light of the exigencies of the peace which followed the recent war. **This constitutional provision needs to be viewed in its context, namely through the fact that it is contained in the Constitution of Bosnia and Herzegovina as an annex to the Peace Agreement.**

However, instead of fulfilling their constitutional obligation to select the missing national judges that would one day give assurances that the “international element” in the Constitutional Court of Bosnia and Herzegovina can be efficiently replaced with the national element, the actions of the Entity authorities are discouraging and but prove that this would not take place any time soon. Namely, the Entity authorities, by either taking a negative or passive view on the matters involving election of judges to the Constitutional Court of Bosnia and Herzegovina, are working intensively to undermine and degrade the Constitutional Court of Bosnia and Herzegovina. Specifically, for almost two years the responsible authorities in the Federation of Bosnia and Herzegovina did not elect a new judge from this Entity. The relevant authorities in the Republika Srpska, in addition to openly denying its positive constitutional obligation to elect a new judge, explicitly demanded that the remaining judge (Mr. Zlatko Knežević) withdraw from the Constitutional Court of Bosnia and Herzegovina. In doing so, the Entity authorities literally and unquestionably forced it upon the Constitutional Court of Bosnia and Herzegovina to involve the international judges in every case because without them the Constitutional Court of Bosnia and Herzegovina would not have been able to function at all during the past two years. By making additional efforts, the international judges made it possible for the Constitutional Court of Bosnia and Herzegovina to sit in plenary. Having played an immeasurably important role in the difficult moments through which the Constitutional Court of Bosnia and Herzegovina has been going, I hereby express my deepest gratitude to my international colleagues for their contribution to a successful work and even the survival of the Constitutional Court of Bosnia and Herzegovina.

The Constitutional Court of Bosnia and Herzegovina was forced to make some hard decisions during the previous period as well. The substance of the “weight” lies not in a subtle struggle and confrontation of arguments on sensitive legal issues faced by societies and countries in this modern age but in the fact that the Constitutional Court of Bosnia and Herzegovina was forced to repeal integral laws and legal acts as unconstitutional due to lack of constitutional grounds for such acts. In other words, this means that the legislators showed no understanding whatsoever of the basic constitutional issues such as the division of responsibilities, international obligations of Bosnia and Herzegovina, constitutional principles etc. For example, the Constitutional Court of Bosnia and Herzegovina repealed the entire newly-enacted Election Law of the Republika Srpska by which the Entity authorities endeavoured, contrary to Annex III to the General Framework Agreement for Peace in Bosnia and Herzegovina, to assume State competences while simultaneously undermining the State election system founded on the Election Law of Bosnia and Herzegovina. All that was done in complete disregard of Article 5 of Annex III to the General Framework Agreement for Peace in Bosnia and Herzegovina under which the Parties (the State and the Entities) agreed to create a permanent Election Commission with responsibilities to conduct future elections in Bosnia and Herzegovina. Therefore, this provision imposed an obligation on the Republika Srpska not to take actions that undermine the agreement of the Parties for the creation of a permanent Election Commission of BiH that would conduct future elections in the Republika Srpska as well.

However, it does not end there. The Constitutional Court of Bosnia and Herzegovina is facing overt obstruction of implementation of its final and binding decisions in the Republika Srpska. Not only that decisions of the Constitutional Court of Bosnia and Herzegovina are not *de facto* implemented but the authorities in the Republika Srpska enacted a Law prohibiting compliance with the decisions of the Constitutional Court of Bosnia and Herzegovina, i.e. prohibiting their implementation. The pretext for this course of action is the alleged conduct of the Constitutional Court of Bosnia and Herzegovina against the Republika Srpska by declaring regulations of that Entity’s authorities unconstitutional. In this way, they in effect criticise the decision-making process of the Constitutional Court in an acceptable manner. However, a review of the case law of the Constitutional Court of Bosnia and Herzegovina (transparently visible on the Constitutional Court’s



## Constitutional Court of Bosnia and Herzegovina 1964–2024

website as well) reveals that the Constitutional Court found incompatibility in one half of about 70 cases involving constitutional disputes against the Republika Srpska whereas no violation of the Constitution of Bosnia and Herzegovina was found in the remaining half. This piece of information alone points to the meticulousness with which the Constitutional Court of Bosnia and Herzegovina acts and decides and is the strongest argument against the contentions from the Republika Srpska that the work of the Constitutional Court has been eroded and is aimed against the Republika Srpska.

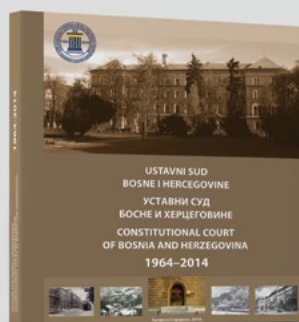
Having perceived the extent and weight of the problems with which the Constitutional Court of Bosnia and Herzegovina is faced, it would not be prejudicial to conclude that it is beyond doubt that this is one of the most difficult moments in which the Constitutional Court of Bosnia and Herzegovina operated in the past 60 years. This is the main reason why I opted for this kind of foreword for the profile “Constitutional Court 1964–2024”. Unfortunately, the current situation does not allow a festive tone. This may sound like an excuse, but the citizens from all over Bosnia and Herzegovina and the generations to come need to know why at this point 10,000 or more of them await the ruling of the Constitutional Court of Bosnia and Herzegovina on their appeals seeking protection of fundamental rights and freedoms.

The publication that is before you is a profile and is a result of a comprehensive research on the journey of the Constitutional Court of Bosnia and Herzegovina over the past six decades. This publication offers a comprehensive overview of the history, stages of development, key decisions and impact of the Constitutional Court in the last 60 years. It is the result of a thorough research, analyses and reflections on its role and significance, as well as the challenges it is facing in the modern society.

The pages that follow are a testimony to the lasting dedication of the Constitutional Court of Bosnia and Herzegovina to ensure a high level of rule of law and protection of fundamental rights and freedoms. I hope that this publication will celebrate not only the achievements of the Constitutional Court of Bosnia and Herzegovina to date, but that it would also inspire constant dedication to the principles of justice and constitutional integrity in the years to come.

I believe that it will be of use to the lawyers and law students, as well as to all citizens who are interested in understanding more about the key role of the Constitutional Court in shaping the legal and social framework of our country.

I thank everyone who has contributed to this work, starting from the members of the working group who have invested their knowledge and efforts, to the institutions and individuals that facilitated access to relevant data and documents. I am especially grateful to the members of the Constitutional Court who have enriched legal theory and practice through their work and involvement.



“Constitutional Court of Bosnia and Herzegovina 1964-2014”, Sarajevo, 2014



“Constitutional Court of Bosnia and Herzegovina 1997-2017”, Sarajevo, 2017

# ABOUT THE COURT

*"Oslobođenje", 16 February 1964*



## Background

In terms of countries, which have transitioned from a socialist system, Bosnia and Herzegovina stands out as a rare example with a history of having a constitutional court. The former Yugoslavia, within which Bosnia and Herzegovina was one of the six republics, was the only country, which had a system of the constitutional courts in the socialist regime. The first Constitutional Court in former Yugoslavia was created as early as 1963. This date coincided with the starting point of the history of a constitutional court in this country. In accordance with the federal structure of the former SFRY, not only was there a Constitutional Court at the federal level, but prior to the dissolution of former Yugoslavia, the six Republics and the two Autonomous Provinces also had their own constitutional courts.

The Constitutional Court of Bosnia and Herzegovina was established on 15 February 1964 pursuant to the Republic Constitution of 1963. It was recognized as an important institution by the Constitution of 1974 as well. The jurisdiction of this Constitutional Court consisted primarily of abstract legislative review. Thus, it would take decisions as to the conformity of the (Republic's) laws with the Constitution, and as to the constitutionality and legality of other regulations and general and self-management acts. In addition, the Constitutional Court also had the jurisdiction to decide disputes between the Republic and other political-territorial units, in particular, conflicts of jurisdiction as between the courts and other bodies of political-territorial units. The Law on the Constitutional Court regulated issues concerning the organization, jurisdiction and procedures before this Constitutional Court.



*Joint session of the both Houses of the National Assembly of Bosnia and Herzegovina on the occasion of the enactment of the Constitution of BiH, April 1963*

The outbreak of the crisis in the territory of the former SFR Yugoslavia in the last decade of the 20<sup>th</sup> century, which resulted in the dissolution of the former federal state, produced serious and long-lasting consequences for Bosnia and Herzegovina. Recognizing the need for a comprehensive solution to end the tragic conflict in the region, as stated in the Preamble of the Peace Agreement, concluded at the end of 1995, the international community had been attempting since 1991 to find a political solution and stop the war in Bosnia and Herzegovina.

The peace negotiations conducted under the leadership of the United States of America from 1 November to 21 November 1995 resulted in the General Framework Agreement for Peace in Bosnia and Herzegovina, which was initialled in the USA, Dayton, Ohio on 21 November 1995 and signed in Paris (France) on 14 December 1995. This is the reason why this agreement is often called Dayton Agreement or Paris Peace Agreement. The Agreement consists of eleven annexes, among which is Annex 4 – Constitution of Bosnia and Herzegovina. With the act of signing the Agreement and its entry into force on the same day, the previous Constitution of the (Socialist) Republic of Bosnia and Herzegovina was replaced by the constitutional act contained in Annex 4.



## Constitutional position

The Constitutional Court as an institution is established under Article VI of the Constitution of Bosnia and Herzegovina, which regulates its jurisdiction, basic issues relating to its structure and procedure, and final and binding nature of its decisions.

The Constitution of Bosnia and Herzegovina ensures the constitutional legal framework for the organization and functioning of the Constitutional Court based on completely new political and legal foundations compared to the previous period.

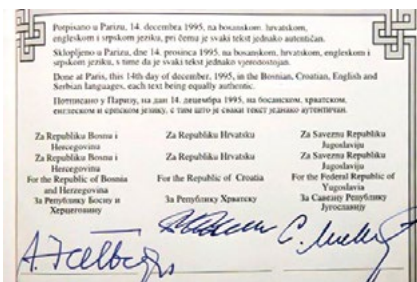
Following long negotiations, the Constitution of Bosnia and Herzegovina, as Annex IV of the General Framework Agreement for Peace in Bosnia and Herzegovina, was agreed upon and initialled on 21 November 1995 in Dayton, Ohio, the USA. It was signed in Paris on 14 December 1995 and it entered into force on that same day. The original text of the Constitution of BiH was written in English and there has been no official translation into the official languages in Bosnia and Herzegovina.



Amongst the five institutions of the state that the Constitution expressly mentions,<sup>2</sup> the Constitutional Court is unique because of its composition. Amongst the judges who preside over the Court, are international judges, who are selected by the President of the European Court of Human Rights after consulting the Presidency of Bosnia and Herzegovina.



By defining the normative prerequisites for becoming a constitutional democracy and modifying the internal structure of the State, the Constitution innovated the constitutional position of the Constitutional Court and made it compatible with the standards of the constitutional judiciary. The Constitutional Court acts as an independent guardian of the Constitution and as an institutional guarantor of the protection of human rights and freedoms enumerated not only in Article II of the Constitution, but also in the instruments of Annex I to the Constitution of Bosnia and Herzegovina.



First of all, the Constitution of Bosnia and Herzegovina in the Preamble states in detail the basic normative principles, such as respect for human dignity, liberty and equality; peace, justice, tolerance and reconciliation, and democratic governmental institutions and fair procedures as the best means for building peaceful relations within a pluralist society. Article II of the Constitution includes a broad list of human rights and fundamental freedoms, which shall be ensured by Bosnia and Herzegovina and both Entities, and stipulates that the European Convention for the Protection of Human Rights

<sup>2</sup> Article III(5)(a) Additional Responsibilities – prescribes that the additional institutions may be established as necessary to carry out such responsibilities.

**Based** on respect for human dignity,  
liberty, and equality,

**Dedicated** to peace, justice,  
tolerance, and reconciliation,,

**Convinced** that democratic  
governmental institutions and fair  
procedures best produce peaceful  
relations within a pluralist society,

**Desiring** to promote the general welfare  
and economic growth through the  
protection of private property and the  
promotion of a market economy,

**Guided** by the Purposes and  
Principles of the Charter of the  
United Nations,

**Committed** to the sovereignty,  
territorial integrity, and political  
independence of Bosnia and  
Herzegovina in accordance with  
international law,

**Determined** to ensure full  
respect for international  
humanitarian law,

**Inspired** by the Universal Declaration  
of Human Rights, the International  
Covenants on Civil and Political Rights  
and on Economic, Social and Cultural  
Rights, and the Declaration on the  
Rights of Persons Belonging to National  
or Ethnic, Religious and Linguistic  
Minorities, as well as other human rights  
instruments,

**Recalling** the Basic Principles  
agreed in Geneva on  
September 8, 1995, and in New  
York on September 26, 1995,

*Bosniacs, Croats, and Serbs, as constituent peoples (along with Others), and  
citizens of Bosnia and Herzegovina hereby determine that the Constitution of  
Bosnia and Herzegovina is as follows*

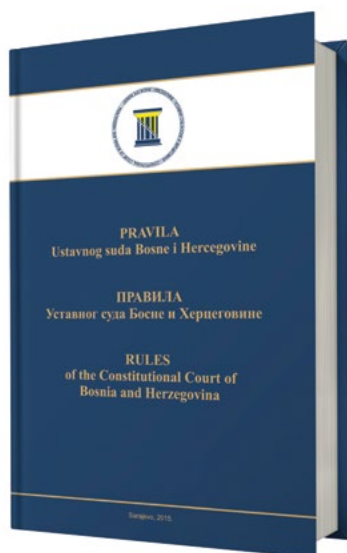
## Constitution of Bosnia and Herzegovina:

(...)

# Constitutional Court of Bosnia and Herzegovina 1964–2024

and Fundamental Freedoms shall apply directly in Bosnia and Herzegovina. Moreover, it states that the rights and freedoms set forth in the European Convention shall have priority over all other law.

The Constitution does not stipulate that the Parliamentary Assembly of Bosnia and Herzegovina should regulate the jurisdiction, rules of organization, work and procedure before the Constitutional Court. Instead it empowers the Court to regulate these by itself by stipulating as follows: “The Court shall adopt its own rules of court by a majority of all members. (...)” (Article VI(2)(b) of the Constitution). Accordingly, the Constitutional Court itself, as authorized under the Constitution, adopts the Rules of the Constitutional Court, regulating in detail the issues of organization and procedure before the Constitutional Court.



The first Rules of Procedure of the Constitutional Court (renamed the Rules at a later point) was adopted at the session held on 29 July 1997. The Rules of the Court were adopted on 23 July 2005 and were applicable until 2014. The Rules as amended in 2014 are currently applicable (*Official Gazette of Bosnia and Herzegovina*, 94/14 – Consolidated text, 47/23 and 41/24).

Viewed as a whole, these Rules have been modelled after the Rules of the European Court of Human Rights in Strasbourg and the former Human Rights Chamber for Bosnia and Herzegovina.

The Rules are published in the Official Gazettes of Bosnia and Herzegovina, the Entities and the Brčko District of Bosnia and Herzegovina.

In order to be able to make completely independent decisions on its own organization and functioning, given that only the Constitutional Court can pass regulations and general acts concerning its work and its role established by the Constitution of Bosnia and Herzegovina, as stipulated in the Rules, the Constitutional Court passed a number of other general acts-decisions, regulations, conclusions, etc. Some of them are as follows:

- Decision on the Organisation of the Secretariat of the Constitutional Court of Bosnia and Herzegovina
- Rulebook on the Work in the Constitutional Court of Bosnia and Herzegovina
- Code of Ethics of the Constitutional Court of Bosnia and Herzegovina
- Rulebook on Internal Operation of the Constitutional Court of Bosnia and Herzegovina
- Rulebook on Access to Information and Re-use of Information of the Constitutional Court of Bosnia and Herzegovina



**Considering** *the fact that the institution of the Constitutional Court of Bosnia and Herzegovina has been established by Article VI of the Constitution of Bosnia and Herzegovina, as an independent guardian of the Constitution and as an institutional guarantee for the protection of human rights and fundamental freedoms laid down in the Constitution and the instruments referred to in Annex I to the Constitution,*

**Bearing in mind** *that the Constitutional Court of Bosnia and Herzegovina is not part of the legislative, executive or ordinary judicial authority, but has been positioned by the Constitution as a special independent and autonomous authority which, on the basis of the Constitution, acts as a remedy for the other three segments of authority,*

**Being mindful** *of the particular position and the role of the Constitutional Court of Bosnia and Herzegovina in the Constitution of Bosnia and Herzegovina, which imposes an obligation to secure its independence, including full financial and administrative independence and autonomy, which is reflected in the autonomous planning and proposing of a budget, as well as in the autonomous distribution of the approved budget funds, the amount of which must in any case be subject to a corresponding review by a competent body and that the Constitutional Court of Bosnia and Herzegovina must be able to decide on its own organization and functioning, and that only the Constitutional Court of Bosnia and Herzegovina may pass regulations and general acts concerning its work and its role established by the Constitution of Bosnia and Herzegovina,*

**Since, due** *to the lack of a constitutional basis to regulate a procedure and organization through law, in addition to the Constitution of Bosnia and Herzegovina, the Rules of the Constitutional Court of Bosnia and Herzegovina, which, according to the power referred to in the Constitution of Bosnia and Herzegovina, shall be passed by the Constitutional Court of Bosnia and Herzegovina itself, are the sole legal act regulating these issues relating to the Constitutional Court of Bosnia and Herzegovina,*

**Having regard** *to Article VI(2)(b) of the Constitution of Bosnia and Herzegovina, the Constitutional Court of Bosnia and Herzegovina, sitting in plenary sessions of the Constitutional Court of Bosnia and Herzegovina held on 23 January and 12 February 2014, adopted the following*

## **RULES**

**of the Constitutional Court of Bosnia And Herzegovina**  
**(...)**



## Jurisdiction

Jurisdiction of the Constitutional Court is defined under Article IV(3)(f), Article VI(3) and Article VI(4) (Amendment I) of the Constitution of Bosnia and Herzegovina. Within its overriding duty to uphold the Constitution of Bosnia and Herzegovina, according to these constitutional provisions, the Court has seven types of jurisdiction, which ultimately implies distinct proceedings and distinct decisions depending on the type of jurisdiction and the nature of the dispute.



Essentially, the distinction between these various types of jurisdiction is based on the extent to which the Constitutional Court, in addition to its usual task of upholding constitutionality, also has a more direct relation with the judicial or legislative authority concerned in certain types of disputes.

### Disputes arising from conflict of jurisdiction

(Article VI(3)(a) of the Constitution of Bosnia and Herzegovina)

The Constitutional Court has exclusive jurisdiction to decide any dispute that arises under the Constitution between the Entities or between Bosnia and Herzegovina and an Entity or Entities, or between institutions of Bosnia and Herzegovina. In effect, the Court has to decide on positive or negative conflicts of jurisdiction, or any other disputes that may arise under relations between the state and entity authority and/or the institutions of Bosnia and Herzegovina.

Under the Constitution, disputes may be referred to the Court only by a certain circle of authorised persons, i.e. a member of the Presidency of Bosnia and Herzegovina, the Chair of the Council of Ministers, the Chair or a Deputy Chair of either chamber of the Parliamentary Assembly, one-fourth of the members/delegates of either chamber of the Parliamentary Assembly, or one-fourth of either chamber of a legislature of an Entity.

### Review of constitutionality of laws

(Article VI(3)(a) of the Constitution of Bosnia and Herzegovina)

The Constitutional Court has jurisdiction to decide as to whether any provision of an Entity's constitution or a law of an Entity is compatible with the Constitution of Bosnia and Herzegovina.

Although the Constitution of Bosnia and Herzegovina explicitly focuses only on "provisions of an Entity's law", this also implies a review of constitutionality of laws of Bosnia and Herzegovina in accordance with the general task of the Court to uphold the Constitution of Bosnia and Herzegovina.<sup>3</sup>

Under the Constitution, disputes may be referred to the Court only by a certain circle of authorised persons, in particular, a member of the Presidency of Bosnia and Herzegovina, the

<sup>3</sup> See decision no. U-14/02 of 30 January 2004, paragraph 9 with further references.

Chair of the Council of Ministers, the Chair or a Deputy Chair of either chamber of the Parliamentary Assembly, one-fourth of the members/delegates of either chamber of the Parliamentary Assembly, or one-fourth of either chamber of a legislature of an Entity.

## Review of constitutionality of special parallel relationships of an Entity with neighbouring states

(Article VI(3)(a) of the Constitution of Bosnia and Herzegovina)

In special cases, the Court also has jurisdiction to examine whether an Entity's decision to establish a special parallel relationship with a neighbouring state is consistent with the Constitution, including provisions relating to the sovereignty and territorial integrity of Bosnia and Herzegovina.

Under the Constitution, disputes may be referred to the Court only by a certain circle of authorised persons, i.e. a member of the Presidency of Bosnia and Herzegovina, the Chair of the Council of Ministers, the Chair or a Deputy Chair of either chamber of the Parliamentary Assembly, one-fourth of the members/delegates of either chamber of the Parliamentary Assembly, or one-fourth of either chamber of a legislature of an Entity.

## Appellate jurisdiction

(Article VI(3)(b) of the Constitution of Bosnia and Herzegovina)

The appellate jurisdiction of the Constitutional Court is established by the constitutional provision according to which the Constitutional Court “shall have appellate jurisdiction over issues under this Constitution arising out of a judgment of any other court in Bosnia and Herzegovina”.

This implies that the Constitutional Court is the last instance of subsidiary protection of the rights and freedoms enshrined in the Constitution.

This provision is effected through the Rules of the Constitutional Court, so if the Court finds that an appeal (in some countries it is named constitutional complaint) is well-founded, may quash the challenged decision and refer the case back to the court that adopted the judgment for renewed proceedings. The court whose decision has been quashed is obligated to take another decision in an expeditious manner and, in doing so, it shall be bound by the legal opinion of the Constitutional Court concerning the violation of the appellant's rights and the fundamental freedoms guaranteed under the Constitution. Exceptionally, if the authority whose decision was quashed, adopts a new decision without complying with the legal opinion of the Constitutional Court, the Constitutional Court itself may decide on the merits of the case, if there is a decision of the authority that is not in violation of the constitutional rights by leaving such decision effective.

Appellants, who believe that the judgment or other decision of any court is in violation of their rights, shall have the right to lodge an appeal after all legal remedies have been exhausted, wherein the Court would also consider the effectiveness of possible legal remedies.

## Referral of an issue by other courts

(Article VI(3)(c) of the Constitution of Bosnia and Herzegovina)

The Constitutional Court has jurisdiction over issues referred by any court in Bosnia and Herzegovina concerning whether a law, on whose validity its decision depends, is compatible with this Constitution, with the European Convention for Human Rights and Fundamental Freedoms and its Protocols, or with the laws of Bosnia and Herzegovina; or concerning the existence of or the scope of a general rule of public international law.

In general, the Constitutional Court may uphold a law pertinent to the lower court's decision or declare it invalid.

## Unblocking of Parliamentary Assembly

(Article IV(3)(f) of the Constitution of Bosnia and Herzegovina)

The jurisdiction of the Constitutional Court in the case of 'blockage' of the work of the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina concerning an issue of destructiveness to the vital national interest, represents in many ways an area of activity that is atypical for a constitutional court, as this represents a close "interface" between the "judicial" and "legislative" authorities.



The Constitutional Court here resolves a dispute in which a decision proposed by the Parliamentary Assembly, according to the opinion of a majority of the delegates representing any of the three constituent peoples in the House of Peoples, is considered to be destructive to the vital national interest, whilst at the same time all "parliamentary remedies" for the resolution of this issue in the House of Peoples have been exhausted.

## Protection of the status and powers of the Brčko District

(Amendment I - Article VI(4) of the Constitution of Bosnia and Herzegovina)

The Constitutional Court of Bosnia and Herzegovina shall have jurisdiction to decide on any dispute relating to protection of the determined status and powers of the Brčko District of Bosnia and Herzegovina that may arise between an Entity or more Entities and the Brčko District of Bosnia and Herzegovina or between Bosnia and Herzegovina and the Brčko District of Bosnia and Herzegovina under this Constitution and the awards of the Arbitral Tribunal.

In addition to the authorized persons referred to in Article VI(3)(a) of the Constitution (member of the Presidency, Chair of the Council of Ministers, Chair or Deputy Chair of either chamber of the PA of BiH, one-fourth of the members/delegates of either chamber of the PA of BiH, or one-fourth of the members of either chamber of a legislature of an Entity), any such dispute may also be referred by a majority of the councilors of the Assembly of the Brčko District of BiH including at least one-fifth of the elected councilors from among each of the constituent peoples.

SLUŽBENI GLASNIK BOSNE I HERCEGOVINE <small>Izdavanje na hrvatskom, srpskom i bosanskom jeziku</small>		СЛУЖБЕНИ ГЛАСНИК БОСНЕ И ХЕРЦЕГОВИНЕ <small>Издање на хрватском, српском и босанском језику</small>	
Godina XIII Utorak, 31. ožujka/marta 2009. godine		Broj/Broj <b>25</b>	Godina XIII Уторак, 31. марта 2009. године
123 <b>PARLAMENTARNA SKUPŠTINA BOSNE I HERCEGOVINE</b> Temeljem članka X.1. Ustava Bosne i Hercegovine (Aneks 4, Općeg okvirnog sporazuma za mir u Bosni i Hercegovini), Parlamentarna skupština Bosne i Hercegovine na 49. sjednici Zastupničkog doma, održanoj 25. ožujka 2009. godine, i na 27. sjednici Doma naroda, održanoj 26. ožujka 2009. godine, donijela je <b>AMANDMAN I. NA USTAV BOSNE I HERCEGOVINE</b> U Ustavu Bosne i Hercegovine, iza članka VI.3. dodaje se novi članak VI.4, koji glasi: "4. Brčko Distrikt Bosne i Hercegovine Brčko Distrikt Bosne i Hercegovine, koji postoji pod suverenitetom Bosne i Hercegovine i spada pod nadležnosti institucija Bosne i Hercegovine, onako kako te nadležnosti proizilaze iz ovoga Ustava, čija je teritorij u zajedničkoj svojini (kondominij) entiteta, jedinica je lokalne samouprave s vlastitim institucijama, zakonima i propisima, te s ovlaštenjima i statusom konačno propisanim odlukama Arbitražnog tribunala za spor u vezi s međuentitetskom linijom razgraničenja u oblasti Brčkog. Odnos između Brčko Distrikta Bosne i Hercegovine i institucija Bosne i Hercegovine i entiteta može se dalje urediti zakonom koji donosi Parlamentarna skupština Bosne i Hercegovine. Ustavni sud Bosne i Hercegovine nadležan je za odlučivanje o bilo kakvom sporu u vezi sa zaštitom utvrđenog statusa i ovlaštenjima Brčko Distrikta Bosne i Hercegovine koji se može javiti između jednog ili više entiteta i Brčko Distrikta Bosne i Hercegovine ili između Bosne i Hercegovine i Brčko Distrikta Bosne i Hercegovine, prema ovoj Ustavu i odlukama Arbitražnog tribunala. Svaki takav spor također može pokrenuti većina zastupnika u Skupštini Brčko Distrikta Bosne i Hercegovine, koja uključuje najmanje jednu petinu izabranih zastupnika iz reda svakog od konstitutivnih naroda."		Dosađajući članak VI.4. postaje članak VI.5. Amandman I. na Ustav Bosne i Hercegovine stupa na snagu osmog dana od dana objave u "Službenom glasniku BiH". PSBiH, broj 327/09 26. ožujka 2009. godine Sarajevo Predsjedatelj Zastupničkog doma Parlamentarne skupštine BiH <b>Beriz Belkić, v. r.</b> Predsjedatelj Doma naroda Parlamentarne skupštine BiH <b>Ilija Filipović, v. r.</b> Na osnovu člana X.1. Ustava Bosne i Hercegovine (Aneks 4, Opšteg okvirnog sporazuma za mir u Bosni i Hercegovini), Parlamentarna skupština Bosne i Hercegovine, na 49. sjednici Predstavničkog doma, održanoj 25. marta 2009. godine, i na 27. sjednici Doma naroda, održanoj 26. marta 2009. godine, donijela je <b>AMANDMAN I NA USTAV BOSNE I HERCEGOVINE</b> U Ustavu Bosne i Hercegovine iza člana VI.3. dodaje se novi član VI.4, koji glasi: "4. Brčko Distrikt Bosne i Hercegovine Brčko Distrikt Bosne i Hercegovine, koji postoji pod suverenitetom Bosne i Hercegovine i spada pod nadležnosti institucija Bosne i Hercegovine onako kako te nadležnosti proizilaze iz ovog ustava, čija je teritorija u zajedničkoj svojini (kondominijumu) entiteta, jedinica je lokalne samouprave sa vlastitim institucijama, zakonima i propisima, i sa ovlaštenjima i statusom konačno propisanim odlukama Arbitražnog tribunala za spor u vezi sa međuentitetskom linijom razgraničenja u oblasti Brčkog. Odnos između Brčko Distrikta Bosne i Hercegovine i institucija Bosne i Hercegovine i entiteta može se dalje urediti zakonom koji donosi Parlamentarna skupština Bosne i Hercegovine. Ustavni sud Bosne i Hercegovine nadležan je da odlučuje o bilo kakvom sporu u vezi sa zaštitom utvrđenog statusa i	

## Composition

The Constitutional Court of Bosnia and Herzegovina has nine members. Out of that number, six members are selected by the Parliamentary Assembly (four members are selected by the House of Representatives of the Federation of Bosnia and Herzegovina and two members by the National Assembly of the Republika Srpska). The remaining three members are selected by the President of the European Court of Human Rights after consultation with the Presidency of Bosnia and Herzegovina.

Judges must be distinguished jurists of high moral standing. Any eligible voter so qualified may serve as a judge of the Constitutional Court. The judges selected by the President of the European Court of Human Rights shall not be citizens of Bosnia and Herzegovina or of any neighbouring state.

The term of judges initially appointed was five years. Judges subsequently appointed serve until age 70, unless they resign or are removed for cause by consensus of the other judges (Article VI(1)(c) of the Constitution of Bosnia and Herzegovina). According to the 2024 Amendments to the Rules, exceptionally, the judge shall continue performing his/her duties after the age of 70 until the relevant authority elects a new judge and until the newly elected judge assumes office.

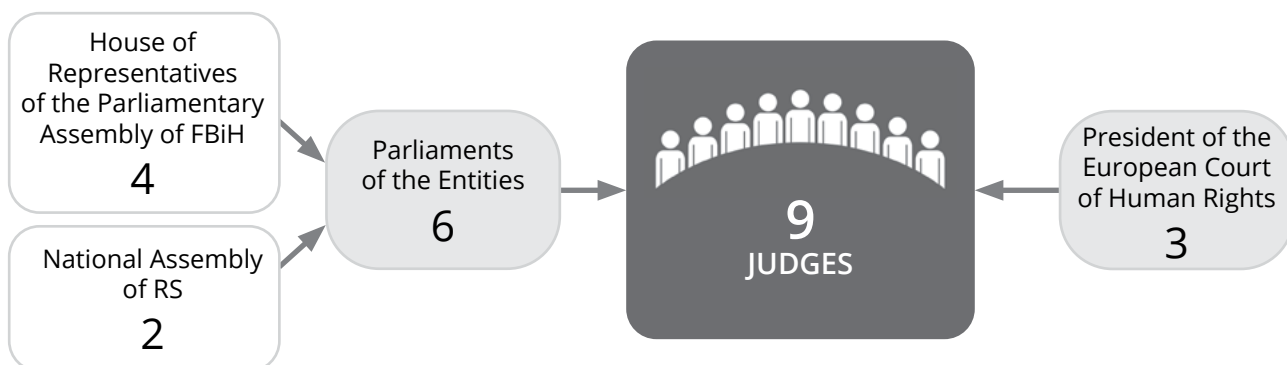
The Constitutional Court elects its President and three Vice-Presidents from among judges by secret ballot by a rotation for a term of three years.

The Rules of the Court also contain provisions on ineligibility and immunity. The position of a judge shall be incompatible with a membership in a political party or a political organization in Bosnia and Herzegovina, a membership in a legislative, executive and other judicial authority in Bosnia and Herzegovina or the Entities and the Brčko District of Bosnia and Herzegovina or any other position, which could affect the impartiality of the judge.

A judge may be dismissed from office before the end of his/her term if he/she requests it or if the Court establishes the existence of a reason for dismissing the judge from office by a consensus of other judges. The reasons for dismissal are as follows: if the judge is sentenced to a prison sentence, if the judge permanently loses the ability to perform his or her functions, if the judge performs public or professional duties incompatible with the function of a judge of the Constitutional Court and if he/she fails to conscientiously perform the function and preserve the reputation and dignity of the Constitutional Court and the judge.

A majority of all members of the Court constitutes a quorum. The Court makes its decisions by majority vote of all members in the Plenary Session and the Grand Chamber. The Chamber, which consists of the President of the Constitutional Court and two Vice-Presidents from among domestic judges, unanimously decides on temporary measures.

Decisions of the Constitutional Court are final and binding, and are published in the *Official Gazette of Bosnia and Herzegovina* and in the Official Gazettes of the Entities and the Brčko District.





## The Seat

The premises of the Constitutional Court of Bosnia and Herzegovina are situated in the building of the Presidency of Bosnia and Herzegovina, located in the very centre of Sarajevo.

The building was designed by architect Josip Vancaš and built in 1886 as the seat of the Provincial Government. The building of the Presidency of Bosnia and Herzegovina was built in the Neo-Renaissance style which is, for its classical, universal and symbolic and the most appropriate style for the construction of public buildings of the Austro-Hungarian Monarchy in that period. This building is a typical example of a Neo-Renaissance palace with a rusticated façade. When it was built, it was the largest building in Sarajevo, and consisted of a basement, a ground floor and two floors.

The original appearance of this building was altered in 1911, when the third floor was added, as designed by architect Karel Pařík. The premises of the Constitutional Court of Bosnia and Herzegovina are situated therein today.



The base of the building is rectangular. Within the building, in its central part, an inner courtyard acts as a skylight. The dimensions of the inner courtyard were reduced by the addition of two annexes on the northern side of the courtyard.

According to a decision taken by the Commission to Preserve National Monuments in 2008, the building in which the Constitutional Court is located, together with movable heritage, was declared a national monument of Bosnia and Herzegovina.

The renovation of the premises and the construction of courtrooms were realized because of the funds that the Constitutional Court received from the Governments of the United States of America, the Republic of Austria, Greece, United Kingdom, the Republic of France, the Kingdom of Spain, the Kingdom of Sweden, the Federal Republic of Germany, the Kingdom of Norway, the European Commission and ICITAP.

# Institutional position of the Constitutional Court in relation to other judicial and quasi-judicial bodies

It was one of the most important tasks of the Constitutional Court from the very beginning to clarify its position concerning the Human Rights Chamber, the Real Property Claims Commission and, in the end, the Office of the High Representative when the persons holding the Office started to intervene in the legislative process.

## Position of the Constitutional Court in relation to the Human Rights Chamber under Annex 6

After all events during the war in BiH, the effective protection of human rights had become – according to Article VII of the Framework Agreement – “of vital importance in achieving a lasting peace”. Hence, Annex 6, following the model of the European Court of Human Rights bodies in Strasbourg, established the “Human Rights Commission” composed of the Ombudsperson as a first instance body and the Human Rights Chamber as second instance or appellate mechanism. In accordance with Article I of Annex 6 the Human Rights Chamber, composed of a majority of international judges (eight out of fourteen judges), was responsible to decide on the violation of all the rights guaranteed under the European Convention for the Protection of Human Rights and its Protocols, which are, to reiterate, “directly applicable.” However, the Constitutional Court is also tasked – under all three procedures of judicial review according to Article VI(3) of the Dayton Constitution - with the protection of human rights following from the bill of rights included in Annex 4 and the European Convention, and so, there is a clear overlap of competences in this regard. This was a cause for confusion amongst individual and legal persons as to which body needs to be addressed in case of human rights violations.



*Human Rights Chamber (1999): Hasan Balić, Miodrag Pajić, Giovanni Grasso, Vitomir Popović, Mehmed Deković, Rona Aybay, Michèle Picard, Dietrich Rauschning, Mato Tadić, Andrew William Grotrian, Therese Nelson, Manfred Nowak, Viktor Masenko Mavi, Jakob Möller, Želimir Juka, Ulrich Garms*

Moreover, both bodies had their own disadvantages in regard to availing rapid and effective legal protection. Whereas the Human Rights Chamber could deal with any act of a state body violating a human right, the Constitutional Court seemed – according to the text of Article VI(3)(b) - literally restricted to “judgments of any other courts of Bosnia and Herzegovina.” Moreover, the Constitutional Court’s Rules of Procedure required the “exhaustion of legal remedies” in its appellate jurisdiction and applied this requirement in a rather formalistic way, and so, access to the Human Rights Chamber proved to be easier for individuals. On the other hand, the Human Rights Chamber could only declare a human rights violation and grant compensation at best, but not review legal norms on the merits and abrogate them for being unconstitutional. The latter was a power that was left to be exercised solely by the Constitutional Court.

As a matter of principle and from the perspective of comparative constitutional law, the relationship between the Constitutional Court and the Human Rights Chamber was regulated for them to function in a cooperative way for ensuring effective protection of human rights. In the course of 1998, the Constitutional Court received several appeals against decisions of the Human Rights Chamber, and so the problem arising from their overlapping competences could no longer be avoided. In two cases no. U-7/98 and U-11/98, the wording in the reasoning given by the Court for dismissal of the appeals is almost identical. Based on the *obiter dictum* on the legal unity of the Annexes of the Dayton Agreement and the provisions in Annexes 4 and 6 which declare the decisions of both the relevant bodies to be “final and binding”, the majority of the Court argued that the the decisions of the bodies having the same rank must also have the same rank. Thus, the aim of the framer of the Dayton Agreement was not to afford the Human Rights Chamber the power to review decisions of the Constitutional Court or the other way around. Moreover, the Constitutional Court found that the Human Rights Chamber had indeed been endowed with judicial functions in relation to the protection of human rights, but that from an organizational standpoint it had not been established as a “court of Bosnia and Herzegovina” for the purposes of Article VI(3)(c) of the Dayton Constitution. Rather based on its status as a transitional institution in the field of human rights protection with a five-year mandate it should be regarded as a *sui generis* institution. It was also stated that after the transitional period, the competences of the Human Rights Chamber would be transferred to the BiH institutions, with the result that the parallel system – which was a cause for confusion amongst individuals and therefore contributing to legal uncertainty - come to an end. This occurred on 31 December 2003 when the Human Rights Chamber ceased to operate.

## Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina

Since the Chamber had failed to decide all the received cases through the end of its mandate, on 1 January 2004, the Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina had been formed as an independent body and the legal successor of the Chamber. Its prime task had been to complete the work and adopt decisions in the remainder of around 9,000

cases of the Chamber. Pursuant to an Agreement on the founding of the Human Rights Commission within Constitutional Court of Bosnia and Herzegovina, signed on 25 September 2003, the Commission received a mandate to decide the pending cases of the Chamber through 1 December 2004. In that period, the Commission had been composed of five members, namely two international and three national judges. As prescribed under the Agreement, the members were appointed by the President of the Constitutional Court of Bosnia and Herzegovina. The Commission operated in two Chambers: the Grand Chamber which sit in plenary and composed of five members deciding solely decisions on admissibility and merits, and the Chamber, composed of three national members who were in charge of adopting decisions on admissibility and the striking out thereof. In cases where the Chamber could not arrive at a unanimous decision, they were referred to the Grand Chamber or Plenary. After the expiry of its original term, the Commission was able to continue its work pursuant to a new Agreement, which became applicable since 1 January 2005, although without the international judges who were originally members of the Commission. These international judges had been substituted by the judges of the Constitutional Court of Bosnia and Herzegovina. The judges of the Court participated in the work of the Commission as part of the Grand Chamber, that



*Session of the Human Rights Commission within the Constitutional Court*

is, only in respect of the adoption of decisions on merits. The Chamber had continued working in the same composition and with the same competencies as those referred to in the previous Agreement.

The Commission operated from 1 January 2004 through to 31 December 2006, and decided around 8,500 cases of the former Chamber during this period. The Constitutional Court of Bosnia and Herzegovina had provided substantial financial, personnel and technical support to the work of the Commission.

In the end, around 500 pending cases were taken over by the Constitutional Court pursuant to the Agreement of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Republika Srpska, in accordance with Article XIV of Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina from January 2007, with an obligation to complete these cases until 30 June 2007. The work on these cases was completed at the last session held on 26 and 27 June 2007.

## Position of the Constitutional Court in relation to the Real Property Claims Commission under Annex 7

The decisions relating to the inadmissibility of appeals against the Human Rights Chamber's decisions also set a precedent in relation to the issue of the relationship between the Court and the Real Property Claims Commission (CRPC) under Annex 7. In cases U-21/01 and U-32/01, the Constitutional Court therefore dismissed appeals against decisions of the CRPC. However, in contrast to decisions relating to the Human Rights Chamber, the Constitutional Court based its conclusion on specific legal grounds and facts of the cases, declared that there should be an access to lower-instance courts. Having regard to the appellate jurisdiction of the Constitutional Court over decisions of ordinary courts, there would indeed be legal recourse to the Court in the end, if necessary.

## Position of the Constitutional Court in relation to the High Representative for Bosnia and Herzegovina

Annex 10 of the Dayton Agreement provides for the establishment of the Office of High Representative (OHR), who is tasked with the supervision and encouragement of civilian implementation of the Peace Agreement. Of particular significance for the relationship between the OHR and the Constitutional Court is Article V of Annex 10, which prescribes that the Higher Representative shall be the "final authority in theatre regarding interpretation of this Agreement on the Civilian Implementation of the Peace Settlement". In 1997, at the Bonn Conference of the so-called Peace Implementation Council (PIC), further significant and far-reaching powers were given to the High Representative based on that provision, including in particular the power to enact legislation and dismiss public officials who attempted to obstruct the implementation of the Peace Agreement. The High Representatives, Carlos Westendorp, Wolfgang Petritsch and Paddy Ashdown had put such powers to ever-increasing significant use, so much so that the relevant literature had begun to speak of the emergence of a quasi-protectorate.

The exercise of these "Bonn Powers" raised the question of whether the High Representative, as an UN-mandated body – can be made only "politically accountable" to the PIC or whether he can be made also legally accountable so that his decisions enacting laws or dismissing elected public officials can be subject to appeal. The decision in case no. U-9/00, in which the issue at dispute related to the constitutionality of the Law on the State Border Service, enacted by the High Representative, the Court attempted to resolve the dilemma by stating that the interventions of the Higher Representative into the legal system of Bosnia and Herzegovina was in fact necessary in the interest of functioning of the legal system when politics failed at reaching a legal resolution, and that a mechanism for the judicial review of such interventions could eventually undermine the political authority of the High Representative.



However, the Constitutional Court declared the request for review of the relevant law admissible, and the reasons given by it for its conclusion allow one to appreciate that the Court was attempting to square the circle. On the one hand, the Court found that the responsibilities of the High Representative and the exercise thereof were based on international law and as such were outside of the scope of its review powers. At the same time, however, the Court justified its competence to review the laws enacted by the High Representative based on the “theory of functional duality” which it developed. In enacting laws, the High Representative was interfering into the national legal system of BiH and thereby acting as a “substitute” for the competent Parliament. In effect, a law enacted by the High Representative and published in the official gazette was therefore part of the national legal system. And since all legislation is subject to review by the Court in accordance with Article VI(3)(a) of the Constitution, the Constitutional Court concluded as follows: “The competence of the Constitutional Court to examine the conformity of the Law on the State Border Service enacted by the High Representative acting as an institution of Bosnia and Herzegovina with the Constitution is thus based on Article VI(3)(a) of the Constitution. Consequently, the request is admissible”.

Despite the seemingly contradictory logic in the reasoning, in which the Court found first that the exercise of competences was based on international law and then that the laws and other regulations of the BiH which were enacted through the OHR’s exercise of the “Bonn powers”, which would form a part of the legal system of BiH, was subject to the constitutional review, that decision became a precedent in cases U-16/00, U-25/00 and U-26/01 and was thus incorporated into a system of “checks and balances” between the High Representative and the Constitutional Court. It must be said, however, that High Representative Wolfgang Petritsch did voluntarily subject himself to this system only because of his trust in the notion that both the OHR’s Legal Office as well as the Constitutional Court, including international judges, were staffed with professional lawyers so that the danger that laws of the High Representative would be declared unconstitutional or in violation of the ECHR by the Court seemed to him to be very small indeed.

However, the application of the doctrine of functional dualism and substitution in cases relating to dismissals of individuals holding public offices by the High Representative was significantly more controversial.

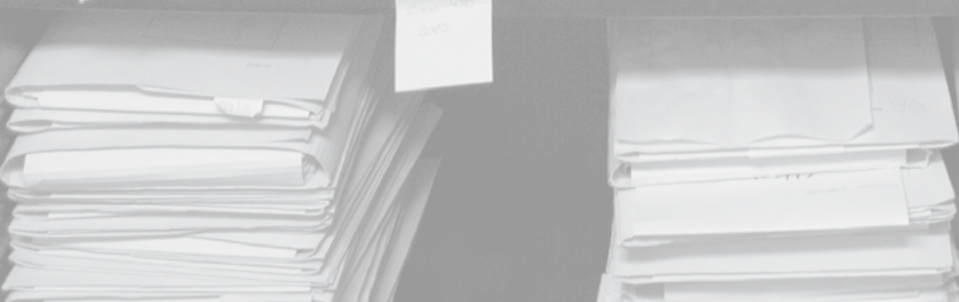
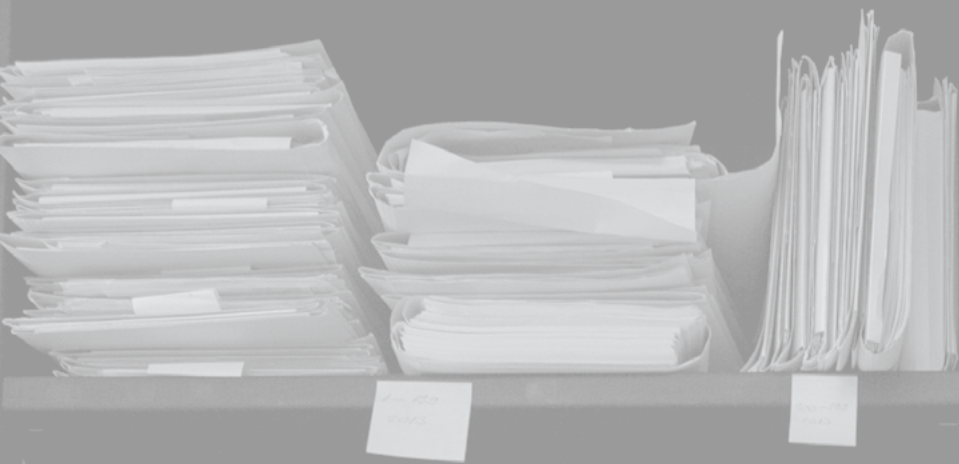
In one of the cases decided by the Constitutional Court in November 2001,<sup>4</sup> which related to the decision of the High Representative to dismiss an official, the Constitutional Court noted that the decision against which an appeal was filed could not be considered a “decision” of the court for the purposes of Article VI(3)(b) of the Dayton Constitution, and that neither parliamentarians nor individuals were authorized to file such an appeal, that is, to refer a constitutional dispute to the Court for the purposes of Article VI(3)(a) of the Constitution. At the end of September 2004, there was a change in the case law of the Constitutional Court on this issue. Appeals filed against the High Representative’s decisions were rejected for formal reasons, on account of their being premature. Namely, the appellants had not even attempted to challenge these decisions before the competent courts. The courts, as the Constitutional Court pointed out, had to apply the European Convention directly and provide protection of safeguarded rights and freedoms.<sup>5</sup> Finally, in a decision taken in 2009,<sup>6</sup> the Constitutional Court emphasized that it had the jurisdiction to decide the appeal, given that the appeal challenged the decisions of the courts in Bosnia and Herzegovina, which decided on the appellant’s labour-related status. However, the disputed decisions were made solely based on the decision of the High Representative, in respect of which the European Court found in the case of *Dragan Kalinić and Milorad Bilbija v. Bosnia and Herzegovina*<sup>7</sup> that Bosnia and Herzegovina could not be held responsible. Hence, the Constitutional Court concluded that the appeal was *ratione personae* incompatible with the Constitution of Bosnia and Herzegovina.

4 Decision no. U-37/01.

5 See, inter alia, decision of the Constitutional Court no. AP-759/04 of 29 September 2004.

6 Decision of the Constitutional Court no. AP-680/07 of 13 May 2009.

7 See ECtHR, Admissibility Decision of 13 May 2008, applications no. 45541/04 and no. 16587/07. In that decision, the European Court reminded that removals from office ordered by the High Representative pursuant to his “Bonn powers” were, in principle, attributable to the United Nations and that Bosnia and Herzegovina could not be held responsible for such removals.







# **HISTORICAL BACKGROUND**





## Social and Political Context of Introducing the Constitutional Justice in SFRY and SRBiH

The state union of the South Slavic peoples, throughout its seventy-year long existence, had very different social, political and state systems. Each of those had specific qualities in addition to specific qualities of the constitutional act, which contributed to further development, or change of the state organization.

In 1918, a unitary monarchy with the Royal House of Karađorđević as the constitutional guarantee of its inception was established (the Kingdom of Serbs, Croats and Slovenes – a very interesting topic on mutual influence of federal elements through national triunity “one people originating from three tribes”, a rigid unitary aspect of the monarchy and the victorious – “liberation of South Slavs”). The change then occurred in the state structure on several occasions (either through the dictatorship and absolute unconstitutionality, or through the beginnings of federalization through the so-called “subdivision of the Kingdom of Yugoslavia into provinces called “banovina” or banate”). In the period from 1941 to 1945, the Yugoslav union was faced (in addition to all the other historical developments) with the crucial question of the type of state system it would follow in the future.

Following the end of the war and the victory of the anti-fascist forces, where communist view of the world and the organization of the state union became predominant, the only option that was seen to be acceptable, was that of a state organized under a constitution. The State - the Federal People's Republic of Yugoslavia, which was designed after the Soviet model of republics as integral parts, with an absolute constitutional priority of the central-federal state and the legal principle that “in a conflict of jurisdiction the central level shall have priority”.

The first Constitution of 1946 was the basis for further amendments. In 1953, this led (in terms of the evolution of the constitutional law) by way of the Constitutional law, to a relatively more liberal stance on economic democracy (without a rigid Soviet planned economy). The management of economic property underwent changes (self-management as an inception of non-state ownership over the means of production and property in general) and even to a slight degree to the loosening of a rigid stance on the political freedoms, without a direct influence, though, on the system of the state organization including the federalization of the state, which, essentially, remained the same as under the 1946 Constitution.



The social system, which was overwhelmed, according to one of the contemporaries, by the “fever of changes”, which saw the socialist principles clash with the economic and social patterns, tried to reconcile new theories on socialist evolution with the statist organization of the state. New wave of the employment of self-management as a primary social goal and, at the same time, the conflict of tendencies of total federalization through the strengthening of republic statehood and the tendencies of stabilization of a unitary state through the strengthening of Yugoslav spirit, was impossible to solve within the scope of the old Constitution or the Constitutional law. Thus, the logical sequence of events was to enact a new SFRY Constitution, and subsequently the Constitutions of the Republics.

There were lengthy discussions within the political system on the new constitutional premises. However, the most important thing is to point to a tendency, which was defended by “the socialist



self-management” as “a sacred letter of new Yugoslavia”. This demanded, shyly at first and openly afterwards, the introduction of an independent body (“independent” in terms of social organization at the time) in a form of non-executive and non-legislative authority. This independent body would not only formally but also substantially protect equality of all citizens and the rights enunciated in the law and give final decision on it.

From such a demand stemmed a demand that someone must protect the text of the Constitution through the review of constitutionality of laws, since legality of laws depends on their compatibility with the Constitution as the highest legal act. It is interesting to note that this premise on the protection of constitutionality passed effortlessly and without much resistance through the sole political filter (the discussion in the structures of a sole political party – back then, already the League of Communists of Yugoslavia). It essentially initiated the state union into a strange political structure that was at odds with itself. On the one hand, there is the consensual right to political decision-making by the only permitted political organization (single-party system guaranteed by law) and, on the other hand, there is the guarantee of equality of all before the Constitution and law and the protection of that right before the Constitutional Court. This does not imply the present-day standards of the protection of rights or the present-day rights. However, by taking a look at the rest of the countries of “the socialist union” during that period, and particularly by taking a look at “the European countries of parliamentary democracy”, this exception in state organization is interesting. There was a rather small number of the European countries, which had had a constitutional court of this capacity at the time.

For the purpose of this text, when it comes to the Constitution of SFRY (and of the socialist republics) of 1963, we will focus exclusively on the founding and responsibilities of the constitutional courts: the SFRY Constitutional Court and the SR BiH Constitutional Court.

In terms of the constitutional “priority”, the Constitution did not attach great significance to the establishment and responsibilities of the Constitutional Court of SFRY (SRBiH). This was so because this issue was positioned after a number of political stances (socialist social system, self-management, foreign policy), as well as after the organisation of the state government and the federalism. However, when viewed from this point in time, they reached the highest level of significance within the Constitution. Considered from the point of rationalization and constitutional matter, the SFRY Constitution refers to (the basic) constitutional principles. It contains the section on the federal state and political and social structure, the section on the judicial system, constitutionality and legality, as well as the section on competencies, functions and organization of the federal authority, which includes the SFRY Constitutional Court as well. Such organisation of the constitutional matter implies a conclusion that the SFRY Constitution was “only a theoretical and systematic outline of the constitutional structure”. The idea behind the text of the Constitution designed in such a way was for (socialist) republics to “further elaborate on and expand the constitutional order” in their respective constitutions within the given historical circumstances and within the boundaries of the socialist social and political system.



In a short overview of fundamental rights and freedoms guaranteed under the Constitution, we refer to the personal rights (of a citizen), political rights (political freedoms) and collective rights (ethnic, class, political). Those are the following: the right to self-management, the right to work, the right to freedom of labour, the rights relating to labour and social rights (with historical and political determinant of socialist/communist ideology, and in contemporary times they represent rights

which “are implicit”), and political rights: freedom of thought, choice, conscience, press, association, equality, speech, assembly and public gathering (which are guaranteed under the Constitution, which protection, though, and even application were restricted and, at times, unenforceable due to the single-party system and political system), as well as “collective rights” such as the right to express ethnic affiliation and the protection of rights of national minorities, including the right to education (in terms of extending the right to ethnic expression through the educational system – language and alphabet), the right to freedom of religion and the organization of churches and religious communities.

The Constitution deals specifically with the personal liberties enunciated in the principles of legality in a criminal procedure, the exclusive right of the court to decide on the deprivation and loss of liberty, the presumption of innocence, the protection of human dignity in a criminal procedure and thereafter, the right to defence, and the right to a hearing. As “the right of a person” the right to liberty of movement and residence, the inviolability of home, the confidentiality of correspondence and the right to a legal remedy (the right to an appeal) were specifically singled out.



These, as well as other rights of an individual and/or of the collective mentioned here are protected through a direct application of the rights guaranteed under the Constitution and the right to protection against arbitrariness through the forms of legal instruments and the structures of implementation thereof.

The most important thing is that the Constitution emphasises constitutionality and legality of all the aforementioned rights and freedoms. Nevertheless, the definition of the terms of constitutionality and legality was subject to political influence. Essentially, the political influence, as well as the influence of legislative, executive and judicial bodies, was restricted by the presence or lack of a constitutional provision or constitutional protection. That applied particularly to the principle of legality, which was listed only to some extent in the Constitution: the supremacy of law, the priority of a federal law, the mandatory publication of laws, regulations and general acts before the entry into force, the prohibition of retroactive application of laws, universal rights of the use of alphabet and languages, etc.

The Constitutional Court of Yugoslavia had a special status both as “a court” and as a special “constitutional institution”, which competence was framed through the protection of constitutionality and legality. It was set forth in the Constitution of (SFR) Yugoslavia, whereas the constitutional courts of (socialist) republics were provided for by the Constitution of Yugoslavia, and established by the constitutions of the republics.

When we take a look back at the provisions guaranteeing the independence of the Constitutional Court, the prohibition of the interference of other bodies with their work and decision-making, the exercise of the function solely based on the Constitution and laws, the full independence of judges and their absolute immunity and guarantees for special privileges, we are surprised by how modern or identical even – perhaps even formally more advanced – the relation towards and guarantee of the principle of judicial independence during those old days was when compared to our present-day system. This particularly refers to the established competence, which involved strict division to the protection of constitutionality and legality under the federal regulations (the Constitutional Court of Yugoslavia) and the protection of constitutionality and legality under the republic’s regulations (the Constitutional Court of Republic), as well as the absence of supremacy of the federal over



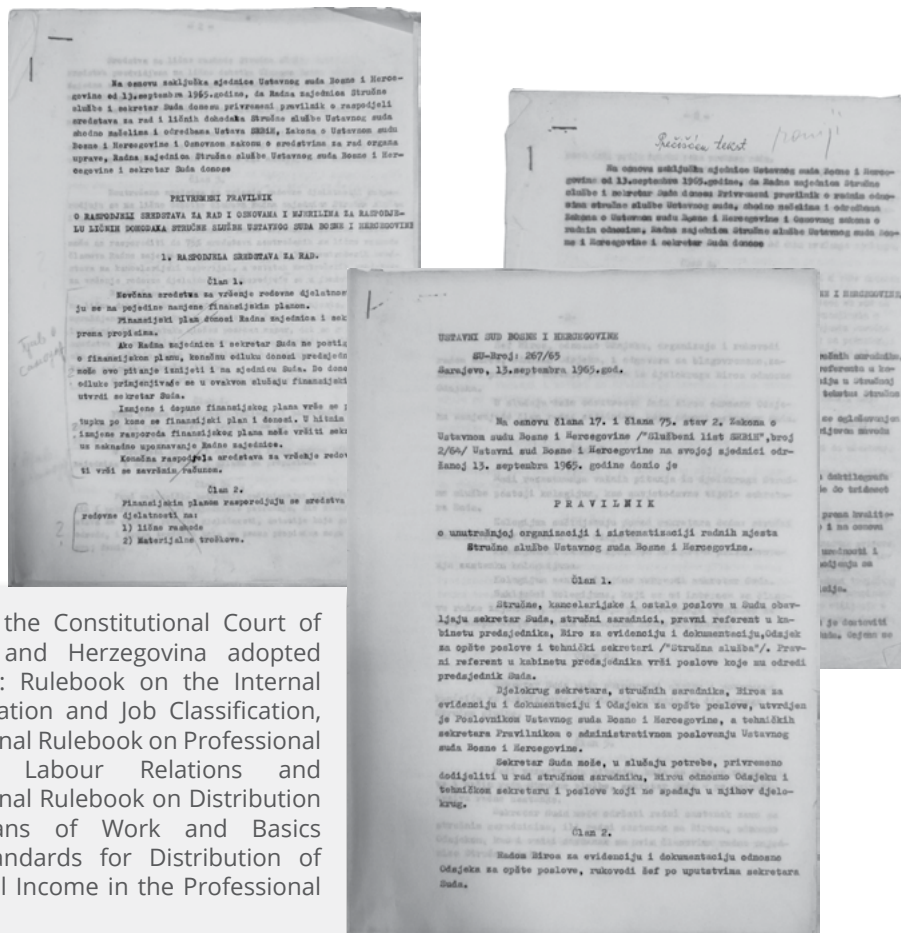


# Constitutional Court of Bosnia and Herzegovina 1964–2024

the republic constitution. The wisdom of the constitutional principle that everyone, while protecting the constitutionality in “their respective territory”, protects the general constitutionality at the same time, contributed to the harmonization and smoothness of the constitutional system.

The Constitutional Court of Yugoslavia was composed of a president and ten members who had been elected for a term of eight years and had been eligible for only one more additional re-election. Half of the judges had been elected every four years. The election of the president and of the judges had been carried out by the Federal Council of the Federal Assembly upon the proposal of the President of the Republic (SFRY). It was the exclusive right of the President of the Republic to select candidates, and the Constitution had not set any conditions regarding the professional and other qualifications for judges, although it had been implied that distinguished jurists or other persons having general authority may have been elected. The judges of the Constitutional Court could not exercise some other state or public office (incompatibility of offices).

The dismissal of a judge against his/her will may have happened only exceptionally, namely on account of a sentence of imprisonment, the loss of capacity to exercise rights and permanent physical inability, while the Court itself had established whether any of the foregoing conditions had been met. Judges had enjoyed the so-called absolute immunity (as had the members of the Federal Assembly), but it was the possible for them to lose their immunity based on a decision of the very Court. The introduction of constitutional justice in the territory of the SFR Yugoslavia and Socialist Republics, including Bosnia and Herzegovina, represented a turning point for the dualism of political and social system that had been in power in the given historical circumstances. The Constitutional Courts of the Republics had been formed on uniformity principle, and the text that follows will provide separate explanation of the competence, the number of judges and the operation of the Constitutional Court of the SR of Bosnia and Herzegovina



Acts of the Constitutional Court of Bosnia and Herzegovina adopted in 1965: Rulebook on the Internal Organisation and Job Classification, Provisional Rulebook on Professional Service Labour Relations and Provisional Rulebook on Distribution of Means of Work and Basics and Standards for Distribution of Personal Income in the Professional Service

## The Period from 1964 to 1974

Based on and within the framework defined by the 1963 Constitution of the SFRY, as well as in other Republics (and Autonomous Provinces) of the then Yugoslav Federation, the Constitutional Court of Bosnia and Herzegovina was established in the Socialist Republic of Bosnia and Herzegovina in 1964, as a separate constitutional authority, or institution. The establishment, jurisdiction, procedure, legal effects of its decisions and organization of its activities were defined in the Constitution of the SR BiH of 30 April 1963 and the 1964 Law on the Constitutional Court of Bosnia and Herzegovina. The issues relating to its organization and activities were specified in its Rules of Procedure. The particularity of the constitutional courts of the SFRY, including that of Bosnia and Herzegovina, was that certain jurisdictions were conferred to them by federal laws, more precisely the 1965 and 1967 Basic Law on Enterprises and the 1973 Law on the Establishment and Registration of Associated Labour Organizations.

The Constitutional Court had seven members, namely a president and six judges. The term of judges was eight years and they were eligible for reappointment for a final period of eight years. Out of the total number of judges, a half could be subsequently reappointed every four years. The initial selection of judges of the Constitutional Court of the SR BiH was carried out by the Assembly of the SR BiH on 26 June 1963. Changes in composition of the Court took place in 1967 and 1971. The judges enjoyed immunity just like the members of the legislative authority, *i.e.* the Assembly of the RBiH.

The activities of the Constitutional Court actually commenced on 15 February 1964 when the first official/working session was held, although the formal beginning of its activities dates back to the initial appointment of judges of the Constitutional Court - 26 June 1963. At its session held on 8 May 1964, the Constitutional Court took its first decision (a ruling rejecting a motion wherein the applicant requested the Court to decide on the protection of his rights in proceedings conducted before an ordinary court and administrative authorities).

The funds necessary for the work of the Court were provided for in the budget of the Republic at the Court's proposal. No fee was charged for the procedures before the Constitutional Court (although the initial Rules of Procedure provided: ... *unless otherwise prescribed by law*).

Mr. Slobodan Marjanović was elected the first President of the Court.

Articles 225-231 of the Constitution of BiH prescribed the following competencies of the Constitutional Court:

- deciding whether the Republic laws, regulations and general acts of the Republic authorities, statutes of the county and municipal authorities and other regulations and general acts of organizations are compatible with the Constitution of the SR BiH and other Republic regulations.
- deciding any dispute over rights and obligations between the SR BiH and municipalities and counties, between two or more municipalities and counties on the territory of the SR BiH, if another court does not have jurisdiction to decide such dispute,
- deciding the conflicts of jurisdiction between the courts and the Republic, county and municipal authorities on the territory of the SR BiH.

### Počeo da radi i Ustavni sud Bosne i Hercegovine

Juče je održana prva redovna sjednica Ustavnog suda Bosne i Hercegovine, kojom je i zvanično označen početak rada Suda. Kao što je poznato, Zakon o Ustavnom sudu Bosne i Hercegovine odredio je da Sud počne da radi 15. februara 1964. godine.

Na prvoj sjednici Sud je raspravljao o nekim organizacionim pitanjima i metodu rada. Usvojen je tekst privremenog poslovnika, rješenje o privremenoj sistematizaciji radnih mjesta za stručne i administrativne službenike, a razmatrana su i pitanja programa rada i rasporeda poslova.

"Oslobođenje", 16 February, 1964

## Constitutional Court of Bosnia and Herzegovina 1964–2024

- deciding on the protection of self-management rights and other rights and freedoms provided for in the Constitution when such rights and freedoms are violated by individual acts or actions of the Republic authorities and deciding on other cases as defined by the law, provided that some other court protection is not prescribed;
- monitoring the occurrences aimed at achieving constitutionality and lawfulness and, based on that, submitting opinions and proposals to the Assembly of the SRBiH to secure the constitutionality, lawfulness and protection of self-management rights and freedoms and rights of citizens and organizations.

The 1963 constitutional text provided for the fundamental provisions on the composition of the Constitutional Court, procedures before the Constitutional Court, determination of purpose of laws or other regulations. However, the competences of the Court and procedure before the Court, legal effects of its decisions, its independent organization and work were to be prescribed by the Republic law. Therefore, the aforementioned issues were regulated and specified in the 1964 Law on the Constitutional Court of Bosnia and Herzegovina. For example, that Law provided that the procedure for review of constitutionality and lawfulness could be initiated by the Assembly of the SRBiH, the Executive Council/Government (with the exception of review of constitutionality of the Republic laws), the Supreme Court of BiH (if the issue of constitutionality and lawfulness arose in relation to the procedure before the ordinary courts), the Higher Commercial Court (if the issue of constitutionality and lawfulness arose in relation to the procedure before the Commercial Courts), the Republic Prosecutor (if the issue of constitutionality and lawfulness arose in relation to the activities of the Public Prosecutor's Office), the municipal and county assemblies or labour or other self-management organizations (if a constitutional right was violated), the municipal and county assemblies (insofar as the review of constitutionality and lawfulness of the statutes and general acts of labour and other self-management organizations was concerned or statutes of municipalities and other regulations and general acts of the municipal authorities, the lawfulness of which was subject to a review by the relevant assemblies), the authorities of socio-political communities that suspended the enforcement of regulations or other general act based on the Constitution or Republic laws), the relevant Republic Secretaries/Ministers, with the exception of review of constitutionality of Republic laws, and in case of review of constitutionality and lawfulness of the regulations of the Executive Council/Government.

Depending on the circumstances established in the preliminary procedure, the Constitutional Court, before taking a decision, could give the relevant authority or the relevant organization an opportunity to remove the incompatibilities of regulations or other general acts with the Constitution or the Republic law. However, when the Constitutional Court found during the proceedings that a Republic law was not compatible with the Constitution, it would take a decision on it, it would pronounce that decision (at the session and in presence of the parties) and it would inform the Assembly of the SRBiH immediately thereafter. If the Assembly failed to bring the challenged law into line with the Constitution within a time limit of six months, the Constitutional Court would take a decision to render ineffective the challenged law or the provisions, which were incompatible with the Constitution. When the Constitutional Court found that regulations, excluding laws, or other general acts were incompatible with the Constitution or the Republic law, it would take a decision to invalidate or quash the challenged regulations or general acts.

As already mentioned, the Constitutional Court of the SRBiH, just like any other constitutional court of the SFRY, had the following jurisdictions deriving from, in addition to the Constitution of the SFRY or Constitution of the SRBiH, a few federal laws:

- deciding disputes between the parts of an enterprise, labour units, labour organizations over the issues relating to the status and other self-management rights (the Basic Law on Enterprises), and

- referring disputes to the constitutional court on the issue relating to the fulfilment of requirements necessary to organize basic organizations (the Law on Establishment and Registration of Associated Labour Organizations).

It is interesting to note that occasionally the Constitutional Court decided the cases in which it was requested to give legal advice and opinions to various applicants and to give instructions to other authorities. In such cases, the applicants were mostly given necessary instructions or the interested parties were informed of their applications.

## The landmark decisions and their impact on social and political life in Bosnia and Herzegovina

Over the years the constitutional judiciary in the SFRY/SR BiH, which was introduced in 1963, became the most important institution for the protection of constitutionality and a very important institution for the protection of lawfulness.

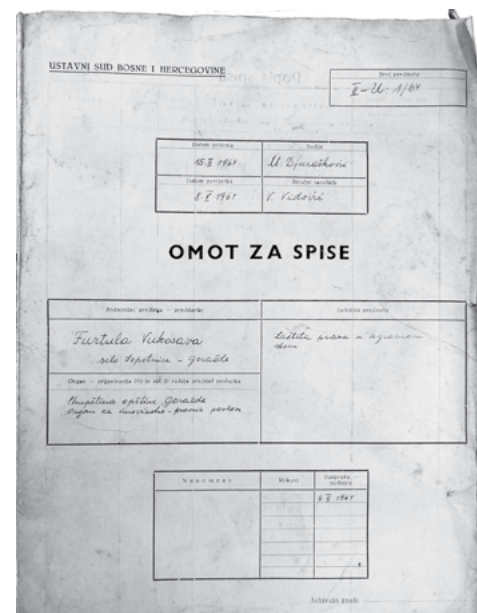
The constitutional court was called, just as it is called today, the “negative legislator” for its jurisdiction to invalidate or quash unconstitutional or unlawful acts and thus exclude them from the legal system.

In the first decade of its work, the Constitutional Court of BiH took a number of important decisions (more than 700 decisions, rulings and conclusions), whose impact on social, economic and political relations and life in BiH and, generally, on the rights of citizens and certain stakeholders was indubitably enormous. Although this was a new mechanism (constitutional judiciary), taking into account the period and relations within which the Court acted, the decisions of the Constitutional Court had significant influence both on the legislative activity and on the application and enforcement of laws and other regulations. Even then, the Constitutional Court was a corrective mechanism, which was gradually increasing its significance.

In the first place, this encompasses the decisions relating to the “abstract review of constitutionality”, *i.e.* the decisions on the compatibility of laws, other regulations and general acts with the Constitution and the review of lawfulness, *i.e.* the compatibility of general acts with the Republic laws. Within the framework of these competencies, the Constitutional Court decided on the disputes over the issues of publication of regulations and general acts (the accessibility of regulations to citizens), reversible effects of regulations and general acts (retrospective application), the issues relating to the contributions to pension and disability insurance, taxes, communal fees and services, the issues relating to the use of construction land, the issues relating to the personal income (salaries), education fees (enrollment fees *etc.*) and other issues in the area of education and the issues in the area of social insurance (health care, pension and disability insurance), *etc.*

In a number of cases, the Constitutional Court decided on the constitutionality and lawfulness of regulations and general acts, which were no longer in force.

Several decisions related to the procedure for a review of “statute compliance”, *i.e.* the procedure for a review of compatibility of regulations and general acts (partially or as a whole) with the provisions







USTAVNI SUD BOSNE I HERCEGOVINE

I Z V O R N I K

Broj: **II-U: 1/64**

Sarajevo, **8. maja** 196**4** god.

**R J E Š E N J E** ✓

Ustavni sud Bosne i Hercegovine na sjednici održanoj dana 8. maja 1964. godine na osnovu člana 66. Zakona o Ustavnom sudu Bosne i Hercegovine r j e š i o j e da se odbaci predlog Furtula Vukosave, kojim je tražila da Sud odluči o zaštiti njezinih prava u sporu koji vodi sa Obarčanin Alijom i dr. pred redovnim sudom i upravnim organima, zbog zemlje koju posjeduje i obrađuje.

Ovakvo rješenje Sud je donio zato što o pravu svojine na zemlji odlučuju sudovi opšte nadležnosti, a osim toga u toku je i upravni postupak u kome će se odlučivati o pravu predlagateljice na beglučko zemljište, pa je i u ovom postupku obezbijedjena zaštita njenih prava od strane suda u upravnom sporu. S obzirom da je obezbijedjena druga sudska zaštita prava, to je prema članu 225. stav 2. Ustava Socijalističke Republike Bosne i Hercegovine i članu 37. stav 1. Zakona o Ustavnom sudu Bosne i Hercegovine, isključena mogućnost da u ovom pravcu odlučuje Ustavni sud Bosne i Hercegovine.

Predsjednik  
Ustavnog suda Bosne i Hercegovine  
Slobodan Marjanović

Sudija  
Ustavnog suda Bosne i Hercegovine  
Milutin Djurašković

D n a !

Rješenje dostavi:

1. podnosiocu predloga ✓
2. službi evidencije, ✓

P.O. spis A/A

Sudija:

Alprenjewa 8.5.64

*[Signature]*

of statutes, and compatibility of general acts with self-management agreements (as acts regulating social, economic and other self-management relations in accordance with the Constitution and law). Those are the association of funds and labour, determination of plans and balancing of interests in division of labor and basis and criteria for distribution of income, etc.

The Constitutional Court had a significant competence for deciding the disputes over rights and duties arising between socio-political communities (between the SRBiH and municipalities, or the counties at an earlier time), between two or more municipalities (or the counties at an earlier time) on the territory of the SRBiH (unless some other court had the competence for deciding such disputes). Several decisions taken related to the disputes of conflict of jurisdiction between the courts and the Republic and municipal authorities (negative or positive conflict of jurisdiction). The Constitutional Court took important decisions relating to the protection of self-management within the then labour organizations (enterprises).

At that time, the “proactive” jurisdiction of the Constitutional Court significantly contributed to the protection of constitutionality and lawfulness. It related to possibility to monitor occurrences and, by doing so, to give the Republic Assembly as a legislative authority opinions on and proposals for the Republic laws and to undertake other measures aimed at safeguarding constitutionality and lawfulness, and protection of self-management rights and freedoms and the rights of citizens and organizations. This was done on several occasions by the Court.



“Oslobođenje”, 15 December 1964

The general review of normative and regulatory activities i.e. review of constitutionality and legality encompassed significant part of the competences of the Constitutional Court during the first 10 years of its activities.

In the same period, the Constitutional Court decided a number of cases relating to the conflict of jurisdiction (*negative or positive conflict of jurisdiction*) between the courts and Republic and municipal authorities on motions of citizens, municipal courts, Public Prosecutor of BiH, district courts, municipal assemblies, labour organizations, communal institutes of social insurance. The Constitutional Court significantly contributed to the legal certainty and effective protection of constitutional rights and interests of citizens and other stakeholders by deciding such cases.

As to the *protection of the right to self-management and other fundamental rights and freedoms* provided for in the Constitution, in the first decade of its work, the Constitutional Court received 900 requests (motions) for protection of fundamental rights and freedoms in this area. Although the Constitutional Court considered them formally, it did not take decisions on merits but it used to conclude that it did not have formal and legal competence for dealing with such cases, including the reasoning that another means of judicial protection were provided, and it rejected or dealt with such requests in another way.



## Constitutional Court of Bosnia and Herzegovina 1964–2024



*The celebration of the 10th Anniversary of the Constitutional Court of BiH which was attended by Judge Boro Popović, Court Secretary Jakob Papo, First President of the Court Slobodan Marjanović, Second President of the Court Bogomir Brajković, Judge Šefkija Puzić, Judge Jovo Sojić, Judge Tahir Hadžović, Judge Samuel Konforti, Judge Atijas Cevi, Judge Ante Miljas, Judge Gašo Mijanović, Judge Bisera Taušan, Legal Advisors, Judicial Associates and other professional staff*



## The Period from 1975 to 1990

The period after the establishment and first decade of work and operation of the Constitutional Court of Bosnia and Herzegovina is characterized, *inter alia*, by significant modifications of the constitutional system in both the SFRY and Bosnia and Herzegovina through the passing of federal, republic and provincial constitutions, which completed the reforms initiated by the amendments of 1971 and 1972.

P R E G L E D      R A D A	
USTAVNOG SUDA BOSNE I HERCEGOVINE	
U 1975. godini	
I .	
OPŠTI PODACI	
<p>U 1975. godini Ustavni sud je imao u radu ukupno 356 predmeta. Od ovog broja 218 predmeta odnosilo se na ocjenjivanje ustavnosti i zakonitosti propisa i drugih opštih akata i samoupravnih opštih akata, kao i na statusne sporove, 2 predloga za rješavanje sukoba nadležnosti, 40 na odlučivanje o zaštiti prava samoupravljanja i drugih osnovnih prava i sloboda povrijeđenih pojedinačnim aktom ili radnjom i 96 predmeta na traženje pravnih savjeta, mišljenja, intervenciju Ustavnog suda kod drugih organa i sl.</p>	

218 ustava  
 2 sav. nadl.  
 40 pojed. akta  
 96 savjeta  
 356

1072 - 1  
 43 - 25

Although by passing the amendments in 1971, the matter of regulation of a number of relations had already been transferred to the competence of the Republic (which was the reflection of the extensive reforms on the territory of the SFRY), the jurisdiction of the Constitutional Court of BiH was substantially extended by the 1974 Constitution of the SRBiH. The number of authorized persons for the initiation of proceedings for review of constitutionality and legality has increased as well. In that manner, in addition to the persons that could have initiated the proceedings before the Constitutional Court until then, the same authority was granted to all courts (if the issue of constitutionality or legality appeared before a court<sup>8</sup>). In addition, it was granted to the Public Attorney (as a newly established authority), the Social Accounting Services (SDK), etc. The solution was still maintained that, in addition to the fact that “anyone may initiate proceedings for review of the constitutionality and legality”, also the Constitutional Court may “initiate proceedings for review of constitutionality”, i.e. “on its own initiative”.

Furthermore, the areas and relations regulated by the municipality assemblies' decisions were substantially broader, especially the normative self-management area. Namely, by the provisions of the 1974 Constitution, the associated labour organizations, self-management communities of interest, local communities, other self-management organizations and communities were authorized to regulate, by their general acts, the significant number of relations the regulation of which had previously been within the scope of competency of the state bodies.

<sup>8</sup> Similar to the present competence of the Constitutional Court under Article VI(3)(c) of the Constitution of BiH (Annex 4 to the GFAP).



At that time, the Constitutional Court of BiH, *inter alia*, evaluated whether a regulation or general act of the socio-political community, *i.e.* the self-management general act, was inconsistent with the Federal law with the authorities of the Republic having a present and the Federal Constitutional Court previous competence for their enforcement.

More precisely, under Article 387 of the 1974 Constitution, the Constitutional Court of the Bosnia and Herzegovina shall decide on the compliance of law with the Constitution; shall decide on the conformity of other regulations or general acts of the socio-political community with the Constitution and law; shall decide whether other general acts are consistent with the Constitution or contrary to the law; shall decide whether a statute or other general act of political or social organization, or citizens' community is in conformity with the Constitution or contrary to the law; shall resolve disputes arising between the Republic and other socio-political communities with regard to their respective rights and obligations, as well as the disputes arising between the socio-political communities if the jurisdiction of another court is not provided for by the law regarding the resolution of such disputes; and, shall decide on disputes arising between the courts and bodies of the socio-political communities with regard to their respective competencies.

The Constitutional Court shall continue to review the constitutionality of laws and the constitutionality and legality of regulations and general acts of bodies of the socio-political communities and other general acts that ceased to be in force if no more than a year has passed from the moment of their cessation to the moment of the initiation of the proceedings.

In terms of the time-period and circumstances under which the BiH Constitutional Court functioned, the period between 1975 and 1990 represented a period of its further successful development and affirmation. Namely, the consequence of the expansion of its jurisdiction was the increase in its workload, *i.e.* the number of cases before the Court. According to the assessment of the Court itself from that period, the constant increase in the backlog "indisputably indicates that the Constitutional Court as the institution protecting the constitutionality and legality is getting increasingly affirmed in our system".

This period also marked the affirmation of the State of Bosnia and Herzegovina (the Republics were defined as "states" by the Federal and Republic Constitutions of 1974) that acquired a new structure and responsibilities. As the 1974 Constitution opened an important space for the development of market economy (irrespective of all restrictions), it imposed a need for strengthening the economic functions of the Republic as well. However, even under those circumstances, there was still a need for regulating the economic and other flows for the purpose of meeting the interests and needs of citizens and the society as a whole. That was the time in which it became apparent that, notwithstanding the proclamation and high goals of the self-management system, the broadly conceived and dispersed self-management was not sufficient to direct economic and other social currents in a proper manner but required the simultaneous intensive role of the state, not only in the regulation of relations but also in the undertaking of other measures.

Although, in the period between 1975 and 1990, as well as prior to that period, the Constitutional Court in the largest number of its cases acted upon the citizens' initiative regarding the review of constitutionality and legality, it could have been expected that the Constitutional Court would have to deal with the issues of the protection of human rights and fundamental freedoms and especially with the economic, cultural and social rights. However, the case law of the Constitutional Court indicated that the 1974 Constitution of the SRBiH overemphasized the possibilities to exercise certain rights especially having in view the current human rights concept and the constitutional mechanisms for the protection thereof. For instance, the characteristic example represents the provision that guaranteed the "right to work" for all the citizens which both in Bosnia and Herzegovina and the whole world remained the unattainable goal/ideal. Therefore, to proclaim the "freedom of labour" by the Constitution, which practically meant the right of citizens to have all working positions and functions in the society made available, under equal conditions, was sufficient and realistic. That, certainly, determined the capabilities of the then Constitutional in terms of citizens' requests for protection of this but also other rights safeguarded by the Constitution.



*Judges and staff of the Constitutional Court, 1978*

In this period of fifteen years, the Constitutional Court solved a considerable number of cases in different areas such as referendum, environmental protection and use, and disputes between the self-management community and its users – citizens, on the use of their services, the problem of collecting payment for the station services in the public road transport, the possibility for and the right to submission of the workers' petitions, cutting-off power supply due to getting behind in payments, political or other forms of organization on the basis of ethnic group affiliation, etc... for directly interested subjects, but also for the general public (published in the media).<sup>9</sup>

Workers in basic organizations form the prices of their products and services according to the market conditions, and the competent body of the socio-political community performs a social control of prices by undertaking measures of direct price control.

As for the composition of the Court and the number of judges, in 1974 the framer of the Constitution decided to increase the number of judges from seven to nine (president and eight judges), whose term of office was eight years without the possibility to be reelected to the functions of the president or judges. This number of judges was kept until the end of this period.

The methodology of work and other issues, including the subject matter of decisions, have been essentially relying on the court's case law from the previous period. The extensive constitutional case law, particularly in respect of general, *i.e.* principle positions, strengthened the continuity of the operation and activity of the Court even in this period. Over the time, the Court improved its effectiveness and promptness, achieving an average duration of proceedings in individual cases to be about six months, which is deemed very satisfactory.

In this period, the 20<sup>th</sup> anniversary of the Constitutional Court of Bosnia and Herzegovina was marked by the solemn session of the Constitutional Court held on 27 June 1983. The then President of the Constitutional Court recalled on that occasion some statistical indicators relative to the Constitutional Court's operation. He first expressed the position that evaluation of the results of the protection of the principles of constitutionality and lawfulness, or to what extent the Constitutional Court managed to fulfil its role and tasks, "may not be solely based upon the number of acts that had been the subject of direct review, the least of all upon the number of norms that had been eliminated in that manner from the legal system". Thus, he stated that in the last twenty years (1963

<sup>9</sup> See a broad overview of decisions and positions from the period 1975-1990 in "Constitutional Court of Bosnia and Herzegovina 1964-2014" - pp. 54-68.

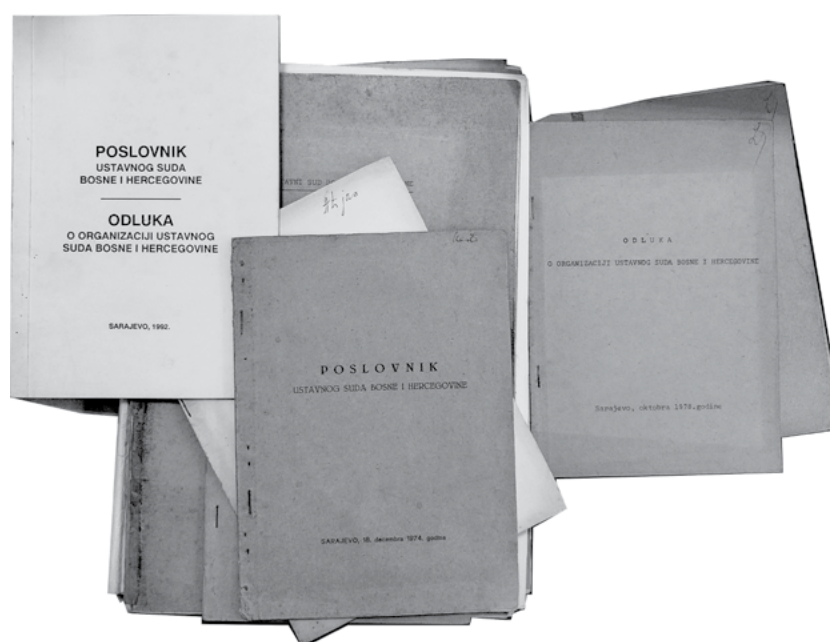
## Constitutional Court of Bosnia and Herzegovina 1964–2024

to 1983), the Constitutional Court reviewed 3,236 regulations and general acts upon requests of authorized persons, working people and citizens as well as upon its own initiative. It was highlighted that in 114 cases, the Court reviewed the constitutionality of republic laws. In particular, it was pointed out that, subsequent to the enactment of the 1974 Constitution and the 1976 Law on Associated Labor, the number of requests by authorized persons was continuously on the rise. This primarily reflected the complex changes in the normative order, the increased awareness and knowledge of the importance of lawfulness and a refusal to accept a violation of the principles of constitutionality and legality in any way.

The role and authority of the decisions of the Constitutional Court as defined by the Constitution is emphasized by the provision that the decisions of the Constitutional Court are binding and enforceable. In case of need, the enforcement of the decisions of the Constitutional Court shall be ensured by the Executive Council/Government of the Republic, while the Constitutional Court, as before, could demand that measures be taken against responsible persons on account of failure to enforce decisions of the Constitutional Court.

It needs to be specifically underlined that in the period from 1975 to 1990 but also during the past ten years, the Constitutional Court had no serious difficulties in the enforcement of its decisions annulling or abolishing unconstitutional and unlawful general acts or individual provisions thereof and removing them from legal practice. Bosnia and Herzegovina was already sufficiently capable back then, *inter alia*, to effectively ensure the enforcement of the decisions of the Constitutional Court of BiH. Hence, the Constitutional Court never had to request from the Executive Council to secure forcible enforcement of its decisions in respect of several thousand cases. However, the Constitutional Court did occasionally address the Assembly of S/RBiH informing them of some current events and observations in the realization of constitutionality and legality in the case-law of the Constitutional Court of BiH (e.g. in December 1977). Such practice and authorisation contributed, *inter alia*, not only to introducing the legislative body to “some current events and observations in the realization of constitutionality and legality” but also contributed generally to the creation of a positive climate in respect of the enforcement of the decisions of the Constitutional Court of BiH in this period of its operation.

Essentially, it might be concluded that the overall function of the Constitutional Court of BiH in the period 1975 through 1990 was an impetus for the affirmation of the rule of law in SRBiH, which left less room for the emergence of the anarchy, arbitrariness and voluntarism in the BH society of that time.



## The Period from 1991 to 1996

After the significant political changes, which occurred in the 1990s in the former state of SFRY, including Bosnia and Herzegovina, the Constitutional Court continued to operate pursuant to its earlier jurisdiction as established by the Constitution. However, subsequent to the first multiparty elections in the Socialist Republic of Bosnia and Herzegovina, held on 18 October 1990 (and even prior to the elections in the transition of the political system which had already commenced), a great number of amendments to the Constitution of SRBiH was adopted, some of them even relating to the Constitutional Court of SRBiH.

As for the jurisdiction, it, essentially, remained the same as before, but extended by Amendment LXXVIII to include the jurisdiction relating to review of the constitutionality of acts of political organizations (parties), which began to form in the circumstances of the newly created multiparty pluralism, instead of the former one-party system (the communism).

However, it is important to point out that the catalogue of rights determined by the Constitution was extended and in cases of possible violations of those rights, the citizens may ask protection before the Constitutional Court (Amendments of 1990 and subsequent amendments).

The Amendments that came into force in the second half of 1990 related to the election of judges, the authority of the Government to suspend the implementation of a general act undergoing the process of review of constitutionality and resolving disputes concerning the constitutionality of the acts of political organizations, social organizations or citizens' associations.

Amendment LXXV:

"Until a decision is adopted by the Constitutional Court of BiH or any other competent authority, the Government of SRBiH is entitled to stay the enforcement of any regulation, general act or individual act or any action by a municipal assembly and city community assembly ... withdrawing or restricting the freedoms, rights and duties of man and citizen as guaranteed by the Constitution or disrupting the order as established by the Constitution, which are deemed unconstitutional or unlawful."

The method of appointment of judges of the Constitutional Court was also changed.

Pursuant to Amendment LXXI to the Constitution of SRBiH of 31 July 1990, the Councils of the Assembly of SRBiH in a joint session:

– "elects and dismisses the President and judges of the Constitutional Court of BiH".

Amendment LXXVIII:

"The Constitutional Court of BiH decides whether the statute or other general act of a political organization, social organization or citizens' association is in accordance with the Constitution of SRBiH or contrary to the law."

The outbreak of the political crisis in SRBiH in 1991, and in particular in 1992 following the referendum on independence of BiH, held on 29 February and 1 March 1992, caused considerable difficulties relating to the operations of the Constitutional Court. This primarily pertained to the personnel and the type of disputes pending before the Constitutional Court, as well as to the scope of decisions adopted.

Some of the judges elected prior to the outbreak of the war did not come exercise their functions and, therefore, new judges were appointed in the war circumstances in accordance with the procedure different from the regular one foreseen under the Constitution.

It should be noted that the Court consisted of the president and eight judges elected for the term of eight years and they could not be reelected to the same function.



## Constitutional Court of Bosnia and Herzegovina 1964–2024

The President of the Constitutional Court was elected from amongst the judges of that court for the period of one year and could only be successively reelected one more time.

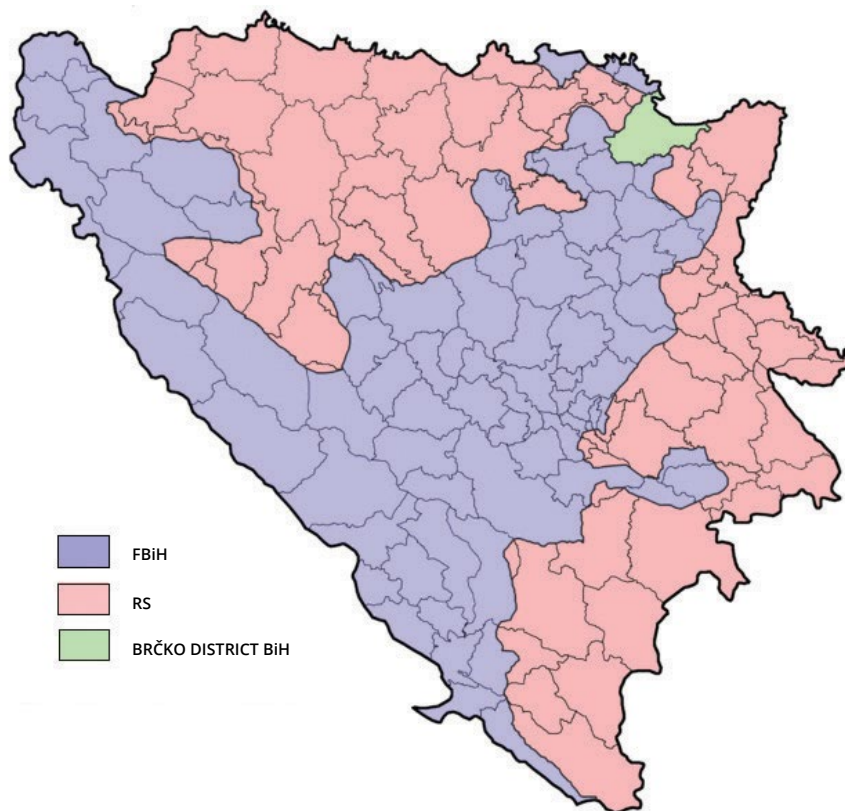
These provisions were also retained at the time of the outbreak of the crisis in BiH.

We are not going to venture here into any comments or evaluation of the Constitutional Court's operation in these circumstances. However, we note that it operated throughout the crisis and adopted a number of decisions that were received differently by the political and legal community and the public in Bosnia and Herzegovina.

This, primarily, pertains to the decisions concerning the establishment of the Croat Community of Herceg-Bosna (Decision adopted on 14 September 1992), the decision declaring incompatibility of the Declaration Proclaiming the Republic of Serb People in Bosnia and Herzegovina with the Constitution (issued on 8 October 1992), and the decision (submitted in the form of notification to the Assembly of SRBiH and the Presidency of SRBiH) of 2 November 1992, stating that the Presidency of SRBiH may not make changes to the Constitution by a decree with the force of law.

What is interesting is the fact that more than one third of all cases considered by the Constitutional Court in this period were initiated by the Court itself or by individual judges.

The enactment of the Constitution of the Federation of BiH, adopted by the Constituent Assembly of the Federation of BiH on 30 March 1994 that came into force at midnight that day, led to the establishment of the Constitutional Court of the Federation of Bosnia and Herzegovina, which, pursuant to the Constitution of the Federation of BiH, had jurisdiction over constitutional issues throughout the Federation of BiH. The Constitutional Court of the Republika Srpska was also established on 1 July 1994. Despite that, however, the Constitutional Court of (S)RBiH continued its operation (although more formally subsequent to the Dayton Peace Agreement), until 1996 when, in accordance with the Constitution of BiH as a result of the General Framework Agreement for Peace in Bosnia and Herzegovina, the Constitutional Court of Bosnia and Herzegovina was established.



*Map of Bosnia and Herzegovina following the signing of the General Framework Agreement for Peace in Bosnia and Herzegovina and the Final Arbitration Award for Brčko*

## The Period from 1997 to 2002

The Constitutional Court of BiH was established on 22 May 1997, as the last out of five institutions expressly provided for by the Constitution of Bosnia and Herzegovina in the so-called post-Dayton period (Parliamentary Assembly, Presidency, Council of Ministers, Central Bank and Constitutional Court).

The term of judges initially appointed was limited by the Constitution to five years, which ended on 22 May 2002.

The Constitutional Court of BiH is specific in many respects. First, it has an international character (even at the present time), because out of nine of its judges three are international judges (who cannot be a citizen of any neighboring state), selected by the President of the European Court of Human Rights in Strasbourg after consultation with the Presidency. Six national judges are selected by the legislative bodies of the Entities (four from the Federation of BiH and two from the Republika Srpska).

The jurisdiction of the Constitutional Court is entirely different from its previous jurisdiction. In addition to resolving constitutional disputes and the constitutionality of laws, the focus has now been placed upon two additional competencies, namely the unblocking of the Parliamentary Assembly and deciding on appeals (constitutional complaint/appeal).

The protection of citizens' (and legal entities') rights has been very broadly set through the Court's appellate jurisdiction (constitutional complaint/appeal), so they may institute proceedings relative to the "...issues under this Constitution arising out of a judgment of any other court in Bosnia and Herzegovina" (Article VI(3)(b) of the Constitution).

As opposed to the broadly set possibility to institute appellate proceedings (constitutional complaint/appeal), there is a small number of authorized persons (Article VI(3)(2) of the Constitution) who may institute the proceedings for review of constitutionality or generally a constitutional dispute before the Constitutional Court under its jurisdiction as established under Article VI(3)(a) of the Constitution. The Court itself (judges) may not institute proceedings *ex officio*.

### COMPOSITION

The Constitutional Court of Bosnia and Herzegovina shall have nine members.

a) Four members shall be selected by the House of Representatives of the Federation, and two members by the Assembly of the Republika Srpska. The remaining three members shall be selected by the President of the European Court of Human Rights after consultation with the Presidency.

b) Judges shall be distinguished jurists of high moral standing. Any eligible voter so qualified may serve as a judge of the Constitutional Court. The judges selected by the President of the European Court of Human Rights shall not be citizens of Bosnia and Herzegovina or of any neighboring state.

c) The term of judges initially appointed shall be five years, unless they resign or are removed for cause by consensus of the other judges. Judges initially appointed shall not be eligible for reappointment. Judges subsequently appointed shall serve until age 70, unless they resign or are removed for cause by consensus of the other judges.

d) For appointments made more than five years after the initial appointment of judges, the Parliamentary Assembly may provide by law for a different method of selection of the three judges selected by the President of the European Court of Human Rights

(Article VI(1)  
of the Constitution of  
Bosnia and Herzegovina)

Furthermore, given the organization of the State, a special competence was established and it should be noted that none of the constitutional courts in the region, *i.e.* in the countries that emerged in the territory of the former Yugoslavia have such type of competence. This is the resolution of constitutional disputes between the Institutions of the State and the Entities (subsequently, the Brčko District of BiH was added by Amendment I to the Constitution).

Particular importance was given to the protection of individual rights of citizens so that some of these rights are directly set out and listed in the Constitution. In addition, the European Convention for the Protection of Human Rights and Freedoms is incorporated into the Constitution and it applies directly in Bosnia and Herzegovina and has priority over all other law, which is something completely new, in particular bearing in mind the fact that, at that time, Bosnia and Herzegovina was not a member of the Council of Europe (it would become the member in 2002), and that at that time, it had not ratified the mentioned Convention.

Apart from the mentioned Convention, Annex I to the Constitution lists fifteen other international documents that make an integral part of the Constitution. Furthermore, when it comes to constitutional disputes and review of constitutionality, the circle of persons authorized to initiate proceedings is determined in a restrictive manner.

Following the first constitutive session and election of the president and vice-presidents and working bodies of the Court, the main task was to adopt the Rules of the Court in accordance with Article VI(2)(b) of the Constitution, for the Constitution does not provide for a special law on the

### Procedures

- a) A majority of all members of the Court shall constitute a quorum.
  - b) The Court shall adopt its own rules of court by a majority of all members. It shall hold public proceedings and shall issue reasons for its decisions, which shall be published
- (...)

### The Brcko District of Bosnia and Herzegovina

The Brcko District of Bosnia and Herzegovina, which exists under the sovereignty of Bosnia and Herzegovina and is subject to the responsibilities of the institutions of Bosnia and Herzegovina as those responsibilities derive from this Constitution, whose territory is held in condominium by the Entities, is a unit of local self-government with its own institutions, laws and regulations, and with powers and status definitively prescribed by the awards of the Arbitral Tribunal for the Dispute over the Inter-Entity Boundary in the Brcko Area. The relationship between the Brcko District of Bosnia and Herzegovina and the institutions of Bosnia and Herzegovina and the Entities may be further regulated by law adopted by the Parliamentary Assembly.

The Constitutional Court of Bosnia and Herzegovina shall have jurisdiction to decide in any dispute relating to protection of the determined status and powers of the Brcko District of Bosnia and Herzegovina that may arise between an Entity or more Entities and the Brcko District of Bosnia and Herzegovina or between Bosnia and Herzegovina and the Brcko District of Bosnia and Herzegovina under this Constitution and the awards of the Arbitral Tribunal.

Any such dispute may also be referred by a majority of the councilors of the Assembly of the Brcko District of Bosnia and Herzegovina including at least one-fifth of the elected councilors from among each of the constituent peoples

### Decisions

Decisions of the Constitutional Court shall be final and binding.

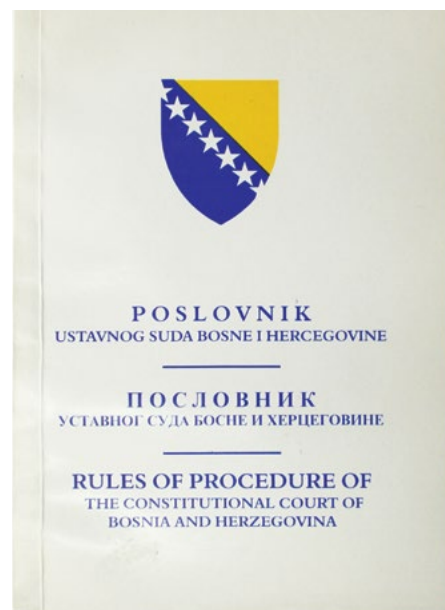
(Article VI(2), (4) and (5) of the Constitution of BiH)

constitutional court but directly authorizes the Court itself to regulate its “rules of procedure” before the Court. While working on these rules, the experiences acquired in the work on the former Rules of Procedure of the Constitutional Court of (SR) BiH were used, in particular the Rules of the European Court of Human Rights and the Rules of the Human Rights Chamber of BiH, which began to operate earlier (in March 1996) and already had some practical experiences.

The Rules regulate not only the procedures relating to internal operations and dealing with cases, but also the procedures relating to the acts of citizens and legal persons, including the State institutions and all other persons participating in the work of or communicating with the Constitutional Court. Given the fact that, according to the Constitution, only the Constitutional Court is responsible for that matter, the internal organization of the Constitutional Court is regulated by the Rules based on which other organizational acts are passed.

The first Rules (called the Rules of Procedure) were adopted on 29 July 1997 (*Official Gazette of BiH*, 2/97), when the Court started dealing with specific cases in accordance with the Rules. During the mandate of five years, these Rules were amended on several occasions (four times). The following matters are regulated in detail by the Rules: the work on cases, types of decisions, role of advisors and registrar, adversarial principle, *i.e.* submission of request/appeal to other party for reply, *etc.*

In this period, according to the Rules, the Constitutional Court was exclusively sitting in its plenary formation with all nine judges present (a session could be held even if all judges were not present, but at least five judges had to be present). The decisions were adopted by the majority of votes of the total number of judges, *i.e.* five votes were required, as is currently the case. The decisions were





published in official gazettes of the State and the Entities. The judge/judges who had a different opinion from the majority have the right to dissent (or give a statement of disagreement) which is attached to the decision and published. Moreover, a dissenting opinion may reflect concurrence with the respective decision but it may contain different arguments. It should be noted that this significantly contributed to the development of different legal viewpoints, arguments and was indeed very useful, so that the dissenting opinions as well as the majority's positions presented in respective decisions are read with the same interest and attention

## Ustavni sud Bosne i Hercegovine Sarajevo

Ustavni sud Bosne i Hercegovine, na osnovu člana VI/3.(a) Ustava Bosne i Hercegovine i člana 55. tačka 2. Poslovnika Ustavnog suda Bosne i Hercegovine, na sjednici održanoj 16. 10. 1997. godine, donio je

### ODLUKU

Odbacuje se zahtjev advokata Branislava Banovića i Jovana Spasića iz Beograda, od 29. 10. 1996. godine, za ocjenu ustavnosti Zakona o izmjenama i dopunama Zakona o stambenim odnosima ("Službeni glasnik Republike Srpske", broj 19/93).

Ova odluka objavit će se u "Službenom glasniku Bosne i Hercegovine", "Službenim novinama Federacije Bosne i Hercegovine" i "Službenom glasniku Republike Srpske".

### Obrazloženje

Advokati Branislav Banović i Jovan Spasić, iz Beograda, dali su 24. 10. 1996. godine inicijativu Predsjedništvu Republike Bosne i Hercegovine da pokrene spor pred Ustavnim sudom Bosne i Hercegovine za ocjenu ustavnosti Zakona o izmjenama i dopunama Zakona o stambenim odnosima ("Službeni glasnik Republike Srpske", broj 19/93).

Predsjedništvo Republike Bosne i Hercegovine, aktom broj 02-012-751/96, dostavilo je Ustavnom sudu Bosne i Hercegovine navedenu inicijativu.

U toku postupka pred Ustavnim sudom utvrđeno je da Predsjedništvo Bosne i Hercegovine, a ni pojedini članovi Predsjedništva, nisu razmatrali navedenu inicijativu. Također je utvrđeno da, povodom ove inicijative, nijedan od članova Predsjedništva Bosne i Hercegovine nije pokrenuo spor pred Ustavnim sudom Bosne i Hercegovine, u smislu člana VI/3.(a) Ustava Bosne i Hercegovine.

Prema Ustavu, sporu koji se javlja između oba entiteta, te između entiteta i države, je odluka entiteta, države ili međunarodnog ustavom, uključujući Ustavom, te Ustavom. Spor predstavlja predstavlja predstavlja članova/delegata doma zakonodav

Prema navedenim odredbama Ustava, Ustavni sud Bosne i Hercegovine je nadležan da odlučuje da li je zakon u skladu sa Ustavom. Međutim, zahtjev za ocjenu ustavnosti u ovom ustavno-sudskom sporu nije podnesen od Ustavom određenih subjekata, pa je stoga Ustavni sud donio odluku kao u dispozitivu.

Ovu odluku Ustavni sud je donio u sastavu: predsjednik Ustavnog suda Mirko Zovko i sudije: Marko Arsović, prof. dr. Kasim Begić, dr. Hans Danelius, prof. dr. Ismet Dautbašić, dr. Joseph Marko i mr. Zvonko Miljko.

U broj 1/96  
16. 10. 1997. godine  
Sarajevo

Predsjednik  
Ustavnog suda Bosne i Hercegovine  
Mirko Zovko

First Decision of the Constitutional Court of BiH established after the Dayton Agreement (Annex 4 – Constitution of BiH), U-1/96 of 16 October 1997

## The Period from 2003 to 2024

Following the end of the five-year term of the initially appointed judges (1997-2003), the Constitutional Court of Bosnia and Herzegovina held a constitutive session in the new composition in May 2003. The new composition of the Constitutional Court, at the session held on 19 and 20 December 2003 respectively, adopted a Decision on Amendments to the Rules of the Constitutional Court, which contained substantial amendments when compared to the previous solutions. First, procedural conditions for the work in the Chambers were created, thereby making conditions for faster deciding the cases. Under the authorization referred to in the mentioned decision, the Editorial Commission established the new consolidated text of the Rules of Procedure of the Constitutional Court of Bosnia and Herzegovina, which was published in the *Official Gazette of Bosnia and Herzegovina*, 2/04.

In July 2005, the Rules of the Constitutional Court of Bosnia and Herzegovina were adopted with a view to improving and speeding up the work of the Constitutional Court, and for the better guidance of citizens and others who address the Constitutional Court as the highest legal instance in the country, because the rules on admissibility of requests and appeals were regulated more precisely, the parties to the proceedings were specified as well as a procedure related to the requests for review, the substantive and legal conditions were created regarding admissibility in cases where a decision of a court in Bosnia and Herzegovina was missing, etc. Therefore, the Rules constitute a fundamental act of organization and operation of the Constitutional Court. The work of the Constitutional Court is carried out in plenary sessions, the sessions of the Grand Chamber composed of five judges, the sessions of the Chamber composed of three judges, and in permanent and interim commissions and other bodies of the Constitutional Court.



In performing professional and other tasks, the Constitutional Court is assisted by the Secretariat. Departments are formed within the Secretariat. The scope of their work is determined by the Decision on Organization of the Secretariat of the Constitutional Court, adopted by the Constitutional Court. The Secretariat is managed by the Secretary General, who assists the Constitutional Court in exercising its functions and is responsible for the organization and activities of the Secretariat.

The responsibilities of the Constitutional Court did not change until 26 March 2009, when Amendment I to the Constitution of Bosnia and Herzegovina was adopted. This amendment conferred upon the Constitutional Court the responsibility to decide any dispute related to the protection of the established status and responsibilities of the Brčko District of Bosnia and Herzegovina, which may arise under the Constitution of Bosnia and Herzegovina and the decisions of the Arbitration

Tribunal between one or more Entities and the Brčko District of Bosnia and Herzegovina, or between Bosnia and Herzegovina and the Brčko District of Bosnia and Herzegovina.

Any such dispute before the Constitutional Court may be referred by a majority of the councilors of the Assembly of the Brčko District of Bosnia and Herzegovina, including at least one-fifth of the elected councilors from among each of the constituent peoples.

In addition to landmark decisions made by the Constitutional Court, this period has been determined, *inter alia*, by the circumstances in which the Constitutional Court functioned, and the emphasized normative activity, *i.e.* organizational adaptation and resolution of a number of such issues.

In the last few years of this period, the work of the Constitutional Court has been characterized by difficulties in the context of the coronavirus pandemic (Covid-19) and the fact that the court did not work in full composition due to the vacant positions of national judges. In addition, the Constitutional Court has adopted a large number of in-house normative acts.

Certain decisions made in this period generated great interest and reactions of the public, political and/or professional or academic communities (state property, Republika Srpska Day, constitutional disputes between the State and Entities, *etc.*). A broader overview of case law and some of those decisions is given in a separate chapter on the case law relating to the appellate jurisdiction, *i.e.* abstract review of constitutionality, *etc.*

During the coronavirus pandemic (*Covid-19*), the Constitutional Court managed to organize itself adequately through in-house measures and the engagement of judges, professional and administrative staff so that, although the intensity and scope of work was reduced, it successfully performed its constitutional role and responsibilities. Namely, after declaring the pandemic in March 2020, the Constitutional Court was compelled to completely reorganize its work and adapt to the new circumstances in order to protect the health of employees and, at the same time, to ensure the uninterrupted work and decision-making process.

In this connection, having regard to the recommendations of the competent crisis staffs in Bosnia and Herzegovina, in mid-March 2020, the President of the Constitutional Court made a decision (and an amendment thereto, subsequently) on a special regime of work in extraordinary circumstances caused by the coronavirus. Based on that decision, at the beginning of June 2020, the Secretary General of the Constitutional Court issued an Instruction for its implementation. In addition, on 20 March 2020, the President of the Constitutional Court made a decision on the formation of a crisis management team in the Constitutional Court in the event of a natural or other disaster. At the end of September 2020, at the session of the Grand Chamber, the Constitutional Court concluded that the Constitutional Court would continue with a special work regime, given that the pandemic did not recede, and that it would continuously monitor the situation and, depending on it, adjust its operation. Accordingly, from March 2020 until the middle of 2021, the sessions of the Constitutional Court were held through electronic communication means.

The special work regime included, *inter alia*, that some of the employees, where possible, performed regular work outside the office premises (working from home, including permanent IT support). Appropriate preventive measures were provided for other staff (adequate workspace, one employee per office, special regime for working in teams, *etc.*). These measures prevented a wider spread of infection and consequences and, although in difficult conditions, the work process continued without interruption.

As far as regulations are concerned, along with the adoption of new Rules in March 2014 (and amendments adopted in the same year), the amendments to the Rules adopted in 2023 and 2024 are particularly important.

Namely, on 19 June 2023, the Constitutional Court made a decision to amend the Rules - the provision of Article 39, which regulated *the mandatory adjournment of a session*<sup>10</sup>, was deleted. In the decision of 30 May 2024, the Rules were amended by adding a new Article 99a after Article 99, which regulated *Exceptional Extension of a Judge's Term of Office*<sup>11</sup>. This amendment was adopted bearing in mind the opinion of the European Commission for Democracy through Law (better known as the Venice Commission)<sup>12</sup>, given at the request of the President of the Constitutional Court in a situation where three seats of domestic judges became vacant.

In addition, in December 2021, the Grand Chamber, aimed at harmonizing the procedure before the Constitutional Court with the practice of the European Court of Human Rights (appeals nos. 4767/20 and 49560/20), issued a Conclusion according to which the Constitutional Court would forward to the appellants responses to appeals, submitted by other participants in the proceedings, for observations.

Difficulties in the work and functioning of the Constitutional Court occurred particularly as three vacancies arose after the retirement of judges reaching the age of 70. In 2022 (in August and November), two national judges (one from each Entity) completed their term of office due to reaching the age of 70. Furthermore, at his own request, one judge from the Republika Srpska was relieved of his duty as a judge, so his term of office ended at the beginning of January 2024, well before the expiration of the term for which he was elected. In this way, three judicial vacancies arose.

Although the House of Representatives of the Parliament of the Federation of Bosnia and Herzegovina and the National Assembly of the Republika Srpska, as competent Entity bodies, were timely notified of the need to fill the three judicial vacancies, neither body complied with this constitutional obligation in a timely manner. The House of Representatives of the FBiH Parliament elected one judge from the Federation of BiH only at the end of May 2024. The National Assembly of the RS, although it had begun, interrupted the election process so that, at the time of publication of this monographic series, neither of the two judges from the Republika Srpska had been elected to fill the vacancies. This means that, given that it is not possible to form a Grand Chamber or a Chamber (as provided for in the Rules of Court), from November 2022, the Constitutional Court sits in plenary sessions.<sup>13</sup> For the time being, the Constitutional Court operates with seven out of nine judges.

In this period, especially in certain years, the unsatisfactory dynamics of deciding cases is evident. The organizational and other measures had a noticeable positive result, the number of pending cases dropped below 3,000 after a long period and the length of case resolution was reduced to less

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10 In the Rules of the Constitutional Court of Bosnia and Herzegovina - consolidated text (*Official Gazette of Bosnia and Herzegovina*, 94/14), Article 39 (Mandatory Adjournment of a Session) is deleted. The deleted Article 39 read: "The session of the Constitutional Court sitting as a plenary Court not attended by a minimum of three judges elected by the House of Representatives of the Federation of Bosnia and Herzegovina and by a minimum of one judge elected by the National Assembly of the Republika Srpska shall be adjourned, whereby the next session will be held in the event that the same situation repeats itself without justified reasons."

11 The added Article 99a (*Exceptional Extension of a Judge's Term of Office*) reads: "(1) Exceptionally, if the relevant authority does not elect a new judge by the date of termination of office of a judge by reason of age, the judge in question shall continue performing his/her duties until the relevant authority elects a new judge pursuant to Article 99 of these Rules and until the newly-elected judge assumes office in accordance with Article 82 of these Rules. (2) The judge whose term of office is extended in accordance with paragraph 1 of this Article may exercise all rights and shall perform all obligations under the Constitution of Bosnia and Herzegovina and these Rules."

12 "Opinion on Certain Questions Relating to the Functioning of the Constitutional Court of Bosnia and Herzegovina", CDL-AD(2024)002 Or. Engl. - Strasbourg, 18 March 2024.

13 The Grand Chamber consists of six national judges, and at least 5 of them are required for a quorum. In the previous practice of the Constitutional Court, it was the Grand Chamber that decided the largest number of cases. Over 99% of all cases from the appellate jurisdiction were decided at the sessions of the Grand Chamber, while the "U" cases, *i.e.* cases where the Court *in abstracto* review constitutionality, and similar cases, and a very small number of appeals were decided at plenary sessions.



than two years (circa 20 months) from the day of receipt of the initial act (appeal/request). However, due to the judicial vacancies still unfilled in the Constitutional Court, the situation changed drastically for the worse. There is again a large number of cases (over 9,000, as never before) pending before the Constitutional Court and the length of the resolution of cases is again well over two years. Consequently, if this continues, the Constitutional Court would be in the position to threaten the right to a fair trial by violating the right to a trial within a reasonable time. For this reason, it would be very important to reactivate the Grand Chamber and the Chamber by electing judges from the Republika Srpska.



**CASE LAW**  
OF THE CONSTITUTIONAL COURT OF  
BOSNIA AND HERZEGOVINA



# Case law of the Constitutional Court of Bosnia and Herzegovina

## What is the “true” Constitution of Bosnia and Herzegovina?

We shall start with the first, most important, question from the perspective of a legal dogma. What is, actually, the true Constitution of Bosnia and Herzegovina upheld by the Constitutional Court using its text as a standard for review during constitutional review of laws?

This question raises two main points of discussion. First, does the Dayton Constitution have anything to do with the earlier version of the Constitution of the Republic of Bosnia and Herzegovina? Second, what is the relationship between Annex 4 and other annexes of the Agreement? Should only Annex 4 be considered a true Constitution of Bosnia and Herzegovina, or the Constitution, is actually, made up of all annexes?

In case no. U-7/97 of 22 December 1997, the Constitutional Court was called upon to decide the first mentioned question, i.e. “constitutionality of the Dayton Agreement”. In its request, the Croatian Party of Rights 1861 from the Republic of Croatia, and its branch in Bosnia and Herzegovina, established, without valid reasons, that the Dayton Agreement violates the provisions of the Constitution of the Republic of Bosnia and Herzegovina. With a short reasoning that “by virtue of the Constitution of Bosnia and Herzegovina, the Constitutional Court has been tasked with safeguarding the Constitution”, the Court dismissed an argument that the Dayton Agreement should be examined by way of applying the standard of the “old” Constitution of the Republic of Bosnia and Herzegovina. Such decision was based on the clear provision of Article XII (1) of the Dayton Constitution, which explicitly provides: “This Constitution shall enter into force upon signature of the General Framework Agreement as a constitutional act amending and superseding the Constitution of the Republic of Bosnia and Herzegovina.” This, in a civil law system, to a degree, unusual formulation “amending and superseding”, the Constitutional Court understood as a clear signal.

The reiteration of a syntagm “this Constitution” in the Dayton Agreement, as is the case in Articles VI (3), X and XII, clearly points to Annex 4, helping in answering the second question about the relationship between Annex 4 and other annexes. The main question from the perspective of a legal dogma is, certainly, whether there is a normative hierarchy among these annexes, and, therefore, whether the provisions of other annexes could, then, serve as a benchmark for review to the Constitutional Court, or not. As for the first question, already in case no. U-7/97 it is possible to find *obiter dictum* regarding that matter. The Court stated that the Constitution was adopted as Annex 4 to the Dayton Agreement, wherefrom it follows that there can be no conflict between this and other annexes. Naturally, this *obiter dictum* makes sense only when understood in such a way that the Court has relied on the theory of *corpus iuris* of the Dayton Agreement, that is to say that the Constitution and all its annexes were assigned the same, constitutional rank. Considering this claim, the Constitutional Court presumed that, in the event of a very likely conflict of norms, a solution



Dayton Peace Agreement published in Official Gazette RBiH, 1996



could be reached only through the harmonisation of interpretations, and not by using arguments that Annex 4 enjoys a superior position. It follows from this stance that, because of constitutional status of other annexes, their norms can be applied in relation to systemic interpretation of Annex 4, as well as independently as a benchmark for review of all sub-constitutional acts.

By virtue of such understanding of the Constitution, the Court would dismiss requests *rationae temporis* if they would be based on the events that occurred before entry into force of the Dayton Agreement. Still, some cases must be indicative of the continuity of the matter from before 14 December 1995 to the period of the Dayton Agreement, as clearly illustrated by the mentioned provisions of the Constitution on the restitution of property or compensation. In addition, the Court, also, explicitly extended the timeframe for the cases related to the prohibition of discrimination, taking over from the jurisprudence of the Supreme Court of the United States the concept of “the past *de iure* discrimination” which requires just compensation through “positive action”.

It can be noted, therefore, in the conclusion, that Annex 4 of the Dayton Agreement constitutes the “true” Constitution of Bosnia and Herzegovina in a traditional sense of one and only document of constitutional rank. However, the mentioned fifteen international human rights protection agreements in Annex 1 to Annex 4, which are applied directly, as other annexes, and the General Framework Agreement itself, also enjoy the constitutional rank, thereby making up – together with Annex 4 – a formal constitutional law of the State of BiH.

From the very start, one question arose over again in the context of establishing the hierarchy of norms. Article II (2) of the Dayton Constitution proclaims that the European Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols “... shall apply directly in Bosnia and Herzegovina...” and that “these shall have priority over all other law”. Thus far, in the cases that came before it, the Constitutional Court acted in such a way as to give priority to the European Convention in the event of a conflict between a national law and the European Convention.



## Case law from within the scope of abstract review of constitutionality

The review of constitutionality of laws (and bylaws<sup>14</sup>) is a primary competence of constitutional courts based on a fundamental idea of establishing *sui generis* courts, or, in some countries, the highest ordinary court.

All this time since the setting up of the Constitutional Court of Bosnia and Herzegovina in the 1960's of the past century, the review of constitutionality has strongly affected and still does affect, not only by a number of cases but also by the significance of the issues addressed in the decisions, the legal and social life and relations in Bosnia and Herzegovina.

The case law of the Constitutional Court in this area is rich. There is a number of the most important, and relevant cases and decisions stemming from the scope of responsibility under the applicable Constitution.

The case that left a significant mark on the work of the Constitutional Court is **the so-called decision on the constituent status of peoples**.<sup>15</sup> The request for the review of constitutionality in this case included some twenty provisions of the Entities' constitutions, with certain disputed provisions containing two or more constitutional issues, or one and the same issue was in a number of provisions of Entities' constitutions, including certain amendments to the challenged constitutional norms. That was a very complex case both in form and in substance. The complexity of this case was reflected in the fact that the request for the review of constitutionality included fundamental provisions of Entities' constitutions. Following the adoption of four partial decisions in this case, certain provisions of the Constitution of the Federation of Bosnia and Herzegovina and the Constitution of the Republika Srpska, as Entities making up Bosnia and Herzegovina, were declared unconstitutional. Hence, it was ordered to amend in that respect the constitutions of the Entities, i.e. to harmonise them with the Constitution of Bosnia and Herzegovina. It is particularly important that this decision, among other things, established that territorial distribution of Entities "must not serve as an instrument of ethnic segregation", and that constitutional principle of collective equality of constituent peoples "prohibits any special privileges for one or two of those peoples, every domination in authority structures and every ethnic homogenisation through segregation based on territorial separation". Also, declared unconstitutional were such provisions of the Constitution of the Republika Srpska mentioning the sovereignty and state autonomy of the Entity of the Republika Srpska, since such provisions were assessed as contrary to the provisions of the Constitution of Bosnia and Herzegovina, which guarantee the sovereignty, territorial integrity, political independence and international sovereignty of the State of Bosnia and Herzegovina, and not its territorial units.

The specific nature of relations and circumstances in Bosnia and Herzegovina in the post-Dayton period lies, among other things, also in the fact that the High Representative for Bosnia and Herzegovina (OHR) had intervened in the legislation by enacting a number of laws at the State and Entities' level. Upon a motion of authorised proponents, the Constitutional Court reviewed the constitutionality of a number of such laws too.

14 E.g. the Constitutional Court, while relying on the case law of the ECtHR, based its competence in a number of cases concerning the issues of constitutionality of general acts (see, inter alia, Decision no. U-4/05 of 22 April 2005), although the act is not referred to as a "law" in a formal sense of the word, given that the concept of "law" has autonomous meaning and must be understood in its "substantive" sense, not its "formal" one only (see, ECtHR, *Ebrahimian v. France*, judgment of 26 November 2015, application no. 64846/11, paragraph 48).

15 Case no. U-5/98.

The first case is the **2000 Law on the State Border Service**<sup>16</sup>. In this decision, the Constitutional Court indicated that the High Representative intervened in the legal system of BiH substituting domestic authorities and, in that regard, acting as the authority of Bosnia and Herzegovina, whereas the law he enacted has the nature of a domestic law, therefore, it must be regarded as the law of Bosnia and Herzegovina, which compatibility with the Constitution is subject to review by the Constitutional Court, pursuant to Article VI(3)(a) of the Constitution of Bosnia and Herzegovina. The Constitutional Court also indicated in this decision that the responsibility to protect the Constitution was assigned to the Constitutional Court according to the first sentence of Article VI(3) of the Constitution, as specified in paragraphs (a), (b) and (c), and read in conjunction with Article I(2) of the Constitution, which reads that Bosnia and Herzegovina shall be “a democratic state, which shall operate under the rule of law and with free and democratic elections”, assigns to the Constitutional Court the power to review the conformity with the Constitution of all acts, irrespective of the author, for as long as that review is based on one of the responsibilities enumerated in Article VI(3) of the Constitution.<sup>17</sup>

The Constitutional Court reviewed the constitutionality of the **Law on the Court of Bosnia and Herzegovina**, which was, also, imposed by the High Representative<sup>18</sup>. The applicants held that this law violated the provisions of Article III of the Constitution of Bosnia and Herzegovina, which regulate the responsibilities and relations between the institutions of BiH and those of the Entities. To that end, they stated that the regulation of a judicial system was in the jurisdiction of the Entities, and that no constitutional basis existed for the passing of the Law on the Court of Bosnia and Herzegovina, given that except for the Constitutional Court, the Constitution of Bosnia and Herzegovina did not provide any other judicial instance at the state level. By its decision, the Constitutional Court assessed that the Law on the Court of Bosnia and Herzegovina is in compliance with the Constitution of Bosnia and Herzegovina emphasising that it is not its task to express an opinion about whether a law should be passed, but that the establishment of the Court of Bosnia and Herzegovina may be expected to make a greater contribution to the rule of law, which is one of the fundamental principles for the functioning of a democratic state. Also, the Constitutional Court indicated that Bosnia and Herzegovina, functioning as a democratic state, is authorised, in the areas within the scope of its responsibility, except for those explicitly provided by the Constitution, to establish other mechanisms and additional institutions required for the exercise of its responsibilities, including the establishment of a court for the strengthening of a legal protection of its citizens and ensuring the compliance with the principles of the European Convention on Human Rights.

Considering the constitutionality of the **Law on the Protection of Domestic Production**, the Constitutional Court concluded in the decision in this case<sup>19</sup> that there is an indisputable obligation of the institutions of Bosnia and Herzegovina, first and foremost of the legislator, to observe, under the rule of *pacta sunt servanda*, the provisions of a treaty concluded by Bosnia and Herzegovina and to perform it in good faith. The Constitutional Court established that the mentioned law was not in compliance with Article III(3)(b) of the Constitution of Bosnia and Herzegovina, and that here was a violation of Article III(3)(b) of the Constitution of Bosnia and Herzegovina in a situation where a domestic law is not in conformity with the provisions of the general rule of the international law of *pacta sunt servanda*, according to which “Every treaty in force is binding upon the parties to it and must be performed by them in good faith”, and where it is not in accordance with the provisions of an international treaty Bosnia and Herzegovina acceded to.

<sup>16</sup> Decision no. U-9/00 of 3 November 2000.

<sup>17</sup> The provision of Article VI(3)(a) prescribes that the Constitutional Court shall have exclusive jurisdiction to decide any dispute that arises under this Constitution between the Entities or between Bosnia and Herzegovina and an Entity or Entities, or between institutions of Bosnia and Herzegovina, including but not limited to (...) whether any provision of an Entity's constitution or law is consistent with this Constitution. In this present case, the issue of the review of constitutionality of a state law was raised for the first time.

<sup>18</sup> Decision no. U-26/01 of 28 September 2001.

<sup>19</sup> Decision no. U-5/09 of 25 September 2009.

Based on the case law of the Constitutional Court, it is important to mention two decisions narrowly linked to the negotiations about the Stabilisation and Association Agreement and the process of fulfilling obligations from the “Road Map”. In these decisions, the Constitutional Court examined the harmonisation of the **Law on Statistics of BiH**<sup>20</sup> and the **Law on Insurance Agency in BiH** with the Constitution of Bosnia and Herzegovina<sup>21</sup>. In these cases, the Constitutional Court concluded that the Parliamentary Assembly had an authorisation to adopt the challenged laws and, stated, among other things, that their aim was mutual harmonisation of Entities’ legislation in certain areas, as well as their harmonisation with relevant regulations, regulating these areas within the European Union, which constitutes, at the same time, the fulfilment of the obligations committed to by signing the Stabilisation and Association Agreement with the European Union.”

Also important is the decision by which the Constitutional Court decided on the constitutionality of the relevant provisions of the FBiH **Law on the Sale of Apartments with Occupancy Right**<sup>22</sup>. The decision was adopted in keeping with the judgment of the European Court in the case of Đokić v. Bosnia and Herzegovina<sup>23</sup>. In this decision, the Constitutional Court concluded that the challenged provisions of the mentioned law were in contravention of the right to property under the provisions of Article II (3)(k) of the Constitution of Bosnia and Herzegovina and Article 1 of Protocol No. 1 to the European Convention, because they do not strike a fair balance between the right holder and the public interest, thereby placing on right holders special and excessive burden. Namely, the Constitutional Court concluded here, by upholding the case law of the European Court referred to in the case of Đokić, that the compensation that would possibly be paid to military persons (who were denied, under other provisions of law, natural restitution of apartments) would be such that it would not constitute even an approximate satisfaction for the deprivation of their property.

One of the most significant decisions in which the Constitutional Court dealt with **the issue of distribution of responsibilities between the Entities and the State** is the decision in which the Constitutional Court decided on the constitutionality of **the Law on the Status of State Property Located in the Territory of the Republika Srpska and under the Disposal Ban**<sup>24</sup>. The applicant held that there was no constitutional basis for the National Assembly of the Republika Srpska to pass the challenged law. On the basis of the analysis of the challenged law, the Constitutional Court established that the Republika Srpska took over the responsibility to regulate, on the one hand, the issue of depriving “Bosnia and Herzegovina” of the right to ownership on “state property”, and its legal transformation into an Entity’s property and, on the other hand, the right of protection, assignment of the right and use of that property. In the end, the Constitutional Court concluded that the Republika Srpska passed the challenged law contrary to Articles I(1), III(3)(b) and IV(4)(e) of the Constitution of Bosnia and Herzegovina. The Constitutional Court held that it was the exclusive responsibility of BiH to regulate the issue of property under the disputed Article 2 of the challenged law. It was particularly emphasised that “state property” includes movables and immovable that serve the purpose of exercising public authority, as well as public goods, which, by their nature, serve primarily everyone in the state (running water, protection of climate-related living conditions, protection of other natural resources, such as forests, the necessary state infrastructural networks within the meaning of Annex 9 of the General Framework Agreement for Peace in BiH etc.).

Following the case law referred to in the decision U-1/11, the Constitutional Court established that Article 53 of **the Law on Agricultural Land of the Republika Srpska, Law on the Forests of the Republika Srpska**<sup>25</sup>, **Law on Inland Waterways Navigation of the Republika Srpska**<sup>26</sup> and

20 Decision no. U-9/07 of 4 October 2008.

21 Decision no. U-17/09 of 27 March 2010.

22 Decision no. U-15/11 of 30 March 2012.

23 Application no. 6518/04, judgment of 27 May 2010.

24 Decision no. U-1/11 of 14 July 2012.

25 In the part prescribing that forests are the property of the Republika Srpska.

26 In the part prescribing that inland waters are the property of the Republika Srpska, and regulating navigation on the rivers of Drina and Sava, which are part of a state border and international navigable rivers.



**Law on Immovable Property Used for the Functioning of the Public Authority**<sup>27</sup>, are also not in conformity with Articles I(1), III(3)(b) and IV(4)(e) of the Constitution of Bosnia and Herzegovina. The Constitutional Court indicated that forests<sup>28</sup>, agricultural land<sup>29</sup> and rivers<sup>30</sup> in the territory of the Republika Srpska are a public good of all citizens of Bosnia and Herzegovina and, therefore, constitute the property of Bosnia and Herzegovina. It was, also, emphasised that the Republika Srpska does not have a constitutional authorisation to regulate the issues of “state property”, as that issue lies within the exclusive jurisdiction of Bosnia and Herzegovina.<sup>31</sup>

When it comes to forests as a “**public good**” it is important to mention that the Constitutional Court dealt with this issue also in relation to the decisions passed by the Federation of Bosnia and Herzegovina (the Government of the Federation of BiH). In the July 2024 decision, the Constitutional Court indicated that the provisions of the **Decision of the Government of the Federation of Bosnia and Herzegovina Changing the Purpose of Forestland and Temporary Use of Forestland for Other Purposes** allows factual change of the purpose of the forestland without a request of a land owner. In that way, as the Constitutional Court indicated, by virtue of decisions passed in an administrative procedure before Entities’, or Cantonal authorities, it was made possible for the forests and forestland to be used for purposes not directly related to the very character of forests and forest land as a “public good” owned by the State, and that a fee be paid for this in favour of the Federation of BiH. The Constitutional Court held that such conversion, including the obligation to pay a fee for the destruction of the forest fund, regardless of their formal and legal determination in the mentioned Decision, constitutes forms of disposal of State property, as it stipulates the possibility of encroaching on the **ownership rights of the owner of the property - the State**, to decide on the method of use and allocating forests and forest land for use. The Constitutional Court indicated next that, regardless of the legal question as to whether the Government of FBiH had the constitutional authorisation to regulate the procedure for changing the purpose of forests and forest land in connection with the provisions on spatial planning, the Constitutional Court considers that the Government, considering the character and real implications of the mentioned Decision on forests and forestland that constitute State property, did not have the responsibility to adopt the above Decision with regards to forests and forestland owned by the State. The Constitutional Court recalled that it has already taken a position in practice on the status of State property, which includes forests and forestland. Therefore, the Constitutional Court sees no reason to depart from its case law in this particular case. Namely, the forests and forestland cannot be disposed of in any way until the issue of State property is resolved by a law to be passed at the State level, which implies that Entities cannot claim responsibilities to decide on ownership rights to State property.<sup>32</sup>

However, contrary to the mentioned case law, the Constitutional Court, while assessing the constitutionality of certain provisions of the **Law on Real Rights of the Republika Srpska**, concluded that the provisions of the Law on Real Rights of the Republika Srpska, which prescribe that **social or state ownership** over things, real estate and urban construction land, which **have not become the property of another person** before the entry into force of that Law, will be transformed into the right of ownership of its previous holder or legal successor, in accordance with the Constitution of Bosnia and Herzegovina. As a basis for such a conclusion, the Constitutional Court indicated the fact that social/state property that the disputed provisions of the Law on Real Rights apply is not the property under the disposal ban, or the property that the Constitutional Court had in mind in the decision U-1/11, that is to say it was not the property on which SR Bosnia and Herzegovina had the right of use, management and disposal at the relevant time. It was emphasised that the

27 Decision no. U-10/22 of 22 September 2022.

28 Decision no. U-4/21 of 23 September 2021.

29 Decision no. U-8/19 of 6 February 2020.

30 Decision no. U-9/19 of 6 February 2020.

31 Decision no. U-10/22 of 22 September 2022.

32 Decision no. U-3/24 of 11 July 2024.

basic intention of the challenged provisions of the Law on Real Rights is to eliminate the former socialist legal mechanisms (right to dispose, right to manage and right to use), and to create a transitional civil law system for the period of transition from the socialist to modern continental European civil law system.<sup>33</sup> The mentioned reasons were the basis for the Constitutional Court to conclude that the **Law on Usurpations and Land Grants** (of the Entity of the Republika Srpska), in the part prescribing conditions and procedure for determining whether the usurper or volunteer, or their legal heir, can be recognised the property right on the usurped land or land that is considered a land grant, in accordance with the Constitution of Bosnia and Herzegovina. In addition, it was emphasised that the public authorities fulfilled their positive obligation in that way of solving the legal status of persons who have been in possession of such land for decades.<sup>34</sup>

The Constitutional Court dealt with the issue of **responsibility of regulating certain legal matter and a legal dispute in that context** that may arise between the State and the Entities. The Constitutional Court took a clear position in this regard about a constitutional obligation to comply with the state laws. The Constitutional Court indicated in that sense that “passing Entities’ laws **contrary to the procedure prescribed by state laws** raises an issue of constitutionality of such laws within the meaning of Article III(3)(b) of the Constitution of BiH, and that obligations imposed by state laws must be observed”<sup>35</sup> This position has been reaffirmed in many decisions of the Constitutional Court.

In the case in which the Constitutional Court tackled the review of the constitutionality of the **Law on Pharmaceuticals and Medical Devices of the Republika Srpska and the Law on Amendments to the Law on the Republic Administration** passed by the National Assembly of the Republika Srpska, the Constitutional Court recalled the following: “(...) the laws of Bosnia and Herzegovina passed by the Parliamentary Assembly of Bosnia and Herzegovina are considered to be “decisions of the institutions of Bosnia and Herzegovina” under Article III(3)(b) of the Constitution of Bosnia and Herzegovina, and the adoption of the laws by the Entities or any subdivisions thereof in Bosnia and Herzegovina contrary to the procedure prescribed by the State laws might challenge the issue of compliance with the provisions of Article III(3)(b) of the Constitution of Bosnia and Herzegovina, according to which the Entities and any subdivisions thereof are obliged to comply, *inter alia*, (also) with the decisions of the institutions of Bosnia and Herzegovina. If held otherwise, besides completely bringing into question the authority of the institutions of Bosnia and Herzegovina, it would also challenge the principle referred to in Article I(2) of the Constitution of Bosnia and Herzegovina under which: “Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law”. In that case, a question might rightly be posed regarding the purpose of the State laws (e.g. the laws in the field of privatisation, operations of the insurance companies, indirect taxation, and such like) if the entities or any subdivisions thereof in Bosnia and Herzegovina could pass laws violating or evading obligations imposed on the entities or any subdivisions thereof in Bosnia and Herzegovina

33 Decision no. U-4/20 of 26 March 2021.

34 Decision no. U-28/22 of 21 March 2024.

35 Decision no. U-14/04 of 29 October 2004. In this decision, the Constitutional Court points out that the Parliament of the Federation of Bosnia and Herzegovina, by adopting the contested laws (Articles 1 and 2 of the Law on Amendments to the Law on Turnover Tax on Goods and Services and the provisions of Articles 1 and 2 of the Law on Amendments to the Law on Special Tax on Non-Alcoholic Beverages), failed to observe the procedure laid down in Article 25 para 4 of the Law on Indirect Taxation System. By doing so, the Federation of Bosnia and Herzegovina de facto assumed competences that it transferred, according to the Agreement dated 5 December 2003, to the State of Bosnia and Herzegovina. The Constitutional Court holds that such course of action questioned the functioning of Bosnia and Herzegovina according to the principle of the “rule of law”. In particular, it violated the provision of Article III(3)(b) of the Constitution of Bosnia and Herzegovina, since the Parliament of the Federation of Bosnia and Herzegovina failed to comply with the procedure laid down in the Law on Indirect Taxation System. This law was adopted by the Parliamentary Assembly of Bosnia and Herzegovina and it undoubtedly constituted a decision of the joint institutions of Bosnia and Herzegovina. Furthermore, by adopting the contested laws without the consent of the Governing Board of the Indirect Taxation Authority, the Parliament of the Federation of Bosnia and Herzegovina violated the provision of Article III(5)(a) of the Constitution of Bosnia and Herzegovina, by entering the scope of competences transferred to Bosnia and Herzegovina by the Federation of Bosnia and Herzegovina by virtue of an agreement.

by the provisions of the State legislation, i.e. laws adopted at the level of the institutions of Bosnia and Herzegovina. Therefore, the Entities (and any subdivisions thereof in Bosnia and Herzegovina) must comply with the obligations imposed on them through the laws passed by the institutions of Bosnia and Herzegovina. The fact that such obligations have not been complied with might result in the breach of the provisions of the Constitution of Bosnia and Herzegovina.”<sup>36</sup>

When it comes to the **criminal matter** the Constitutional Court considered in the Decision no. U-5/16, namely in two partial decisions, the provisions of **the Criminal Procedure Code of Bosnia and Herzegovina** (“the Criminal Procedure Code”). The conclusions made by the Constitutional Court resulted in amendments to the provisions of the Criminal Procedure Code.

In the first partial decision<sup>37</sup>, the Constitutional Court established that certain challenged provisions of the Criminal Procedure Code are not in conformity with the provisions of the Constitution of Bosnia and Herzegovina, and the European Convention. Accordingly, the Constitutional Court established that the provisions of Article 84(2), (3) and (4) of the Criminal Procedure Code, relating to immunity granting, which lies within the jurisdiction of the Prosecutor’s Office, because of imprecision and vagueness of the challenged provision, for which criminal offences immunity is granted and in which procedure this type of immunity may be used, are not in conformity with the provisions of Article I (2) in conjunction with Article II (3)(f) of the Constitution of Bosnia and Herzegovina. The Constitutional Court held that a decision on immunity needed to be upheld by a court.

Next, the Constitutional Court established that provision of Article 117(d) of the Criminal Procedure Code, which afforded a possibility for special investigative actions under Article 116(2) of the Criminal Procedure Code to be ordered for the criminal offences for which, under the law, a prison sentence of three

## Jurisdiction

The Constitutional Court shall uphold this Constitution.

a) The Constitutional Court shall have exclusive jurisdiction to decide any dispute that arises under this Constitution between the Entities or between Bosnia and Herzegovina and an Entity or Entities, or between institutions of Bosnia and Herzegovina, including but not limited to:

- Whether an Entity’s decision to establish a special parallel relationship with a neighboring state is consistent with this Constitution, including provisions concerning the sovereignty and territorial integrity of Bosnia and Herzegovina.

- Whether any provision of an Entity’s constitution or law is consistent with this Constitution.

Disputes may be referred only by a member of the Presidency, by the Chair of the Council of Ministers, by the Chair or a Deputy Chair of either chamber of the Parliamentary Assembly, by one-fourth of the members of either chamber of the Parliamentary Assembly, or by one-fourth of either chamber of a legislature of an Entity.

b) The Constitutional Court shall also have appellate jurisdiction over issues under this Constitution arising out of a judgment of any other court in Bosnia and Herzegovina.

c) The Constitutional Court shall have jurisdiction over issues referred by any court in Bosnia and Herzegovina concerning whether a law, on whose validity its decision depends, is compatible with this Constitution, with the European Convention for Human Rights and Fundamental Freedoms and its Protocols, or with the laws of Bosnia and Herzegovina; or concerning the existence of or the scope of a general rule of public international law pertinent to the court’s decision.

(Article VI(3) of the Constitution of BiH)

<sup>36</sup> Decision no. U-17/22 of 1 and 2 December 2022, paragraph 29 with further references.

<sup>37</sup> Decision no. U-5/16 of 1 June 2017.

(3) years or a heavier penalty may be pronounced, is not in conformity with the Constitution of Bosnia and Herzegovina and the European Convention. Namely, the Constitutional Court held that by prescribing that special investigative measures may be ordered for a great majority of criminal offences prescribed by the Criminal Code, including offences not carrying elements of serious criminal offences, the legislator failed to ensure that the interference with the right referred to in Article 8 of the European Convention would be to such an extent that is necessary for the preservation of democratic institutions, i.e. it failed to secure the proportion between the severity of the interference with the right to privacy and the legitimate goal sought to be achieved through the application of that special measure.

Also, in relation to Article 118(3) of the Criminal Procedure Code, which specifies the duration, namely the maximum duration of special investigative measures – up to a month, a total of three, i.e. six months, the Constitutional Court concluded that it is not in conformity with Article I(2) in connection with Article II(3)(f) of the Constitution of Bosnia and Herzegovina. The reason being that the manner of extension, i.e. whether the reasons of the prosecutor proposing the extension of special investigative measures will be sufficient in terms of “particularly important reasons” depends exclusively on the margin of appreciation of the preliminary proceedings. Therefore, the legislator failed to observe that the law must prescribe sufficiently clearly the scope of margin of appreciation allocated to the competent bodies. Next, the Constitutional Court concluded that the legislator, when prescribing the duration of special investigative measures, failed to be mindful of the proportion between restrictions on human rights and the severity of criminal offences.

The Constitutional Court established, next, that the provisions of Article 225(2) of the Criminal Procedure Code are not in conformity with Article I(2) in connection with Article II(3)(e) of the Constitution of Bosnia and Herzegovina, because the legislator was not consistent in terms of law, when it regulated a possibility of, essentially, unlimited duration of investigation, thereby failing to prescribe a mechanism for the protection of the rights of suspects and injured parties. Next, the conclusion of the Constitutional Court was that the provision of Article 226(1) of the Criminal Procedure Code is not in conformity with Article I(2) of the Constitution of Bosnia and Herzegovina, because the legislator failed to prescribe a time limit within which a prosecutor shall be obliged to prepare an indictment, and the said time limit has neither been prescribed by the provision regulating the conclusion of the investigation. The Constitutional Court ordered the Parliamentary Assembly of Bosnia and Herzegovina to harmonise the mentioned provisions with the Constitution of Bosnia and Herzegovina, and the European Convention.

It was established in the same decision that the provisions of 84(5) of the Criminal Procedure Code are in conformity with Articles I(2) and II (3)(e) of the Constitution of Bosnia and Herzegovina, as well as that the provisions of Article 119 (1) of the Criminal Procedure Code are in conformity with Article I(2) and II (3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention, while Article 216 (2) of the Criminal Procedure Code is in conformity with Article II (3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 of the European Convention and Article 13 of the European Convention.

In the second partial decision<sup>38</sup>, the Constitutional Court concluded that the second sentence of paragraphs 1 and 2 of Article 109 of the Criminal Procedure Code are inconsistent with Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Article 8 of the European Convention. It ordered the Parliamentary Assembly of Bosnia and Herzegovina to harmonise them with the relevant provisions of the Constitution of Bosnia and Herzegovina and the European Convention. It was established in the same decision that the first sentence of paragraph 1 of Article 109 of the Criminal Procedure Code is consistent with Article II(3)(b) and Article II(3)(f) of the Constitution of Bosnia and Herzegovina and Articles 3 and 8 of the European Convention. Namely, the Constitutional Court concluded that the legislator elaborated a clear general legal framework and that prescribed the general conditions under which suspects/accused would be subjected to the measures referred

<sup>38</sup> Decision no. U-5/16 of 26 March 2021.



to in the challenged provisions with sufficient clarity and foreseeability, and it found nothing in the challenged provisions that could prevent application of the referenced standards arising under the case-law of the European Court. On the contrary, the legislator did not regulate the preconditions for the interference with the bodily integrity of “other persons” in a sufficiently clear manner and thus failed in this part of the regulation to meet the condition “in accordance with the law” under Article 8 of the European Convention, i.e. did not ensure that the interference with the right referred to in Article 8 was only to the extent that was strictly necessary for safeguarding the democratic institutions.

The Constitutional Court considered certain provisions of the **Criminal Code of the Republika Srpska**. In the decision in this case<sup>39</sup> the Constitutional Court established that the provision of Article 280a of the RS Criminal Code “Damage to the reputation of the Republika Srpska and its Peoples” is incompatible with Article II(3)(h) of the Constitution of Bosnia and Herzegovina and Article 10 of the European Convention. While the Constitutional Court accepted in this case that the interference with the freedom of expression in relation to all contested provisions is sufficiently precise in order to meet the requirement of “lawfulness”, and that it has a legitimate aim, according to the Constitutional Court, the scope of offences, which may be regarded as punishable under Article 280a of the disputed law calls into question the proportionality of the interference by way of criminal sanctions. The Constitutional Court did not find any argument for the conclusion that such a harsh punishment is proportionate to the legitimate aim it seeks to achieve. Although the determination of penalties for criminal offences, in principle, falls within the margin of appreciation of the competent legislator, the Constitutional Court deemed that the legislator in the Republika Srpska exceeded the permitted margin of appreciation in stipulating criminal sanctions that would inevitably have a chilling effect, stifling the freedom of the press and dissuading individuals from voicing serious criticisms against the authorities of this Entity.

On the other hand, the provisions of Articles 208a, 208b, 208v, 208g, 208d and 208đ of the RS Criminal Code are compatible with Article II(3)(h) of the Constitution of Bosnia and Herzegovina and Article 10 of the European Convention. Namely, as the Constitutional Court indicated, the fact that defamation was again, after a long period of time, prescribed as a criminal offence, was not in itself contrary to the Constitution of Bosnia and Herzegovina or the European Convention. When answering the question as to whether the challenged provisions strike a fair balance between the legitimate aim sought to be achieved and the means employed, the Constitutional Court recalled that the legislative authorities enjoy a margin of appreciation when enacting a certain law. In addition, restriction of the freedom of expression is possible in accordance with paragraph 2 of Article 10 of the European Convention. Considering Articles 208a, 208b, 208v, 208g, 208d and 208đ of the disputed law, the Constitutional Court observed that fines explicitly were prescribed as criminal sanctions by the disputed articles, with the range of prescribed fines being close to the amount awarded by courts in civil proceedings as compensation for defamation.

In addition, the defamation laws in both Entities also provide for the courts to order publication of judgments. The Constitutional Court concluded that this kind of interference with the freedom of expression was proportionate, and that the contested provisions did not exceed the “margin of appreciation” of the competent legislator. Notwithstanding the above, the Constitutional Court underlined that the competent authorities in the Republika Srpska should act with special care in cases of criminal prosecution for the offences prescribed by these articles, and, in particular, make sure that the contested provisions are applied in accordance with the standards established in the long-standing case law of the European Court, as well as the case law of the Constitutional Court Bosnia and Herzegovina.

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<sup>39</sup> Decision no. U-21/23 of 18 January 2024.

## Case law from within the scope of the appellate jurisdiction

Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms (...)

(Article II(1) of the Constitution of BiH)

With the aim of ensuring complete protection of human rights and fundamental freedoms, in its case law the Constitutional Court was gradually *taking positions* on important issues that may imply a possible violation of constitutional rights. In the first years of its work, after the cessation of the war in Bosnia and Herzegovina, that can be seen in the decisions in which the Constitutional Court deliberated on different issues relating to the persons who had gone missing during the war in BiH, the cases of the so-called **war damage** and of the citizens' foreign currency savings deposited in banks in the former joint state, the so-called *old foreign currency savings*, etc. In the decisions relating to the **missing persons**<sup>40</sup>, the Constitutional Court determined violations of the prohibition of inhumane treatment and of the right to respect for private and family life given that, nearly ten years after the cessation of the war in BiH, the competent authorities failed to submit information to the appellants regarding the fate of members of their families that had gone missing during the war. The Constitutional Court ordered the competent authorities to immediately secure operational functioning of the institutions established in accordance with the Law on Missing Persons, especially the Missing Persons Institute, the Fund for Providing Assistance to the Families of Missing Persons and the Central File Records on the Missing Persons in Bosnia and Herzegovina.

In the cases relating to the so-called **old foreign currency savings**, the appellants filed appeals based on the claims seeking full payment of their foreign currency savings deposited solely with the banks of Bosnia and Herzegovina and their branch offices in the territory of the present Entities. In these cases<sup>41</sup>, the Constitutional Court concluded that, by failing to adopt a framework law that would regulate the issue of disbursement of the old foreign currency savings, Bosnia and Herzegovina failed to effectively protect the appellants' right to property. The Constitutional Court underlined the positive obligation of the State, irrespective of the jurisdiction of the Entities and the District as the units of internal organization of BiH, and noted that "the State cannot be released from the obligation of guaranteeing the right to property [...] by its attempt to delegate responsibility for regulating and implementing the performance of its functions to the Entities' and Brčko District's institutions if it does not secure enough legal guarantees that those institutions will act in accordance with, amongst other things, standards set out in Article 1 of Protocol No.1 to the European Convention".

In the cases of the so-called **war damage**, the appellants complained of a violation of the right to a fair trial because they could not obtain the enforcement of the court decisions awarding them non-pecuniary and pecuniary damages. The conclusion of the Constitutional Court in these cases was that the manner and deadlines prescribed for the payment of the war damages arising from final judgments were in violation of the right to a fair trial as the payment was rendered impossible in some cases, whilst in some other "an excessive burden was placed on the individuals" by the law

40 See, *inter alia*, decision no. AP-129/04 of 27 May 2005.

41 See, *inter alia*, decision no. AP-130/04 of 2 December 2005.

and therefore the requirement of proportionality between the public interest of the community and fundamental rights of individuals was not met”.<sup>42</sup>

The consequences of the war, which were visible in the cases such as the referenced ones, were overcome in the course of time. However, new issues were raised before the Constitutional Court, which resulted in new case law. With its decisions, the Constitutional Court kept on sending a clear message to ordinary courts that they must fulfill their obligations in accordance with the principles of the European Convention.

Within the complaints regarding the **right to life**, the issue of inefficiency of investigation and the positive obligation of the State is one of the most frequent issues raised. In one of the cases, the appellant raised an issue of the lack of promptness, inactivity and non-comprehensiveness of the investigation conducted by the competent Prosecutor's Office and the Public Security Center, pointing to a very long period of the conduct of investigative actions, their repetition and the neglecting of the necessary actions which, 25 years later, still did not result in identification of the perpetrator of his brother's murder, but in the discontinuation of the proceedings. In this case, the Constitutional Court pointed out that the competent Prosecutor's Office did not act with due diligence and comprehensiveness in the conduct of the investigation. The arguments of the Prosecutor's Office that during the investigation in the case at hand numerous investigative measures were undertaken that did not result in discovering the perpetrator of the criminal offence of murder could not, in the opinion of the Constitutional Court, eliminate the requirement of promptness and expeditiousness required in such cases. They also could not serve as justification for the 25-year-long investigation that, ultimately, did not result in identification of the perpetrator, particularly with regard to the fact that it was precisely due to the inadequacy of the undertaken actions that the investigation was discontinued over the statute of limitations concerning the criminal prosecution. The Constitutional Court concluded that a timely and adequate response, in terms of the positive obligation of public authorities under Article 2 of the European Convention, was lacking in the investigation and detecting of the perpetrator of the criminal offence of murder in this case and therefore the Court determined that there was a violation.<sup>43</sup>

The role of the Constitutional Court in criminal matters is very important with regards to the issue of concretization of the special grounds for detention, raised within the **right to liberty and security of a person**. At one moment, there were many cases before the Constitutional Court in which ordinary courts in the decisions ordering or extending detention only provided the statutory provision or stereotypical reasoning or based their decisions on the “presumptions” of the court alone. The Constitutional Court reacted to that problem for the first time in 2008, in the case in which it found a violation of the right to liberty and security of a person where the appellant was ordered into detention because of a fear that he would hinder the criminal proceedings by influencing witnesses, although such fear was not justified by specific and clear reasons indicating in an objective way that the appellant had attempted to or that there existed a serious risk that he would attempt to influence the witnesses, but the decision was based only on the *presumptions by the court* based on the nature and gravity of the offence as charged and a possibility of investigation against accomplices.<sup>44</sup> In addition to this ground for detention, in multiple cases the Constitutional Court found a violation because ordinary courts did not sufficiently reason the detention ground of “flight”. In the majority of these cases the reasoning in the ordinary courts' rulings ordering or extending detention on this ground came down to the fact that the appellants were charged with serious criminal offences and that they had dual citizenship. In one such case, the Constitutional Court found a violation of the right under Article 5(3) of the European Convention because, except for stating in the reasons of the challenged rulings that the case concerned an investigation into grave criminal offences, that the suspects had dual citizenship, and that there existed a reasonable

42 See, *inter alia*, decision no. AP-288/03 of 17 December 2004.

43 Decision no. AP-1057/19 of 25 June 2019.

44 Decision no. AP-6/08 of 13 May 2008.

## ENUMERATION OF RIGHTS

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

- a) The right to life.
- b) The right not to be subjected to torture or to inhuman or degrading treatment or punishment.
- c) The right not to be held in slavery or servitude or to perform forced or compulsory labor.
- d) The rights to liberty and security of person.
- e) The right to a fair hearing in civil and criminal matters, and other rights relating to criminal proceedings.
- f) The right to private and family life, home, and correspondence.
- g) Freedom of thought, conscience, and religion.
- h) Freedom of expression.
- i) Freedom of peaceful assembly and freedom of association with others.
- j) The right to marry and to found a family.
- k) The right to property.
- l) The right to education.
- m) The right to liberty of movement and residence.

(Article II(3) of the Constitution of BiH)

suspicion that they acquired a considerable gain that would enable them to reside outside the country, the ordinary court did not provide specific and sufficient reasons regarding the appellant for the conclusion that there really existed the risk of flight and that it was necessary to order detention under that statutory ground.<sup>45</sup> Issues related to disturbance of public order have also become topical lately. With respect to this issue, the Constitutional Court frequently concluded that an ordinary court did not point out the actual existence of such circumstances that would indicate that the release of suspects would indeed result in disturbance of public order, that is, that there really existed an actual threat of disturbance of public order.<sup>46</sup>

In multiple cases, the Constitutional Court found a violation of the right to liberty and security of a person because a court did not render a timely decision about extension of detention or did not review, after having ordered detention, the real need for the extension thereof. In other words, the initial existence of a ground for detention when the criminal proceedings were initiated does not mean that the ground shall continue to exist until the completion of the proceedings, but the detention must be reviewed in all its elements for every extension. In one of the cases the Constitutional Court pointed out that mandatory review of justification of detention every two months made a component part of the text of the law (the Criminal Procedure Code), and that when an ordinary court carried out the mandatory statutory review with an 18-days delay, it did not act “lawfully” and “promptly” within the meaning of Article 5(3) of the European Convention, whereby the principle of “lawfulness” of detention under Article 5(1)(c) was violated as well.<sup>47</sup> The Constitutional Court dealt with a similar issue in the cases that did not concern the ordering of detention, but the imposing of prohibiting measures. In one case, the appellant challenged the fact that not even three

<sup>45</sup> Decision no. AP-921/16 of 20 June 2016.

<sup>46</sup> Decision no. AP-1971/14 of 17 September 2014.

<sup>47</sup> Decision no. AP-7588/18 of 10 April 2019.



months after the rendering of the ruling imposing certain prohibiting measures, the ordinary court did not review whether their application was necessary and justified, that is, did not decide either to extend or revoke them. The appellant argued a violation of her right to a reasoned decision and the right of appeal in criminal matters because there was no decision reviewing further justification of the imposed prohibiting measures. The Constitutional Court examined the appellant's complaints in terms of a violation of the right to an effective remedy under Article 13 of the European Convention in conjunction with the right to freedom of movement under Article II(3)(m) of the Constitution of BiH and Article 2 of Protocol no. 4 to the European Convention and concluded that the failure of the ordinary court to review further justification of the imposed prohibiting measures after two months and to render a ruling either revoking or extending the imposed measures, amounted to an unjustified obstruction which rendered ineffective in practice the otherwise effective remedy provided for by the law.

In one of its recent decisions, the Constitutional Court found a violation of the right to liberty and security of a person because of an ordinary court's failure to personally examine the appellant in the procedure of review of justification of detention, although the Criminal Procedure Code does not contain provisions explicitly stipulating the obligation of a court to hold a public session when reviewing the justification of detention at which an accused person would have an opportunity to personally address the court. In the case at hand, although it concerned the so-called automatic system of reviewing the decision on lawfulness of detention, the Constitutional Court was of the opinion that the period longer than one year during which the appellant was not heard could not in any way be considered a "reasonable interval" within the meaning of the relevant case law of the European Court. Because of the significance of the protected object, and that is personal liberty, the Court should have "seen and heard the appellant" in more frequent intervals than was done in the specific case. By insisting that a court should "see and hear the appellant", the bureaucratization of the procedure of deciding on the extension of deprivation of liberty would be avoided and the person deprived of liberty would be given an opportunity to comment on it. Considering the fact that the appellant was deprived of that right, the Constitutional Court found a violation of the appellant's right under Article II(3)(d) of the Constitution of BiH and Article 5(4) of the European Convention. The Constitutional Court emphasized that it was not decisive whether the Criminal Procedure Code strictly prescribed such conduct, given the fact that under the Constitution of BiH, the provisions of the European Convention shall have priority over all other law and must be applied directly.<sup>48</sup>

The majority of the cases before the Constitutional Court raise the issue of the right to a **fair trial**. They concern different situations, some of them involving an appellant who claims that a court's decision is *arbitrary*, that is, that it lacks reasons of sufficient quality about the facts established by the court. The Constitutional Court does not examine the facts, as that falls within the jurisdiction of ordinary courts, but it can determine arbitrariness if a decision is arbitrary. Therefore, when it determines that an ordinary court acted arbitrarily in certain proceedings, both when establishing the facts and applying the relevant legal regulations, the Constitutional Court may exceptionally engage in the examining of the manner in which the competent court established the facts and applied legal regulations on the facts thus established. In a number of its decisions, the Constitutional Court pointed out that obvious arbitrariness in the application of the relevant regulations can never lead to fair proceedings. In one case, it found a violation of the right to a fair trial because in its adjudication the ordinary court arbitrarily applied the provisions of the Criminal Procedure Code of BiH regarding the right to compensation of damages to a person who was in detention but criminal proceedings were not initiated or the proceedings were suspended or a judgment was pronounced acquitting the person of the charges, and regarding the right to compensation of damage inflicted by media. In other words, in this case the ordinary court identified the issue of whether or not the deprivation of liberty was well-founded with the issue of whether or not the deprivation of liberty was lawful<sup>49</sup>.

48 Decision no. AP-3228/22 of 23 March 2023.

49 Decision no. AP-4793/14 of 17 March 2015.

The requirement to comply with the “right to a reasoned decision,” which is an integral part of the right to a fair trial under Article 6 of the European Convention, is consistently emphasized by the Constitutional Court in its case law, especially since it often involves a legal issue of fundamental importance to the outcome of the specific case.<sup>50</sup> In the case before the ordinary courts, the appellant’s claim for damages for defamation was partially upheld, in the part where he sought the payment of an appropriate amount, but was rejected in the part where he requested that the court order the defendants to publish the judgment at their expense. The Constitutional Court concluded that the court had failed to include all relevant aspects of the specific case in the reasons of its decision, which could have affected the final decision, and that the court had failed to consider the appellant’s complaints related to the publication of the judgment, thereby violating the appellant’s right to a fair trial.<sup>51</sup> A violation of the right to a fair trial due to insufficient reasons was also established in the case where the appellant’s request to register as the owner of real estate in Bosnia and Herzegovina, based on a contract for lifelong maintenance, was rejected. This rejection was due to the fact that the contract was endorsed by a judge in the Republic of Croatia, rather than by a judge in Bosnia and Herzegovina.<sup>52</sup> It is also important to mention the decision in which the lack of adequate reasons was related to the compliance with the principle of the “best interests of the child” as set forth in the Convention on the Rights of the Child. In this decision, the Constitutional Court concluded that the ordinary courts did not provide adequate and convincing reasons regarding the determination of the child support amount for the minor child (the appellant), which, in accordance with the “best interests of the child” standard, should be sufficient to cover the needs appropriate for the appellant’s age. Due to such an omission, the Constitutional Court could not conclude that the procedure in the case ensured the guarantee of a fair trial.<sup>53</sup>

Interesting legal issues were also raised within the scope of the right related to **no punishment without law**, guaranteed under Article 7 of the European Convention. One of these issues concerns the application of a more lenient law in cases involving war crimes. In line with the European Court’s practice in the case of *Maktouf and Damjanović v. Bosnia and Herzegovina*, the Constitutional Court ruled in 2013 that Article 7 paragraph 1 of the European Convention had been violated. The Court found that, in this case, there was a genuine possibility that the retroactive application of the Criminal Code of Bosnia and Herzegovina would in fact adversely affect the appellant’s sentence, which was contrary to Article 7 paragraph 1 of the European Convention, regardless of the fact that, in view of the prescribed range of imprisonment, it was uncertain whether the appellant would have received a lesser sentence had the criminal law of the former SFRY been applied in his case. Specifically, as the Constitutional Court concluded, it is of crucial importance that the appellant could have received a lower sentence had this law been applied.<sup>54</sup> In its 2018 decision, the Constitutional Court considered the issue of applying a more lenient law, specifically regarding the substitution of a prison sentence with a fine, in a case where the appellant had been sentenced to prison under the previous law, which decision became final at a time when a new law came into effect, which no longer permitted the substitution of a prison sentence with a fine. In this decision, the Constitutional Court particularly clarified whether the substitution of the sentence should be considered as “execution of the sentence” or as a modification of the imposed sentence, which was crucial for the application of Article 7 of the European Convention. Following a detailed review of the European Court’s case law on this issue, the Constitutional Court concluded that, at the time the appellant was sentenced to prison, he fulfilled the requirements under the previous Criminal Code and was eligible to request the substitution of his prison sentence with a fine. According to the Constitutional Court, such a request could not be regarded as the “execution of the prison sentence,” but rather **as an opportunity for the prison sentence to “become” a fine. Therefore, his request falls under**

50 Decision no. AP-3225/07 of 14 April 2010, paragraph 36.

51 Decision no. AP-6429/18 of 2 July 2020.

52 Decision no. AP-6035/18 of 9 September 2020.

53 Decision no. AP-399/22 of 20 April 2022.

54 Decision no. AP-325/08 of 27 September 2013.

## ADDITIONAL HUMAN RIGHTS AGREEMENTS TO BE APPLIED IN BOSNIA AND HERZEGOVINA

1. 1948 Convention on the Prevention and Punishment of the Crime of Genocide
  2. 1949 Geneva Conventions I-IV on the Protection of the Victims of War, and the 1977 Geneva Protocols I-II thereto
  3. 1951 Convention relating to the Status of Refugees and the 1966 Protocol thereto
  4. 1957 Convention on the Nationality of Married Women
  5. 1961 Convention on the Reduction of Statelessness
  6. 1965 International Convention on the Elimination of All Forms of Racial Discrimination
  7. 1966 International Covenant on Civil and Political Rights and the 1966 and 1989 Optional Protocols thereto
  8. 1966 Covenant on Economic, Social and Cultural Rights
  9. 1979 Convention on the Elimination of All Forms of Discrimination against Women
  10. 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
  11. 1987 European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
  12. 1989 Convention on the Rights of the Child
  13. 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
  14. 1992 European Charter for Regional or Minority Languages
  15. 1994 Framework Convention for the Protection of National Minorities
- (Annex I of the Constitution of BiH)

**the scope of Article 7 of the European Convention. Since the new Criminal Code excluded this possibility, it adversely affected the appellant by preventing** the substitution of his prison sentence, imposed under the previous law, with a lighter and clearly more favorable fine. As a result, the Constitutional Court concluded that there was a violation of the rights under Article 7 of the European Convention.<sup>55</sup>

**The COVID-19 pandemic** raised a number of issues in the context of human rights protection. In one case, an appeal was filed challenging the order issued by the FBiH Civil Protection Staff, which imposed the obligation to wear protective facemasks and restricted the movement of the population across the Federation of Bosnia and Herzegovina from 23.00 hrs to 5.00 hrs. It is important to note that the Constitutional Court did not annul these measures but found a violation of the rights under Article 8 of the European Convention, because the Court found that the lack of action by the legislative authority to precisely and timely establish a legislative framework for the actions of the executive branch during the pandemic inevitably creates the possibility of disrupting the balance between different interests (rights). The Constitutional Court concluded that the inaction of the FBiH Parliament is contrary to the ensuring of the compliance with guarantees comprised in the right to “private life” and the right to “freedom of movement”, given that in the present case the interference with the constitutional rights does not satisfy the principle comprised in the “necessity” test.<sup>56</sup> When it comes to **freedom of movement** in the context of the declared COVID-19 pandemic, the Constitutional Court was also called upon to decide on the movement restrictions for individuals under 18 and over 65 years of age.<sup>57</sup> In this case, the Constitutional Court emphasized that the challenged order did not provide for any exceptions to both categories of persons covered by it, for example the specific needs of a category of persons under the age of 18 in relation to their health status, especially when it comes to children with special needs. The Court also pointed out that it

<sup>55</sup> Decision no. AP-1498/18 of 23 April 2018.

<sup>56</sup> Decision no. AP-3683/20 of 22 December 2020.

<sup>57</sup> Decision no. AP-1217/20 of 22 April 2020.

was overlooked that among individuals over 65, some remain actively employed and professionally engaged. The Constitutional Court highlighted that, prior to the adoption of the impugned general measure, no alternative and more lenient measures were considered which would specifically protect these groups if such special protection was needed. Finally, the Constitutional Court concluded that the impugned measures do not fulfil the requirement of “proportionality”.

The case law of the Constitutional Court of Bosnia and Herzegovina regarding **freedom of expression** has developed significantly in recent years. In 2018, having long rejected the issue of access to information as part of the rights under Article 10 of the European Convention, as inadmissible *ratione materiae*, the Constitutional Court conducted a thorough review of European Court case law and subsequently revised its approach. In its decision ruling on the merits of this issue for the first time, the Constitutional Court provided a detailed overview of the evolution of the European Court’s views and the application of relevant criteria regarding the right of access to information as part of the right to freedom of expression.<sup>58</sup> In its case law regarding this right, the Constitutional Court has emphasized, among other things, the necessity of considering the broader context and all relevant factors when determining whether there is an ‘urgent social need’ to restrict freedom of expression. It has also stressed the importance of providing sufficient and relevant reasoning in the decisions of courts that impose such restrictions.<sup>59</sup> The Constitutional Court has found violations of this right in circumstances where ordinary courts failed to make a clear distinction between facts and value judgments, which resulted in an interference with the right to freedom of expression.<sup>60</sup>

In 2014, the Constitutional Court found a violation of **the right to freedom of assembly** for the first time. This was also the first case in which Organization Q, representing LGBTIQ individuals, filed a complaint regarding the violation of several rights, including the right to freedom of assembly. In the present case, the Constitutional Court found a violation of the right to freedom of assembly because public authorities failed to take the necessary measures to ensure the peaceful gathering organized in accordance with the law, which led to violence between opposing parties. The authorities also failed to provide a clear legal framework to take preventive action to stop and deter similar acts from occurring.<sup>61</sup> Four years later, it found a violation of the **right to freedom of assembly** in a very similar case.<sup>62</sup>

Significant positions have also been taken **regarding the right to an effective remedy under Article 13 of the European Convention**. Specifically, the Constitutional Court received several appeals related to the rejection of requests for extraordinary review of judicial decisions through the analogous application of the Code on Civil Procedure (LCP), which limited the party’s capacity to file petition for review. In its first decision on this issue,<sup>63</sup> the Constitutional Court concluded that by rejecting the appellant’s request for an extraordinary review on the grounds that it did not meet the requirements of the Code on Civil Procedure for filing a petition, while the Law on Administrative Disputes explicitly grants the “party” the right to file this legal remedy, the ordinary court effectively rendered an available legal remedy ineffective by arbitrarily denying the appellant access to it. As a result, the Constitutional Court concluded that the appellant’s right to an effective remedy in connection with the right of access to a court under Article 6, paragraph 1 of the European Convention had been violated.

With respect to **the right to property**, in a case concerning the sale of the appellant’s property in enforcement proceedings, where the ordinary court failed to take into account that, according to the law, enforcement should be determined and carried out only to the extent necessary to

58 Decision no. AP-461/16 of 6 June 2018.

59 Decision no. AP-3430/16 of 19 December 2018.

60 Decision no. AP-4486/20 of 11 May 2022.

61 Decision no. AP-1020/11 of 25 September 2014.

62 Decision no. AP-4319/16 of 19 December 2018.

63 Decision no. AP-5055/18 of 15 January 2020.



satisfy the creditor, the Constitutional Court found that the principle of proportionality between the general interest and the appellant's right to property had been violated. The Constitutional Court noted that the ordinary court failed to consider other, less burdensome measures for the appellant, such as whether the sale of only one of the assessed properties would have been sufficient to settle the debt. In view of the aforementioned legal requirement, the Constitutional Court concluded that by accepting the enforcement creditor's request to sell all three of the appellant's properties, the principle of proportionality was violated to the appellant's detriment, placing an excessive burden on the appellant, which resulted in a violation of his right to property.<sup>64</sup>

In the context of the **right to non-discrimination**, the Constitutional Court has taken important positions, including in cases related to the recognition of the heirship rights for common-law partners<sup>65</sup> and the right to receive a pension following the death of a common-law partner<sup>66</sup>. In these cases, the Constitutional Court found that the application of the Inheritance Law and the Law on Pension and Disability Insurance, which were not in alignment with the Family Law of the Federation of Bosnia and Herzegovina, imposed a disproportionate and discriminatory burden on the appellants. In the first case, discrimination was found because the Inheritance Law was applied in such a way that a common-law partner was prevented from inheriting their partner in the same way as a married partner, despite the fact that the Family Law put common-law partners on an equal footing with married couples in respect of rights and obligation. In the latter case, the Constitutional Court concluded that the ordinary court and administrative authorities, by applying the Law on Pension and Disability Insurance without considering the provisions of the Family Law of the Federation of Bosnia and Herzegovina regarding the equal treatment of common-law partnerships, which in this particular case lasted for 17 years, with marital unions in all rights and obligations, including property rights, and by rejecting the appellant's request to recognize her right to a family pension as a family member of the deceased insured person, violated the prohibition of discrimination. In both cases, the Constitutional Court emphasized that, according to Article II(2) of the Constitution of Bosnia and Herzegovina, the European Convention is directly applicable and takes priority over all other law. This means, among other things, that laws that are not in compliance with the European Convention must be applied in the manner that does not violate the rights protected by the Convention.

In its case law, the Constitutional Court has found a violation of the right to prohibition of discrimination due to the absence of reasons that would justify differentiation based on nationality. Specifically, in a 2019 case, the Constitutional Court found discrimination based on nationality in relation to the right to family life for an appellant who, solely because she was a foreign national, was denied the possibility of receiving maternity benefits. The Constitutional Court found a violation because the decisions did not provide relevant reasons that would justify such a distinction, and thus, the proportionality relationship required by Article 14 of the European Convention was not established.<sup>67</sup>

The previously referenced case law is but a small part of the Constitutional Court's case law, which serves as an illustration. However, even this illustration is more than sufficient to demonstrate that the Constitutional Court is an effective mechanism for protecting human rights and citizens' freedoms at the national level.

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64 Decision no. AP-4204/22 of 23 March 2023.

65 Decision no. AP-4207/13 of 30 September 2016.

66 Decision no. AP-4077/16 of 11 October 2018.

67 Decision no. AP-324/18 of 27 November 2019.

# Violations of rights under the Constitution of Bosnia and Herzegovina and the European Convention

If one takes into consideration the total number of decisions adopted by the Constitutional Court and the number of cases finding a violation of a constitutional or Convention right, it can be inferred that the percentage of cases finding a violation of those rights is small. However, violations of human rights need to be prevented no matter how small the percentages of these violations are. That is something that every society founded on the rule of law needs to strive towards. In order to achieve that, it is necessary to determine causes leading to human rights violations. The statistics shows that the most frequent violations in the case law of the Constitutional Court involve the right to a fair trial and the right to property. Unreasonable **length of court proceedings and non-enforcement of final court decisions** are among the basic reasons in a large number of cases where violations of the **right to a fair trial** and the **right to property** were found. In the recent case law of the Constitutional Court, these cases have impacted the statistics related to violations of the **right to an effective legal remedy**<sup>68</sup>. Requests concerning a **trial within a “reasonable time”** affect all the aspects of a justice system and the prescribed guarantees are substantially important for the creation of a framework in which the rights guaranteed under the European Convention would be practical and effective rather than merely theoretical and illusory as is often noted by the European Court of Human Rights and the Constitutional Court. Time plays a key role in the preparation of cases and a speedy conduct of proceedings, and an **effective access to court** as a whole would be possible if a trial is conducted within a “reasonable time”. This is the reason why a part of this publication is dedicated to this issue (Contribution of the Constitutional Court to the protection of rights of person and fundamental freedoms). A significant number of cases in which a violation of the right to a fair trial was found concern **compliance with the “right to a reasoned decision”**.

During the initial years of work of the Constitutional Court, the cases involving the so-called foreign currency savings<sup>69</sup> and war damages<sup>70</sup> (also discussed in more detail in this publication) have impacted the number of violations of the right to property. Generally speaking, a majority of the decisions in which a violation of the right to property was found failed to observe the principle of proportionality<sup>71</sup>.

The cases involving **persons who went missing during the war** in Bosnia and Herzegovina (addressed intensively by the Constitutional Court about 20 or so years ago) have considerably impacted the statistics pertaining to violation of the right to **prohibition of torture and inhuman treatment** and the **right to private and family life**<sup>72</sup>. With regard to prohibition of torture and inhuman treatment, the recent case law of the Constitutional Court consists of but sporadic cases in which a violation of this right due to inefficient investigations<sup>73</sup> or expulsion of foreign nationals<sup>74</sup> were found.

As noted, violation of the right to private and family life was found in a large number of cases involving the so-called missing persons. Activities during the war have resulted in a large number of

68 See, among others, decision no. AP-2907/16 of 10 May 2017.

69 See, among others, decision no. AP-130/04 of 2 December 2005.

70 See, among others, decision no. AP-288/03 of 17 December 2004.

71 See among others, decisions nos. AP-75/21 of 1 and 2 December 2022 and AP-1670/21 of 13 July 2023.

72 See, among others, decision no. AP-129/04 of 27 May 2005.

73 Decision no. AP-3360/20 of 16 December 2021.

74 Decision no. AP-2695/21 of 21 March 2024.

cases in which **violation of the right to home**<sup>75</sup> was found. The recent case law of the Constitutional Court consists of cases in which violations of the **right to private life** were found due to failure to strike a fair balance between competing rights, the right to freedom of expression and the right to reputation as part of the right to private life<sup>76</sup>.

The number of cases involving **freedom of expression** has risen over the years. In most cases the reasons behind the established violations of this right include absence of a necessary analysis of all the relevant factors under the circumstances of a given case, that is, the lack of “relevant and sufficient reasons” in ordinary courts’ decisions based on which one may infer that the interference with the freedom of expression was “necessary in a democratic society”<sup>77</sup>.

The purpose of the text above is to briefly illustrate and explain the statistics of violations of rights under the Constitution of Bosnia and Herzegovina and the European Convention. More detailed information and a somewhat greater picture can be drawn from the parts of this publication that describe the case law of the Constitutional Court in more detail; in particular, **a chart**<sup>78</sup> gives a summary of established violations per year and article of the Constitution and the European Convention.

## Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial In the Interests of morals, public order or national security In a democratic society, where the Interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary In the opinion of the court In special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed Innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
  - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
  - (b) to have adequate time and facilities for the preparation of his defence;
  - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
  - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
  - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

(Article 6 of the Convention for the protection of human rights and fundamental freedoms)

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

(Article II(3)(e) of the Constitution of Bosnia and Herzegovina)

<sup>75</sup> See, among others, decisions nos. AP-979/04 of 23 September 2005 and AP-1498/05 of 12 September 2006.

<sup>76</sup> See, among others, decision no. AP-4423/20 of 8 June 2022.

<sup>77</sup> See, among others, decisions nos. AP-2607/19 of 16 March 2021, AP-384/21 of 21 March 2024 and AP-270/21 of 13 July 2023.

<sup>78</sup> See the chart on p. 79.

# Constitutional Court of Bosnia and Herzegovina 1964–2024

Article of the BiH Constitution and/or the	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	Total
European Convention	0	0	0	0	0	0	0	0	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2
Right to return under Article II(5) of BiH Constitution	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2
Article IV(3)(f) of BiH Constitution – destructive of a vital national interest	0	0	0	0	4	0	0	0	4	2	3	0	2	1	3	3	6	2	6	3	8	7	0	4	3	4	12	6	83
Article VI(3)(a) and VI(3)(c) of BiH Constitution – compatibility with Constitution/EC	0	0	0	0	0	0	0	0	0	1	0	0	1	0	0	0	0	0	0	0	0	1	0	1	0	4	0	0	8
Article 2 of the European Convention and Article II(3)(a) of BiH Constitution – right to life	0	0	0	0	0	0	0	0	1	135	391	285	232	2	0	0	32	29	0	0	1	0	4	0	0	2	0	0	1114
Article 3 of the European Convention and Article II(3)(b) of BiH Constitution – prohibition of torture	0	0	0	0	0	0	0	0	0	1	10	2	2	8	8	2	19	21	19	28	29	21	18	15	23	9	12	21	268
Article 5 of the European Convention and Article II(3)(d) of BiH Constitution – right to liberty and security of person	0	0	0	7	8	12	10	27	364	349	637	494	127	153	201	463	234	662	582	1046	1133	1045	1444	918	320	721	798	91	11846
Article 6 of the European Convention and Article II(3)(e) of BiH Constitution – right to a fair trial	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	12	6	8	2	0	5	1	2	0	4	0	42
Article 7 of the European Convention – no punishment without law	0	0	0	7	6	4	0	2	11	141	395	288	235	4	3	4	35	30	0	1	3	5	3	3	9	9	9	2	1029
Article 8 of the European Convention and Article II(3)(f) of BiH Constitution – right to private and family life, home and correspondence	0	0	0	0	0	0	0	0	0	3	3	1	2	1	0	1	0	1	1	1	1	6	7	4	9	7	4	1	53
Article 10 of the European Convention and Article II(3)(h) of BiH Constitution – freedom of expression	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1	0	0	0	0	0	2
Article 11 of the European Convention and Article II(3)(i) of BiH Constitution – freedom of peaceful assembly and freedom of association	0	0	0	0	0	0	2	0	0	0	2	0	0	0	0	0	0	0	0	0	0	269	2	4	11	24	2	1	317
Article 13 of the European Convention – right to an effective legal remedy	0	0	0	0	0	0	0	4	1	0	0	1	0	1	0	0	0	1	0	0	1	0	2	3	1	2	2	0	19
Article 14 of the European Convention and Article II(4) of BiH Constitution – prohibition of discrimination	0	0	0	7	8	4	2	8	12	320	538	394	75	45	41	124	90	268	152	459	522	111	637	780	24	80	31	14	4746
Article 1 of Protocol No 1 to the European Convention and Article II(3)(k) of BiH Constitution – right to property	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	3	2	1	9	2	3	1	22
Article 2 of Protocol No. 4 to the European Convention and Article II(3)(m) of BiH Constitution – right to freedom of movement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Article 2 of Protocol No. 7 to the European Convention – right of appeal in criminal matters	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Article 1 of Protocol No. 6 to the European Convention – abolition of the death penalty	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	3	1	1	1	0	0	1	0	0	0	8
Article 4 of Protocol No. 7 to the European Convention – right not to be tried or punished twice	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	1	0	3
Article 1 of Protocol No. 12 to the European Convention – general prohibition of discrimination	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	1	0	3



## Cases involving “vital national interest of constituent peoples”

### Article IV(3)(f) of the Constitution of Bosnia and Herzegovina

#### Deblocking the Parliamentary Assembly of BiH

The Constitutional Court, among others, has an important jurisdiction in terms of deblocking the work of the Parliamentary Assembly of Bosnia and Herzegovina. Specifically, Article IV(3)(f) of the Constitution of Bosnia and Herzegovina defines the jurisdiction of the Constitutional Court with regard to “deblocking” the Parliamentary Assembly of Bosnia and Herzegovina. The role of the Constitutional Court, as the highest court in the country and guardian of the Constitution of Bosnia and Herzegovina (Article VI(3) of the Constitution of Bosnia and Herzegovina), is to contribute to deblocking of the work of the Parliamentary Assembly of Bosnia and Herzegovina by its decision on the merits when the Assembly is unable to overcome a problem by itself. **This is an expedited procedure since a prompt intervention of the Constitutional Court is necessary so that a legislative body could continue performing its role.** Adoption of a decision on the merits whether or not the decision is destructive of the vital interest of one people is very important in a situation when the State needs a law to regulate a particular field and the voting on that law is blocked by the objection raised regarding the vital interest of a people.<sup>79</sup> In this way, a kind of pre-emptive action by the Constitutional Court concerning the constitutionality of acts (laws) in parliamentary procedure in terms of elimination of “destructiveness to the vital interest” of one or more constituent peoples is ensured. In many ways this jurisdiction of the Constitutional Court represents an atypical form of activity of a constitutional court, as it effectively establishes a “close contact” between “constitutional” and “legislative” branch. At this stage the Constitutional Court does not assess the constitutionality of the law or some of its norms, only whether the dispute raised under the Constitution has the character of vital interest for any of the constituent peoples in Bosnia and Herzegovina.

The Constitution of Bosnia and Herzegovina itself does not contain a definition or closer identification of this constitutional notion. The absence of the definition of vital interest was criticised by the Venice Commission; the Commission noted in one of its opinions that it is true that case law of the Constitutional Court may provide a definition of the vital interest and reduce the risks inherent in the mechanism, but it seems inappropriate to leave such a task with major political implications to the Court alone without providing it with guidance in the text of the Constitution<sup>80</sup>. However, the Constitutional Court has boldly coped with its task and in its decisions defined the concept of “vital interest” on a case-by-case basis (by applying the functional criterion in each case<sup>81</sup>), interpreting and explaining the procedure applied thereto.

The Constitutional Court indicated in its case law that there are several factors shaping the perception of the notion of vital national interest of a constituent people. Considering that the notion of “vital interest” is a functional category, it cannot be viewed separately from the notion of “constituency of peoples” whose vital interests are protected under Article IV(3)(e) and (f) of the Constitution of Bosnia and Herzegovina. The Constitutional Court also indicated that the meaning of “vital interest” is partially interpreted by Article I(2) of the Constitution of Bosnia and Herzegovina, which provides that Bosnia and Herzegovina shall be a democratic state and, in connection therewith, the interest of the constituent peoples to participate in full capacity in the government system and in the activities of public authorities may be viewed as a vital interest. According to the Constitutional Court’s jurisprudence, effective participation of constituent peoples in the process of adoption of political decisions, in terms of prevention of absolute domination of one group over another, constitutes a vital interest of every constituent people.<sup>82</sup>

79 Decision no. U-8/04 of 25 June 2004, paragraph 20.

80 Venice Commission, Opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative, CDL-AD(2005)004, 11-12 March 2005, paragraph 32.

81 Decision no. U-2/04 of 28 May 2004, paragraph 31; and decision no. U-8/04 of 25 June 2004, paragraph 35.

82 Decision no. U-7/06 of 31 March 2006, paragraphs 33-37.

In its case law the Constitutional Court further indicated that, in accordance with the first sentence of Article VI(3) of the Constitution of Bosnia and Herzegovina, the Constitutional Court upholds the Constitution of Bosnia and Herzegovina and is limited thereof with regard to the functional interpretation. In that regard, in the consideration of any specific case the Constitutional Court shall apply, within the assigned constitutional framework, the values and principles essential to a free and democratic society that incorporates, *inter alia*, the inherent dignity of every person and accommodates a wide range of diversity in beliefs and respect for the cultural identity of a person or groups in the society as well as the confidence in social and political institutions that are promoting the participation of individuals and groups in the society. On the other hand, the protection of vital national interest must not imperil the State sovereignty and functionality, which is closely related to the neutral and essential notion of citizenship, as the criterion of affiliation to a “nation”. In other words, the protection of vital national interest must not lead to unnecessary disintegration of civil society as the indispensable element of modern statehood.<sup>83</sup>

The Constitutional Court adopted its first decision on the issue of vital national interest in 2004. In that decision the Constitutional Court noted, among other things, that the mechanism of protection of vital interests of one people is very important in states with multiethnic, multilingual, multireligious communities or communities which are typical in their differences. The Court also emphasised that each invocation of vital interest has for a consequence a stricter criterion for adoption of general acts, including a special condition of a majority of votes, and that this results in interruption of parliamentary procedures, which may have an adverse effect on the work of the legislative body and the ensuing functioning of the State. It further noted that the requirements of Article IV(3)(f) of the Constitution of Bosnia and Herzegovina must be explained and they must express serious controversies in opinions and doubts on violations of this constitutional mechanism, accompanied by an expression of conviction. Considering that this request was filed by a legislative body acting as a political authority, the Constitutional Court noted that such a request may be considered admissible if there is an objective interest for the resolution of the dispute. In other words, the applicant need not declare the subjective interest for the resolution of the dispute. In that regard, the Constitutional Court noted that it is not bound by the request itself as the general public interest outweighs the request itself.<sup>84</sup> In the case in question, the request sought a review of procedural regularity, i.e. determination of existence of constitutional requirements for the statement of the Bosniac Caucus that the Proposal of the Law Amending the Law on Refugees from Bosnia and Herzegovina and Displaced Persons in Bosnia and Herzegovina is destructive of the vital interest of the Bosniac people. The Constitutional Court noted that the request contained more reasons based on which it is argued that the amendments to the Proposal of the Law were destructive of the vital interest of the Bosniac people. The reasons refer to the important issue of exercise of property rights and return of refugees and displaced persons and eliminating the consequences of the ethnic cleansing. The request also pointed to a possible creation of legal uncertainty in this area. In view of the above, the Constitutional Court concluded that the request was sufficiently explained as to satisfy the admissibility requirement.<sup>85</sup> Two issues were examined on the merits a) existence of the vital interest of one or more constituent peoples and b) destructiveness to the vital interest of one more constituent people.<sup>86</sup> In this case, the Constitutional Court determined the existence of vital national interest and destructiveness to the vital national interest. However, in one case the Constitutional Court concluded that while a particular decision affected a vital national interest, it was not destructive of the vital national interest<sup>87</sup>, and in one decision in which the Constitutional Court found that a request did not concern a “decision” within the meaning of Article IV(3)(d) through (f) of the Constitution of Bosnia and Herzegovina, which has legal and constitutional consequences on the vital national interest of the constituent peoples and the review of which does not fall within the competence of the Constitutional Court.<sup>88</sup>

83 Ibid, paragraph 38.

84 Decision no. U-2/04, paragraph 18.

85 Ibid, paragraph 19.

86 Ibid, paragraph 28.

87 Among others, decision no. U-10/05 of 22 July 2005.

88 Decisions nos. U-9/08 of 8 July 2008 and U-19/13 of 27 September 2013.

## Separate opinions

The Constitutional Court decides by a majority of votes of all the judges. Consequently, each decision requires votes of minimum five out of nine judges (Article 42(4) of the Rules). A judge may not abstain from voting. Most of the decisions of the Constitutional Court have been adopted unanimously.

As “distinguished jurists of high moral standing” (the requirement definition from the Constitution of BiH), the judges, regardless of how they were elected, act in personal capacity as a generally accepted standard for the judicial branch.

The Constitutional Court is autonomous and independent in relation to other authorities and any external influence. Consequently, the judges individually are autonomous and independent in their work and the rights and duties of a judge are exercised in line with the Constitution and the Rules of the Constitutional Court.

The judges make a solemn declaration at the beginning of their term, undertaking that in the exercise of their duties as judges they would uphold the Constitution and laws of Bosnia and Herzegovina and that they would exercise their duties as judges conscientiously and impartially.

If a judge does not share the view of the majority, they have a right and a possibility to give a separate opinion.

According to Article 43 of the Rules of the Constitutional Court, disagreement with the majority view can be expressed in two ways:

- a written reasoned separate opinion, and
- a statement of dissent.

A separate opinion may concur with or dissent from the decision. It is attached to the minutes of the session and enclosed with the case file concerned; this shall be duly noted in the rendered decision or ruling. A separate opinion shall be annexed to the decision. The decision, together with the separate opinion, shall be published in the official gazettes and the publications of the Constitutional Court.

Giving a separate opinion or a bare statement of dissent is a judge’s right and possibility. A judge can also join the separate opinion of another judge.

The purpose of a separate opinion (in particular) and a bare statement of dissent is not to send out a message to the general, legal or academic community. Rather, a separate opinion is, primarily, an expression of assessment and need to make a contribution to the constitutional theory and practice through a particular case and in general; it is an affirmation of a judge’s individual opinion and integrity. Namely, the constitutional issues that are raised before the Constitutional Court are among the most complex legal issues (especially when it comes to cases involving abstract review of constitutionality) and the differences in opinions are often a consequence of a particular constitutional issue or even a constitutional norm. Therefore, a reasoned separate opinion may (and there are such cases in the books and in everyday practice of all constitutional courts) sooner or later have an impact on a broader understanding of certain categories or mechanisms of constitutional law or law in general and on occasion cause a change in case law (admittedly, the latter sometimes occurs long after the separate opinion was given). Accordingly, separate opinions should be respected not only as a current need to voice a different view and possible send a message (to anyone) but primarily as a confirmation of a judge’s personal and professional integrity and contribution to the development of constitutional practice and theory.

Almost all the judges of the Constitutional Court used the possibility of giving a separate opinion (concurring with or dissenting from the decision) or a bare statement of dissent.

The relevant statistics show that compared to the total number of decisions adopted in the post-Dayton period (48,352 decisions and 91,191 cases decided) as on 30 June 2024, the number of cases in which the judges gave a separate opinion or a statement of dissent is relatively small.

With regard to “U” cases (abstract review of constitutionality), one or more judges gave a separate opinion or a statement of dissent in 75 decisions. A total of 102 separate opinions were enclosed and 41 statements of dissent were given. Out of 31 judges who were/are judges of the Constitutional Court, 21 judges have given a separate opinion or a statement of dissent on at least one occasion (and some of them did that more than once).

With regard to “AP” cases (appellate jurisdiction), one or more judges gave a separate opinion or a statement of dissent in a total of 208 decisions. A total of 169 separate opinions were enclosed and 122 statements of dissent were given.

As some decisions cover more than one case, one should keep in mind that the number of cases for both categories may be somewhat higher.

(1) Any judge who has taken part in the consideration of the case shall be entitled to state his/her opinion, concurring with or dissenting from the decision, or give a bare statement of dissent or joining a separate opinion.

(2) Any judge shall have the right and obligation to present and explain his/her separate opinion in writing not later than 15 days after the edited decision has been sent to him/her.

(3) A separate opinion of a judge shall be attached to the minutes of the session and enclosed with the case-file concerned. This shall be duly noted in the rendered decision and the ruling.

(4) A separate opinion shall be annexed to the decision. The decision, together with the separate opinion, shall be published in the Official Gazettes and the Bulletin of the Constitutional Court.

(5) A decision shall not be remitted before a separate opinion has been submitted or before the time limit referred to in paragraph 2 of this Article has expired. If a separate opinion has not been submitted before the expiry of the time limit referred to in paragraph 2 of this Article, the decision shall be remitted, and the separate opinion submitted subsequently shall be enclosed with the case-file and shall make an integral part thereof.

(Article 43 of the Rules of the Constitutional Court of BiH)



# Enforcement of decisions of the Constitutional Court of Bosnia and Herzegovina

Decisions of the Constitutional Court  
shall be final and binding.

(Article VI(5) of the Constitution of BiH)

According to the explicit provision of Article VI(5) of the Constitution of Bosnia and Herzegovina, decisions of the Constitutional Court of Bosnia and Herzegovina (“the Constitutional Court”) shall be final and binding. Article 72 of the Rules of the Constitutional Court too stipulates that the decisions of the Constitutional Court are final and binding and that every physical and legal person is obligated to comply with them. All bodies are obligated to enforce the decisions of the Constitutional Court within their competences established by the Constitution and law. Every person who has a legal interest may seek enforcement of a decision of the Constitutional Court. Pursuant to Article 72(4) of its Rules, the Constitutional Court may specify the manner of and the deadline for the enforcement of its decisions and it is free in that regard; as a result, the orders of the Constitutional Court for enforcement will not be the same in all the cases.

The course of action taken by the Constitutional Court in a particular case depends, first, on the circumstances surrounding that case, the jurisdiction of the Constitutional Court in question, the nature of the unconstitutional act and the established unconstitutionality, as well as potential consequences that a decision of the Constitutional Court may produce. Based on the criteria of the orders given by the Constitutional Court in its decisions, there are several situations that are directly linked to enforcement of decisions of the Constitutional Court. The Constitutional Court may – and it does so in most of the cases involving abstract review of constitutionality – repeal (quash) an entire law or a provision thereof, without giving a specific order to the competent authority or stipulating a deadline for the enforcement. Next, the Constitutional Court may adopt a decision (which is declaratory in nature) finding that a particular provision or a decision by an ordinary court or an administrative body is incompatible with the Constitution and/or the European Convention, but it will not quash the contested act or give an order that those provisions be changed. Furthermore, the Constitutional Court may give a specific order and a deadline for enforcement to the competent authority, and it does so in most of the cases involving abstract review of constitutionality. On the other hand, in the procedure upon appeal in most cases, the Constitutional Court adopts a decision quashing a decision by an administrative body or an ordinary court and gives an order that a new decision be taken within a certain deadline or instructs a public authority that further legislative amendments are necessary. However, it is important to point out that these situations are not final but merely reflect the complexity of issues connected with enforcement of decisions of the Constitutional Court.

Starting from 2005, the Constitutional Court has been periodically reviewing reports on enforcement of its decisions. Within a deadline specified by the Constitutional Court, the body that has a duty to implement a decision of the Constitutional Court and is required to submit information about the measures taken with a view to implementing the decision as indicated therein. Before making a decision on the status of enforcement of a decision, after the expiration of the deadline for enforcement of the decision, the Constitutional Court obtains a statement on the measures taken from the body so ordered by the Constitutional Court. Accordingly, an assessment is given based on information about the measures taken with a view to implementing a decision of the Constitutional Court.

In the event of failure to enforce a decision or a delay in the enforcement or in giving information to the Constitutional Court about the measures taken, the Constitutional Court applies Article 72(6) of its Rules and issues a ruling finding that a decision of the Constitutional Court has not been enforced. It may determine in that ruling the manner in which the decision would be enforced. When adopting the ruling, the Constitutional Court, depending on the aspects of a particular case, may find a) that the decision has not been enforced, b) that the incompatible provisions of the law or bylaw cease to be in effect on the day following the date of publication of that decision in the *Official Gazette of Bosnia and Herzegovina*, and c) determine the manner of enforcement and application of the decision. In each of these cases, the Constitutional Court will communicate its ruling to the Prosecutor's Office of BiH for further action.

Bosnia and Herzegovina is among few countries in the world that stipulates criminal responsibility as a means of pressure in terms of enforcement of decisions of the Constitutional Court and other courts. Pursuant to Article 239 of the Criminal Code of Bosnia and Herzegovina, failure to enforce a decision of the Constitutional Court, the Court of BiH or the Human Rights Chamber constitutes a criminal offence. That said, a ruling finding that a decision of the Constitutional Court has not been enforced is communicated to the Prosecutor's Office of BiH as the competent institution. It is important to point out that according to amendments to the Criminal Code of Bosnia and Herzegovina (*Official Gazette of BiH*, 47/23) this offence is committed by an official person who "[...] fails to implement, enforce or otherwise fails to comply with a final and binding decision of the Constitutional Court of Bosnia and Herzegovina [...] or who prevents or otherwise interferes with the application, implementation or enforcement of such a decision[...]". Adoption of a ruling on non-enforcement and the inclusion of the Prosecutor's Office of BiH in the process of enforcement of decisions of the Constitutional Court represents an additional mechanism, a kind of "ultimate measure or sanction" to be undertaken with a view to implementing a decision of the Constitutional Court. In such a situation, one can argue that the Constitutional Court exhausted all the mechanisms for the enforcement of its decision and that in this way the formal competence and possibility of the Constitutional Court in connection with enforcement of a decision is delegated to the Prosecutor's Office of BiH.

If one takes into consideration the total number of decisions adopted since the establishment of the Constitutional Court and its operation under the current Constitution of BiH, the issue of enforcement of decisions of the Constitutional Court does not appear to be a major problem. However, that fact that does diminish this problem considering the type and content of non-enforced decisions and their impact on the legal system, respect for human rights and fundamental freedoms, social and even political processes and relations in Bosnia and Herzegovina. This problem will be particularly visible if decisions from particular fields have not been enforced for years. For example, in appellate jurisdiction cases one can observe systemic problems in connection with enforcement of decisions of the Constitutional Court involving length of courts proceedings, enforcement of final court decisions at the expense of the budget, old foreign currency savings, military apartments. When decisions of the Constitutional Court in those cases are not implemented, the European Court of Human Rights finds violations of human rights and fundamental freedoms and conducted the procedure of monitoring the implementation of its decisions, additionally pointing to the necessity of their implementation. On the other hand, in cases that belong to abstract review of constitutionality examples where decisions of the Constitutional Court were not implemented for many years include provisions of the Statute of the City of Mostar, the Law on the Sale of Apartments with Occupancy Right, the Election Law of Bosnia and Herzegovina, the laws on salaries and compensations of judges and prosecutors etc. Furthermore, there have been situations in which the authorities or ordinary courts disregarded the legal reasons of the Constitutional Court and adopted essentially the same regulations/decisions as the ones declared unconstitutional by the Constitutional Court. In that way, the decisions are essentially complied with and not implemented and one is knowingly and purposefully showing intent and creating a perception that is not difficult to recognise. Consequently, it can be argued that non-enforcement or untimely and/or inconsistent enforcement of decisions of the Constitutional Court indicates problems in the functioning of a legal system founded on the principle of rule of law. That problem has been identified as a systemic problem and

one of the conditions that Bosnia and Herzegovina needs to meet in the process of integration with the European Union, defined through 14 priorities in the European Commission Opinion on Bosnia and Herzegovina's application for membership of the European Union, is enforcement of decisions of the Constitutional Court.

However, it is important to point out that the Constitutional Court did not limit its role in monitoring the enforcement of its decisions to merely registering the decisions that have not been enforced and communicating those decisions to the Prosecutor's Office of BiH.

Through its operation and in the exercise of its jurisdiction, the Constitutional Court made efforts to be proactive, making sure to mitigate negative effects, if any, in connection with the non-enforcement of decisions of the Constitutional Court. In that context, in addition to a series of meetings organised to discuss this topic, the Constitutional Court organised a conference entitled *"Enforcement of decisions of the Constitutional Court of Bosnia and Herzegovina"* that took place on the Jahorina Mountain on 13-14 June 2023. Representatives of the legislative, judicial and executive branches took part at this conference. The conclusions give rise to a finding that a systemic approach is needed in Bosnia and Herzegovina to address this systemic problem with a clear concept of specific measures that should be taken in order to reduce and, if possible, eliminate the deliberate practice or practice derived from omissions, in other words, the phenomenon of non-enforcement of court decisions.

With a view to addressing the issue of non-enforcement of the decisions of the Constitutional Court, it is necessary to take the following steps:

1. All public authorities, civil society organisations and society as a whole must continue to work and act to promote and affirm the general legal culture and, notably the culture of the enforcement of court decisions. The Constitutional Court, in cooperation with other authorities and institutions, should continue to play a proactive role in monitoring the enforcement and enforcing its decisions.
2. The Constitutional Court should, where it is appropriate, consider the possibility of additional specification of the enforcement order given to the competent authorities in order to contribute to the acceleration of the procedure for enforcement of the decisions of the Constitutional Court.
3. Exceptionally, when the Constitutional Court declares a law unconstitutional and the public authority does not comply with the deadline for enforcement, and there is a possibility of irreparable damage or serious violations of human rights, the Constitutional Court should consider issuing provisional rulings as necessary transitional measures.
4. As individual measures, relevant authorities should do an analysis of specific obstacles to the enforcement of individual decisions of the Constitutional Court and actively undertake actions with the aim of drafting proposals of regulations that lead to the enforcement of decisions of the Constitutional Court.
5. As a general measure, it is necessary to implement more adequate mechanisms for the enforcement of Constitutional Court's decisions falling under abstract jurisdiction. This will include the responsibility for supervision and legal consequences for non-compliance with these requirements. This would significantly optimise the enforcement, prevent harmful consequences and significantly facilitate criminal prosecution due to non-enforcement of decisions of the Constitutional Court. In this connection, the adoption of legal arrangements that would prescribe these procedures in detail should be considered.
6. The prosecutorial authorities need to make additional efforts with the aim of clarifying the existing dilemmas about the prosecution of the criminal offence of non-enforcement of a decision of the Constitutional Court.

7. The following measures related to ordinary courts could contribute to the enforcement of decisions of the Constitutional Court:
  - a) adoption of technical and organisational measures (e.g. increase in the number of judges, development of new case management information systems etc.).
  - b) enactment of laws on the length of proceedings where they are not enacted. A legal arrangement implying a new trial potentially raised the issue of a “trial within a trial”. This may result in new violations of the right to a fair trial within a reasonable time.
  - c) reducing the burden of the ordinary courts.
  - d) all levels of public authorities should determine more precisely their obligation to pay compensations and, in connection therewith, increase their budgets for these purposes (including the amendment to procedural laws to speed up trials).

In conclusion, enforcement of decisions of the Constitutional Court is a challenge requiring coordinated efforts of all relevant institutions. While the current mechanisms provide a certain legal framework, systemic difficulties and inconsistencies are still present in practice. It is therefore necessary to find an adequate approach that includes procedures that are more precise, more efficient monitoring and a greater responsibility of all the parties involved in order to ensure efficient enforcement and compliance with decisions of the Constitutional Court. Only in this way is it possible to ensure the integrity of the constitutional system and respect for fundamental human rights, which prove to be key to stability and further progress of Bosnia and Herzegovina.



*Conference  
“Enforcement of  
Decisions of the  
Constitutional  
Court of Bosnia and  
Herzegovina”, Jahorina,  
June 2023*





# Contribution of the Constitutional Court to the protection of and respect for human rights and fundamental freedoms

The Constitutional Court, by taking corrective-mechanism action and developing practice founded on the standards from the European Convention for the Protection of Human Rights and Fundamental Freedoms (and Protocols thereto) and the case law of the European Court of Human Rights in Strasbourg, makes both direct and indirect impact on the respect for and protection of human rights and freedoms guaranteed under the European Convention. The reasons given in the decisions of the Constitutional Court carry weight with the courts. By protecting human rights in each individual case, with reference to the standards of the European Court that are also followed by the Constitutional Court, certain instructions and course of action in all the other cases are given. Besides, the minimum rights guaranteed under the European Convention (directly incorporated in the Constitution of Bosnia and Herzegovina) is the threshold and the respect for and protection of those rights is of great importance.

By nurturing judicial activism, carrying out a principled and bold search for and support of normative capacity and exploring the actual range and possible meaning of the constitutional text, the Constitutional Court has exercised its jurisdictions, role and mission responsibly. The totality of the cases in which the Constitutional Court addressed protection of human rights and fundamental freedoms makes a real contribution of the Constitutional Court to the protection and promotion of the rule of law in Bosnia and Herzegovina and the text below is but a small illustration of that contribution.

## Length of proceedings as a systemic problem in Bosnia and Herzegovina – response by the Constitutional Court of Bosnia and Herzegovina

There are so many examples of drastic violations of the right to a fair trial within a reasonable time in the case law of the Constitutional Court. By way of illustration, a violation of this right was found in one case because the criminal proceeding against the appellant lasted more than 17 years<sup>89</sup>. In a case involving the determination of the right of ownership/co-ownership over inherited real estate, the proceeding lasted for 17 years in total, of which *ratione temporis* 16 years and three months under the competence of the Constitutional Court<sup>90</sup>. The Constitutional Court decided a case where the procedure for compensation of damage commenced in 1969 and was finalised at the end of 2011 (42 years)<sup>91</sup>.

Due to the fact that many proceedings before ordinary courts lasted more than a decade, the Constitutional Court noted in a 2010 decision<sup>92</sup> that protection against unreasonable length of proceedings before the ordinary courts in the legal system of Bosnia and Herzegovina has not been ensured. In view of the situation before the ordinary courts and the length of proceedings that often cross the “reasonable time” boundaries, the Constitutional Court noted in this case that the decision is to be communicated to all the relevant authorities on the territory of Bosnia and Herzegovina.

89 Decision no. AP-6162/18 of 25 June 2019.

90 Decision no. AP-1774/12 of 17 June 2015.

91 Decision no. AP-579/12 of 27 November 2015.

92 Decision no. AP-575/07 of 30 January 2010.

In that regard, the Constitutional Court referred to Article II(6) of the Constitution of Bosnia and Herzegovina, stipulating that *Bosnia and Herzegovina, and all courts, agencies, governmental organs, and instrumentalities operated by or within the Entities, shall apply and conform to the human rights and fundamental freedoms referred to in paragraph 2*. The decision was communicated to all the relevant authorities at all levels on the territory of Bosnia and Herzegovina for the purpose of taking appropriate steps in connection with protection and provision of an effective legal remedy concerning unreasonable length of proceedings before the ordinary courts in the national system of Bosnia and Herzegovina. However, the issue remained unresolved. The Constitutional Court noted the following in a 2016 decision<sup>93</sup>: *The problems underlying a violation of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention are of wide scope and of complex nature. They accordingly require implementation of extensive and complex measures, preferably of legislative or administrative character, that would include different bodies at State, Entity and the level of the Brčko District of Bosnia and Herzegovina. In this regard, the Constitutional Court reiterates that for a decade the decisions of the Constitutional Court finding drastic violations of the right to a decision within a reasonable time are also communicated to the High Judicial and Prosecutorial Council of Bosnia and Herzegovina. On that note, the Constitutional Court considers that one needs to appreciate the efforts of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina as an independent and autonomous body tasked with ensuring an independent, impartial and professional judiciary and promoting the efficiency of the judiciary in Bosnia and Herzegovina. Nevertheless, in view of its powers and competences defined under the Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina [...], the Constitutional Court considers that it is necessary that the High Judicial and Prosecutorial Council of Bosnia and Herzegovina takes further measures to eliminate the flaws of the judicial system in Bosnia and Herzegovina with regard to compliance with the requirements for a reasonable time frame within the scope of the constitutional right to a fair trial. The Constitutional Court has therefore decided to communicate this decision to the High Judicial and Prosecutorial Council of Bosnia and Herzegovina so that the latter can take measures from within its competence.*

Two years after this decision was adopted, the Constitutional Court adopted a decision<sup>94</sup> in which it noted that the High Judicial and Prosecutorial Council failed to inform the Constitutional Court about taking any measure in connection with this issue. The Court further noted that the cases of this type point to a serious issue of non-compliance with the deadlines for action or non-compliance with other procedural rules prescribed by laws that, if applied consistently, would undoubtedly have a positive impact on the overall length of proceedings (e.g. deadlines for submitting a lawsuit for comments thereon or scheduling a preliminary and main hearing or situations when a preliminary hearing is postponed several times despite the fact that there is no foundation for that in civil procedure codes etc.). As noted by the Constitutional Court, all this points to omissions in effective trial management, which is something that the Constitutional Court cannot resolve as part of its appellate jurisdiction. The Constitutional Court concluded in this as well as a series of other decisions it adopted on the same day<sup>95</sup> that notwithstanding the measures being taken to address excessive duration of court proceedings **excessive duration of court proceedings is the consequence of systemic flaws in the organisation of the judiciary and effective exercise of competences of various levels of public government in this field, resulting in a systemic violation of this right before the ordinary courts**. The Constitutional Court ordered that appropriate measures be taken view a view to enforcing these decisions. In addition, the Constitutional Court noted the following: *due to the fact that the competent public authorities have not yet found an adequate way to address this obvious problem to which the Constitutional Court has indicated over the years, due to limited constitutional possibility for the Constitutional Court to determine concrete acceleration measures in each specific case and due to constant increase of the number of appeals relating to length of court*

93 Decision no. AP-303/16 of 16 March 2016.

94 Decision no. AP-4101/15 of 10 May 2018.

95 See decisions nos. AP-3283/16, AP-2908/16, AP-2341/15, AP-1724/16, AP-2907/16, AP-1680/16, AP-207/16, AP-2395/15, AP-1918/16, AP-1062/15, AP-1620/16.

*proceedings, the effectiveness of appeal as the only legal remedy available to the appellants for this issue is seriously called into question in terms of actual and efficient termination of court proceedings so that the requirements of a trial within a reasonable time could be essentially met.* Ultimately, the Constitutional Court found a violation of the right to an effective legal remedy under Article 13 of the European Convention in connection with the right to a trial within a reasonable time under Article 6(1) of the European Convention.

In view of these decisions, the Constitutional Court adopted a “pilot” decision in November 2018 rejecting the appeals lodged over non-compliance with the standard of adoption of a decision within a reasonable time by the ordinary courts in ongoing proceedings because this issue had been previously decided by the Constitutional Court<sup>96</sup>. The Constitutional Court emphasised in this decision that it was still facing an exceptionally large number of requests to examine new cases of the same type (the Constitutional Court received more than 1,700 new cases of this type in 2018). The Court further noted that this clearly showed that the measures taken have not yet yielded full effective results, in particular an effective legal remedy to which the Constitutional Court pointed in its decisions has not been established, considering that the appellate jurisdiction of the Constitutional Court constitutes subsidiary protection of human rights in cases where all the other options envisaged by appropriate regulations have been exhausted. In the Constitutional Court’s view, this kind of situation makes it difficult for the ordinary courts to implement the adopted plans in an efficient manner and generates new cases before the Constitutional Court. The Constitutional Court further noted that re-occurrence of similar cases before the Constitutional Court on a large scale, after the Constitutional Court adopted decisions (particularly the referenced pilot/principled decisions) containing indications of general measures that need to be taken in order to avoid future violations, generally point to the failure to establish an effective legal remedy

## ZAKON O ZAŠTITI PRAVA NA SUĐENJE U RAZUMNOM ROKU

### POGLAVLJE I. OSNOVNE ODREDBE

#### Predmet zakona Član 1.

Ovim zakonom uređuje se zaštita prava na suđenje u razumnom roku, kao i pravo na pravično zadovoljenje zbog povrede prava na suđenje u razumnom roku, koje se ostvaruje u sudskom postupku na način i pod uvjetima propisanim ovim zakonom.

#### Pravo na sudsku zaštitu Član 2.

(1) Pravo na sudsku zaštitu zbog povrede prava na suđenje u razumnom roku ima svako ko smatra da nije u razumnom roku odlučeno o njegovim građanskim pravima i obavezama ili krivičnoj optužbi protiv njega.

(2) Pravo iz stava 1. ovog člana ima i oštećeni u krivičnom postupku i oštećeni kao tužilac, ako su istakli imovinskoopravni zahtjev.

(3) Povreda prava na suđenje u razumnom roku utvrđuje se u skladu sa praksom Evropskog suda za ljudska prava u Strazburu.

#### Diskriminacija i rodna ravnopravnost Član 3.

Pojedini izrazi upotrijebljeni u ovom zakonu za označavanje muškog ili ženskog roda podrazumijevaju oba pola.

### POGLAVLJE II.

#### PRAVNA SREDSTVA I KRITERIJI ZA OCJENU TRAJANJA SUĐENJA

##### Pravna sredstva za zaštitu prava na suđenje u razumnom roku Član 4.

Pravna sredstva za zaštitu prava na suđenje u razumnom roku su:

- 1) zahtjev za ubrzanje postupka,
- 2) tužba za utvrđivanje povrede prava na suđenje u razumnom roku i na pravično zadovoljenje zbog povrede prava na suđenje u razumnom roku.

##### Kriteriji za ocjenu trajanja suđenja u razumnom roku i određivanje novčanog obeštećenja Član 5.

U postupku odlučivanja o pravnim sredstvima iz člana 4. ovog zakona uzimaju se u obzir sljedeći kriteriji:

- 1) složenost predmeta u činjeničnom i pravnom smislu,
- 2) ponašanje suda i drugih republičkih organa uprave, organa jedinica lokalne samouprave, javnih službi i drugih nosilaca javnih ovlaštenja,
- 3) ponašanje podnosioca pravnog sredstva,
- 4) značaj predmeta za podnosioca pravnog sredstva.

### POGLAVLJE III.

#### NADLEŽNOST I ZAHTJEV ZA UBRZANJE POSTUPKA

##### Nadležnost za odlučivanje Član 6.

(1) Zahtjev za ubrzanje postupka podnosi se sudu pred kojim se vodi postupak.

(2) O zahtjevu iz stava 1. ovog člana odlučuje predsjednik suda, a ako se radi o predmetu u kojem postupka predsjednik suda, o zahtjevu za ubrzanje postupka odlučuje zamjenik predsjednika suda.

<sup>96</sup> Decision no. AP-1356/17 of 6 November 2018.

at the domestic level. The system of protection of human rights set up by the appellate jurisdiction of the Constitutional Court is weakened in this way, because this court is burdened by an excessive number of appeals lodged over issues that should be resolved efficiently by another legal remedy. Lastly, the Constitutional Court concluded that it would serve no purpose to continue deciding in new individual cases of this kind and ordering the ordinary courts to act with urgency in those cases as this would create an obligation on their part to act beyond the mentioned case management plans, generate new proceedings before the Constitutional Court and other courts and in general would not lead to an effective protection of human rights or elimination of consequences of violations thereof. The Constitutional Court considered that it was necessary to allow an additional one-year deadline to the courts for a full and effective implementation of systemic measures that are being or will be undertaken and until this deadline expired the Constitutional Court would not be ruling on appeals raising the issue of lengthiness of ongoing court proceedings in Bosnia and Herzegovina.

However, it is important to note that the Constitutional Court, within the scope of its appellate jurisdiction, continued ruling on excessive length of enforcement proceedings before the courts and compliance with the right to a fair trial within a reasonable time in the cases finalised before the ordinary courts. The previously mentioned deadline that the Constitutional Court gave to the public authorities for undertaking system measures in the pilot decision expired. The Constitutional Court revisited the length of ongoing proceedings on the merits. Specifically, in a number of decisions adopted in this year the Constitutional Court noted that it has already found a violation of the right to a trial within a reasonable time in a series of its decisions on matters similar to the ones raised in the appeals concerned<sup>97</sup>. Furthermore, the Constitutional Court reiterated that there is a systemic problem with regard to deciding cases within a reasonable time before the courts in Bosnia and Herzegovina resulting from systemic flaws in the organisation of the judiciary and effective exercise of competences of different levels of public government in this field, for which there is no effective legal remedy.

It is important to note that a Law on the Protection of the Right to a Trial within a Reasonable Time came into force in the Republika Srpska on 1 January 2021<sup>98</sup>. In that regard, in March 2021 the Constitutional Court adopted a decision rejecting an appeal lodged for failure to issue a decision within a reasonable time in a proceeding before an ordinary in the Republika Srpska on the grounds that domestic legal remedies were not exhausted. The Constitutional Court held that the Law on the Protection of the Right to a Trial within a Reasonable Time in the Republika Srpska constituted an effective legal remedy that the appellants, in line with the principle of subsidiarity, needed to exhaust prior to lodging an appeal with the Constitutional Court. In this way, the public authority would be given an opportunity to remedy the violations by applying the statutory modality adopted as part of fulfilment of orders from previous decisions that found a systemic problem in the organisation of the judiciary, that problem resulting in court proceedings that did not satisfy the reasonable time requirements.<sup>99</sup>

Law on the Protection of the Right to a Trial within a Reasonable Time was also adopted by the Brčko District of Bosnia and Herzegovina. This law entered into force on 6 March 2021.

The Parliamentary Assembly of BiH enacted a Law on the Protection of the Right to a Trial within a Reasonable Time before the Court of BiH on 7 June 2022.<sup>100</sup>

<sup>97</sup> See, among others, decisions nos. AP-4499/22 of 15 February 2024 and AP-2232/22 of 18 January 2024.

<sup>98</sup> *Official Gazette of the RS*, 99/20.

<sup>99</sup> Decision no. AP-148/21 of 16 March 2021.

<sup>100</sup> *Official Gazette of BiH*, 40/22, 21 June 2022.



## Detention and prohibiting measures

Quite a number of cases falling within the appellate jurisdiction of the Constitutional Court raised the issue of the right to liberty and security of person, involving situations where the appellants' detention was ordered or continued as a result of criminal proceedings (with the appellants being *de facto* in detention). It is very important to highlight this point as the protection of the right to liberty and security of person is activated once a person is deprived of liberty, i.e. when they are in detention<sup>101</sup>, and it lasts until they are released.

The underlying purpose of Article 5 of the European Convention is to provide protection against unlawful or arbitrary detention. *Everyone has the right to liberty* – the opening line of Article 5 of the European Convention – clearly points to a general rule that it applies to every person. However, Article 5 of the European Convention envisages situations where deprivation of liberty is allowed, one of them being “the lawful arrest or detention of a person”.

The notion of “lawful” means compliance with a procedure that must be prescribed by national law, and national law must meet the quality required by the European Convention. Departure from a procedure prescribed by national law may result in a violation. According to the case law of the Constitutional Court, non-compliance with statutory deadlines by the ordinary courts when ordering or continuing detention resulted in an established violation<sup>102</sup>. Even if a law does not clearly stipulate a procedure or a specific deadline, the procedure and deadlines must be interpreted and applied in line with the standards of the European Court or may otherwise lead to a violation of the right to liberty and security of person<sup>103</sup>.

The most frequent arguments made by the appellants in these cases include (1) where there is a reasonable suspicion and/or evidence that corroborate it, and (2) whether clear and concrete reasons were given in support of detention, i.e. are there circumstances indicating existence of special grounds for detention. The case law of the Constitutional Court manifestly shows that in a majority of cases the arguments provided in the decisions ordering/continuing detention constitute sufficient reasons that satisfy the “reasonable suspicion” standard as required by national law, i.e. there are facts and information satisfying an objective observer that the person in question may have committed the criminal offence charged, in line with the standards of the European Convention. According to the case law of the European Court (which the Constitutional Court follows), in most cases the issue of lawfulness of evidence on which an ordinary court bases the existence of reasonable suspicion is an issue discussed at a trial (if the case reaches that stage) because in its decisions the court cites evidence pointing to the existence of reasonable suspicion. Nevertheless, the Constitutional Court found a violation of the appellant's right to liberty and security of person because in the detention decision the court did not give sufficient reasons that are clearly connected to the act of perpetration of the criminal offence charged and because the contested detention decision was missing reasons concerning the admissibility of evidence on which the reasonable suspicion is based<sup>104</sup>.

The Constitutional Court found a violation with regard to special grounds for detention more often. Special grounds for detention require courts to assess special circumstances in each case. Neither national law nor the European Convention lists the special circumstances that need to be present for detention to be ordered or continued on the grounds of risk of flight, risk of re-offending, risk of witness or evidence tampering or risk of public order disturbance. However, the case law has indicated that some circumstances may be of relevance to and have bearing on a decision on detention and they are assessed on a case-by-case basis. The key point is that a

101 Decision no. AP-1375/19 of 19 September 2019.

102 Decision no. AP-1520/23 of 18 January 2024.

103 Decisions nos. AP-3228/22 of 23 March 2023, AP-1037/23 of 30 November 2023.

104 See decision no. AP-533/21 of 23 June 2021.

decision on detention must contain a clear explanation, namely reasons supporting the existence of special circumstances justifying ordering or continuation of detention. Circumstances supporting ordering or continuation of detention in a particular case must be cited. Otherwise, if a case did not contain sufficiently clear and concrete reasons concerning special grounds for detention, the Constitutional Court would find a violation. In particular, reasons pertaining to the risk of disturbing public order/security were insufficient<sup>105</sup>. However, insufficient reasons or omission on the part of courts to cite concrete reasons and circumstances justifying detention included other grounds as well, e.g. existence of only “dual citizenship” as a risk of flight<sup>106</sup> or a court’s finding that the appellant demonstrated persistence and determination in the commission of criminal acts, in the absence of any evidence or at least *indicia* suggesting a justified fear that the appellant is planning and undertaking activities aimed at continuation of criminal acts<sup>107</sup>.

The issue that the appellants often raise (and is very important from the aspect of protection of the right afforded by Article 5 of the European Convention) is the issue of duration of detention, namely the repetition of previous reasons that were indisputably justified at the outset. Again, a court’s explanation of the circumstances surrounding a particular case is crucial. What is important in this regard is that the court acts with due diligence, failing which can result in a violation<sup>108</sup>. The reason for this is that the courts conduct and organise proceedings and, regardless of the complexity of the proceedings, the scope of the indictment and the number of persons participating in the proceedings, the person in detention should not “suffer” the consequences of one’s organisation of work on the case in question.

The Constitutional Court reminds of the legally prescribed obligation of the competent authorities, to which the European Court of Human Rights points in its case law as well, that when deciding on the measures to be applied in order to ensure the presence of the suspect/accused, they should be cautious not to apply a more severe measure if the same purpose can be achieved with a milder measure. Therefore, whenever possible, a prohibiting measure should be imposed instead of detention. However, certain questions have arisen concerning the imposed prohibiting measures. First, the appellants before the Constitutional Court did not know which of their rights was affected by the imposed measure. The Constitutional Court, as the “master of characterization” in law determined based on the presented facts which of their respective rights were affected. Most often, the suspects/accused persons - appellants confused the right to liberty and security of person with the right to freedom of movement. In its case law, the Constitutional Court pointed out the essential difference between these two rights<sup>109</sup>.

The fact that prohibiting measures are generally milder than detention does not mean that they should not be applied with caution, and only when necessary. Prohibiting measures most often affect the right to freedom of movement, but may raise the issue of the right to property, the right to private life, or the right to an effective legal remedy in connection with some of the Convention rights. The Constitutional Court concluded that sufficient reasons were not given in order to make a conclusion that there is a “reasonable suspicion” that the appellant had committed the criminal offense for which he was accused (which is a prerequisite for imposing a detention measure) and then a prohibiting measure. It is because in the ruling, which imposed the prohibiting measure, there is a lack of reasons in connection with the evidence on which the court based the reasonable suspicion and because the evidence and the appellant’s actions were not connected.<sup>110</sup> Moreover, if the law requires a review of the prohibition measures, as is the case with the domestic law, the failure to act according to the legal provisions, i.e. to periodically examine the justification of the

105 See decision no. AP-1017/23 of 21 March 2024.

106 See decision no. AP-4920/16 of 15 February 2017.

107 See decision no. AP-4873/18 of 10 January 2019.

108 See decisions nos. AP-124/19 of 11 June 2019 and AP-534/21 of 21 April 2021.

109 See decision no. AP-2788/20 of 27 November 2020.

110 See decision no. AP-3836/21 of 16 December 2021.

measure, leads to the violation of the rights that are specifically affected by the imposed prohibiting measure (e.g. right to freedom of movement<sup>111</sup> or right of access court or right to property<sup>112</sup>). This is because the legal provisions lead to a conclusion that, while the law stipulates that a prohibiting measure can last as long as there is a need for it, it does not exclude or limit the possibility of their revoking when the need for it ceases.

The issue of the legality of the imposed prohibiting measures was raised in the case where the court imposed a measure on the appellant prohibiting him from leaving his place of residence and prohibiting him from travelling outside Bosnia and Herzegovina, and the appellant claimed that there was no basis for imposing that measure, because during the proceedings it was never established that there was a risk of his escape. The Constitutional Court concluded that the court did not find, neither when determining or extending the detention nor when imposing the prohibiting measure, that there were circumstances indicating that the appellant could escape or go abroad. Moreover, the appellant was not found to be a flight risk, which is why the imposed measure did not meet the standard of “lawfulness” that is necessary for imposing such measures<sup>113</sup>.

The most frequently asked question raised before the Constitutional Court is the question of the proportionality of the imposed measures, that is, their duration and the reasons given that justify their duration. In this regard, the Constitutional Court pointed out that duration of prohibiting measures is determined by law, whereas proportionality is assessed taking into account the circumstances of each specific case. The Constitutional Court noted that a reasonable suspicion is *a conditio sine qua non* for determining or extending the prohibiting measures, as is the case with determining and extending the detention. However, this does not suffice after a while and it must be assessed whether there are relevant and sufficient reasons for prohibiting measures, which is precisely what the mandatory two-month control of justification of those measures is about. When it was not possible to reach a conclusion from the reasons of the challenged decisions that during the prohibiting measures there were circumstances that made it impossible to conduct a criminal investigation or that there were insurmountable obstacles that made it impossible to expose possible accomplices and accessories and potential witnesses (or where there were difficulties and irremovable obstacles in the process of collecting material evidence), the Constitutional Court concluded that it was a formal repetition of reasons, without a substantial assessment of those reasons.<sup>114</sup>

As regards the conclusion about formal repetition of reasons, the Constitutional Court brought it into connection with the fact that no appropriate measures were taken to start the trial. Circumstances that initially represented a strong basis for justifying the restriction of the appellant's right to freedom of movement, and which are reiterated during the proceedings, must be examined, considered and reasoned by the courts, because the same circumstances lose their weight and strength over time and become insufficient to limit the rights of individuals<sup>115</sup>. The appellant's rights<sup>116</sup> are violated in a situation where the court fails to explain why it has been justifying the prohibiting measures for years with the same reasons, and at the same time does not take appropriate actions to start the trial and end the proceedings. Therefore, the concretization of the reasons justifying the application of the imposed measure and justifying its duration must also be contained in the reasons of the court decision and must justify the goal in pursuance of which the measure was imposed. Otherwise, it leads to disproportionality and violation of basic human rights.<sup>117</sup>

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111 See decision no. AP-120/23 of 13 July 2023.

112 See decision no. AP-1003/17 of 19 April 2017.

113 See decision no. AP-1539/23 of 21 March 2024.

114 See decision no. AP-120/23 of 13 July 2023.

115 See decision no. AP-1633/23 of 21 March 2024.

116 See decision no. AP-1633/23 of 21 March 2024.

117 See decision no. AP-6728/18 of 10 April 2019.

## Non-discrimination

The enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in Annex I to this Constitution shall be secured to all persons in Bosnia and Herzegovina without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

(Article II(4) of the Constitution of BiH)

One of the important areas in which the Constitutional Court made a significant contribution is the protection of the right to non-discrimination. We can observe this contribution of the Constitutional Court from the beginning of the work of the Constitutional Court in accordance with the currently applicable Constitution of Bosnia and Herzegovina, because it was only after its entry into force that the protection of human rights and fundamental freedoms was placed in the central part of the constitutional order. For this reason, a conclusion follows that the Constitutional Court, given its different cases and decisions, was committed to protecting human rights and fundamental freedoms of every individual, regardless of any of his/her personal attributes or characteristics.

When deciding the cases from appellate jurisdiction in which the issue of violation of the right to non-discrimination was raised, the Constitutional Court followed the case law of the European Court of Human Rights in its entirety. Thus, it ensured the highest level of protection of that right in Bosnia and Herzegovina and at the same time laid the foundations for the application of non-discrimination standards for all citizens in proceedings before ordinary courts or administrative bodies. Application of these standards was the same regardless of whether the violation of this right was established based on Article II(4) of the Constitution of Bosnia and Herzegovina, Article 14 of the European Convention in conjunction with some other Convention right, or whether the violation of the general prohibition of discrimination under Article 1 of Protocol No. 12 to the European Convention was established.

In the first decisions it adopted, the Constitutional Court dealt with the issue of discrimination in the field of labour relations. In those decisions, the court emphasized that non-discrimination is a central part of the labour law and that it refers both to the exercise of the right to admission to public service under general and equal conditions and to the exercise of individual rights arising from employment relationship on equal grounds.<sup>118</sup> In this connection, it is important to mention the cases in which the violation of the right to non-discrimination was established in connection with the application of Article 143 of the Labour Law of the Federation of Bosnia and Herzegovina. As a reminder, that provision referred to employees who, mostly as a result of the state of war, found themselves in a situation where they were laid off by their employers on the day the law entered into force.<sup>119</sup> The Constitutional Court pointed out that these provisions could have an impact on members of different ethnic groups. According to the position of the Constitutional Court, in difficult economic times, a law may have a justified goal of temporarily placing employees on lay-off. However, it was emphasized that this will not be the case if the employees are temporarily laid-off or their employment is terminated based on the discretion of the employer, or if it is done arbitrarily, and especially if it is done on discriminatory grounds.

In addition, the Constitutional Court concluded that there was a violation of the right to non-discrimination in connection with the right to a fair trial, where administrative bodies and ordinary

<sup>118</sup> U-64/01 of 26 September 2003.

<sup>119</sup> U-38/02 of 19 December 2003 and AP-1093/07 of 25 September 2009.



courts in identical cases made different decisions in relation to the appellants, without providing reasonable justification for such differential treatment. It follows from case law that such a position is taken in case where the appellant, knowing the previous case law of the court, addressed the court expecting it to grant his claim, but his claim was dismissed or where, by the decisions of the court and the administrative body, he was placed

in a legally insecure position, different from the position of other persons in the same situation who bought their apartments in an identical way.<sup>120</sup> Thus, the Constitutional Court also pointed to the importance of complying with the principle of legal certainty, which is an integral element of the principle of the rule of law, and emphasized the need for ordinary courts and administrative bodies to consistently apply law regulations and not prevent appellants from exercising rights that others in the same situation have exercised in accordance with the same regulations.

In a large number of decisions, the Constitutional Court clearly pointed to the inadmissibility of discrimination arising from the application of the Law on salaries and other remuneration of judges and prosecutors, and professional staff employed in judicial institutions. Namely, for many years these budget users were not entitled to compensation for meals, travel expenses, separate living and accommodation allowance during work, nor were they entitled to compensation for the time being on call/standby<sup>121</sup>. In cases where these issues were raised, regardless of whether the Constitutional Court was deciding in the procedure of appellate jurisdiction or in the procedure of abstract review of constitutionality, the Constitutional Court pointed out that failing to grant the right to mentioned compensations constituted discrimination since the constitutional principle of equality of arms under Article II(4) of the Constitution of Bosnia and Herzegovina has been violated in that way. The Court also emphasized that there is a need to provide them with these compensations in order to ensure compliance with the principle of independence of judges and prosecutors and the principle of appropriate territorial and ethnic representation of judges and prosecutors in judicial institutions. Furthermore, in one of the recent cases, the court pointed to the existence of discrimination against professional advisors in the Supreme Court of the FBiH, who were not granted the right for their basic monthly salary to be adjusted for a percentage increase of the average monthly net salary in Bosnia and Herzegovina, as was the case with professional staff in other judicial institutions<sup>122</sup>. All these cases, viewed in their totality, pointed to the need for amendments to the laws and changes of the case law, and they ultimately led to the granting of these rights to holders of judicial offices and professional staff.

The Constitutional Court had the opportunity to deal with the issue of compliance with this right where the appellant's employment ended due to the fact that he had fulfilled the condition of 40 years of pensionable service, but at the same time he could not exercise the right to a pension due to his years of life as a condition prescribed by the provisions of the Law on Pension and Disability Insurance.<sup>123</sup> In that case, the Constitutional Court established that the principle of prohibition of discrimination in connection with the right to property was violated because, due to the inconsistency

## Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

(Article 14 of the European Convention on Human Rights)

<sup>120</sup> AP-98/03 of 27 October 200 and AP-534/06 of 5 June 2007.

<sup>121</sup> U-7/12 of 31 January 2013, U-29/13 of 28 March 2014, AP-2985/19 of 8 July 2021, U-7/21 of 23 September 2021, AP-1312/20 of 12 January 2022 and U-22/22 of 23 March 2023.

<sup>122</sup> U-12/23 of 28 September 2023.

<sup>123</sup> AP-598/17 of 10 April 2019.

of the relevant legal regulations (the Labour Law and the Law on Pension and Disability Insurance) in connection with the fulfilment of years of life condition in order to be able to acquire the right to a pension, the appellant was faced with a situation where he was treated differently compared to all other persons who, after reaching 40 years of pensionable service, have been granted the right to a pension. At the same time, the Constitutional Court pointed out that the responsibility for such a situation lies with the legislator that, when passing the relevant laws, failed to harmonize the conditions for termination of the employment contract upon the completion of 40 years of pensionable service and the right to an old-age pension.

The issue of equating common-law union with matrimonial union with regards to all rights and obligations, including property rights, was another legal issue where the Constitutional Court found a violation of the right to non-discrimination in conjunction with the right to property. Namely, the Constitutional Court concluded that the refusal of administrative bodies to recognize the right to a family pension for non-marital partners<sup>124</sup>, or the refusal of the courts to recognize the right of a non-marital partner to participate in the probate process as a heir of the first line of succession, led to a violation of the right to prohibition of discrimination.<sup>125</sup> In its decisions, the Constitutional Court clearly indicated that it is necessary to comply with the provisions of the new family laws that matrimonial union and common-law union are equal, which was crucial for strengthening the protection of the rights of cohabiting partners and preventing discrimination based on marital status.

In several cases, the Constitutional Court emphasized the necessity of applying the principle of non-discrimination in connection with the exercise of a woman's right to compensation during periods of absence from work due to pregnancy, childbirth and childcare. In this regard, although it was a case relating to the abstract review of constitutionality, it is important to point out that the Constitutional Court found that Article 35 of the Law on Salaries and Remunerations in the Institutions of Bosnia and Herzegovina was discriminatory. The female employees from two different entities working in the institutions of Bosnia and Herzegovina were discriminated against concerning the amount of compensation paid for the duration of maternity leave.<sup>126</sup> In several cases from the appellate jurisdiction, the court found a violation of the right to non-discrimination of foreign nationals, where administrative bodies and ordinary courts denied their right to be paid salaries during absence from work due to pregnancy, childbirth and childcare<sup>127</sup>. While these law provisions were amended in the meantime, this conduct of administrative bodies and ordinary courts refusing to recognize that right based on earlier regulations created a problem that was not only related to the issue of social policy, but also to the issue of human rights and their protection, i.e. human rights of a vulnerable category of the population – pregnant women and women who have given birth.

The necessity of applying anti-discrimination standards in connection with the right of access to court have arisen in a case where ordinary courts dismissed the appellant's lawsuit for divorce as inadmissible. It was because at the time of filing the lawsuit, the child of the appellant and the defendant had not reached the age of two years, which was the condition for filing the lawsuit prescribed by the then Article 43 of the FBiH Family Law<sup>128</sup>. The Constitutional Court concluded that this provision led to a different treatment of men compared to women, i.e. discrimination based on gender, in relation to their right of access to court, and that there was no objective and reasonable justification for such different treatment. What is characteristic for this decision adopted in the proceedings conducted upon the appeal is the fact that the Constitutional Court submitted it to

124 AP-4077/16 of 11 October 2018 and AP-2891/20 of 6 April 2022.

125 AP-4207/13 of 30 September 2016 and AP-118/17 of 13 February 2019.

126 U-12/09 of 28 May 2010.

127 AP-324/18 of 27 November 2019 and AP-1086/19 of 14 October 2020.

128 AP-369/10 of 24 May 2013.

the Parliament of the Federation of BiH that amended the disputed provision<sup>129</sup>, which is another example of the irreplaceable role of the Constitutional Court in the exercise and protection of human rights and fundamental freedoms.

The role of the Constitutional Court proved to be significant in other segments of society as well, of which it is necessary to single out the field of education. Particularly important examples that illustrate this role refer to situations where the issue of ethnic discrimination in the education system was raised, resulting from the application of the law on primary and secondary education in the Entities. The Constitutional Court emphasized the importance of consistent application of anti-discrimination standards when creating curricula or when making any related decisions.<sup>130</sup> While no violation of the provisions of the Constitution of Bosnia and Herzegovina and the European Convention was found in several cases<sup>131</sup>, one of the examples that illustrates the importance of clearly applying the standard of proof with regards to the probability of discrimination is the example of “two schools under one roof” in the Central Bosnia Canton. Namely, the Constitutional Court pointed out that the appellant, contrary to the conclusions of ordinary courts, made his allegations of discrimination plausible. On the other hand, as it was established, the defendants did not prove that there is no separation of children in schools in the Central Bosnia Canton, nor did they prove that there is an objective and reasonable justification for it or that a legitimate aim is sought to be realized in that way.<sup>132</sup> For this reason, a violation of the right to prohibition of discrimination in connection with the right to education under Article II(3)(I) of the Constitution of Bosnia and Herzegovina and Article 2 of Protocol No. 1 to the European Convention was established, as well as a violation of the right to general prohibition of discrimination under Article 1 of Protocol No. 12 to the European Convention. In light of the aforementioned problem, which is particularly sensitive in the context of Bosnia and Herzegovina, the Constitutional Court played a key role in emphasizing that non-discrimination must be the basis of all educational policies and practices and that the right to equal access to education without discrimination must be fully complied with. Precisely because of this, the actions of the Constitutional Court represent a significant mechanism towards building a society that values diversity and ensures access to education for all its members.

The case law of the Constitutional Court also represented an important step towards building a tolerant society in Bosnia and Herzegovina and the need to prevent violence motivated by homophobic prejudices against members of the LGBT community. Thus, the Constitutional Court, when deciding alleged violation of human rights of the participants of the LGBT Festival where there was a physical attack on them, clearly emphasized the obligations of public authorities arising from the right to prohibition of humiliating treatment under Article II(3)(b) of the Constitution of Bosnia and Herzegovina and Article 3 of the European Convention and the right to freedom of assembly in connection with the right to non-discrimination under Article 11 of the European Convention in connection with Article II(4) of the Constitution of Bosnia and Herzegovina and Article 14 of the European Convention<sup>133</sup>. Namely, the Constitutional Court concluded that there is a violation of these rights in connection with the right to non-discrimination, due to the fact that the public authorities a) failed to take the necessary measures to ensure a peaceful assembly organized in accordance with the law and to ensure a clear legal framework in order to act in preventing and deterring from committing the same or similar acts; b) failed to fulfil their positive obligation to protect the appellants as participants of the Festival from homophobic attacks, and c) because they failed to fulfil their procedural obligation to investigate the failures in providing the security for the Festival and the perpetrators of the attacks on the appellants. In this way, the court gave

129 Law on Amendments to the Family Law of the Federation of Bosnia and Herzegovina (*Official Gazette of FBiH*, 31/14 of 23 April 2014).

130 U-26/13 of 27 March 2015.

131 AP-4348/14 and AP-4984/14 of 18 July 2017.

132 AP-166/18 of 15 July 2021.

133 AP-4319/16 of 19 December 2018.

clear guidelines to public authorities about their positive obligation to take the necessary measures to ensure peaceful gatherings and prevent violence motivated by homophobic prejudices. Their responsibility in establishing a clear legal framework for preventive action and deterring violent incidents was also emphasized. With this, the Constitutional Court clearly confirmed its role as the protector of rights and equality before the law for all citizens.

All the above examples show the exceptional commitment of the Constitutional Court to the protection of human rights and fundamental freedoms, with special emphasis on the right to non-discrimination. Analysing various decisions dealing with the issue of labour relations, family relations, education and protection of the rights of the LGBT community and other issues in situations where vulnerable categories of the population may be threatened, the Constitutional Court emphasized the importance of the respect for the rights of every individual, regardless of their personal traits or characteristics. Its decisions paved the way for changes in the legislation and the case law, ensuring justice and equality before the law for all citizens, and they constituted a key mechanism in building a tolerant society.

## Case law of the Constitutional Court of BiH – COVID-19

The measures taken by the public authorities during the COVID-19 virus pandemic in order to protect the health of the population raised the issue of violations of human rights safeguarded by the Constitution of Bosnia and Herzegovina and the European Convention. In response to the challenges caused by the pandemic, **the public authorities in Bosnia and Herzegovina formed crisis staffs**<sup>134</sup> that adopted concrete measures aimed at protecting the health of the population. The Constitutional Court pointed out that giving authority to a reduced segment of the executive power - crisis staffs to adopt measures that encroach on basic human rights on a massive scale with regards to the entire population, without the control by the highest executive power, and especially legislative power, is not characteristic of a democratic society and violates the principle of the rule of law. Therefore, the measures they adopted<sup>135</sup> violated constitutional and Convention qualified rights.<sup>136</sup> The Constitutional Court particularly pointed out the passivity of the legislative power at all levels, which failed to react in a timely manner and consider the need to harmonize existing laws and possibly pass new laws that would enable an effective response to the pandemic crisis. In addition, the Constitutional Court considered the decision of the Council of Ministers of BiH on the restriction of the movement and residence of foreign nationals in BiH, and concluded that it had no basis in the relevant legal framework, nor was the imposition of specific measures sufficiently foreseeable nor accompanied by appropriate protective measures against possible abuses.<sup>137</sup> What is important to point out is that the Constitutional Court, bearing in mind the health situation in Bosnia and Herzegovina and the world, did not abolish specific measures, but ordered the public authorities to harmonize their actions with constitutional and Convention standards.

134 The Staff for Emergency Situations of the Government of the Republika Srpska and the Crisis Staff of the Federation of BiH Ministry of Health and the cantonal crisis headquarters.

135 Obligations to wear masks and limited movement of the entire population and certain categories of persons, ban on the operation of catering facilities, limited number of people in closed spaces and the application of the so-called "VTR rules" (vaccinated-tested-recovered), and the obligation to vaccinate with a third "booster" dose for certain categories of persons.

136 As regards the right to freedom of movement, see decisions AP-3683/20 dated 22 December 2020 and AP-1217/20 dated 22 April 2020, and as regards the right to private life, see decisions no.AP-3932/21 dated 23 February 2022 and no. AP- 1239/21 of 16 November 2021.

137 See Decision AP-1689/20 of 9 February 2022.



## Cases against Bosnia and Herzegovina before the European Court of Human Rights

Bosnia and Herzegovina ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms in 2002. That year, the citizens of Bosnia and Herzegovina were given an opportunity to seek the protection of their rights under the European Convention for the Protection of Human Rights and Fundamental Freedoms before the European Court of Human Rights after exhausting available legal remedies at the domestic level. In several cases against Bosnia and Herzegovina, the European Court noted that an appeal to the Constitutional Court is, in principle, an effective domestic remedy within the meaning of Article 35, paragraph 1 of the European Convention.<sup>138</sup> The fact that the appeal to the Constitutional Court is really an effective legal remedy and how effective the Constitutional Court is as a filter for correcting errors at the domestic level is indicated by the data related to the number of applications filed against Bosnia and Herzegovina that are rejected<sup>139</sup> and the relatively small number of cases where the views of the Constitutional Court and the European Court of Human Rights were different.

As to the cases of non-enforcement of final decisions (war damage), the European Court and the Constitutional Court found a violation of rights under the European Convention<sup>140</sup>. The same situation is with the applications concerning deprivation of liberty of persons with mental disorders in the Institute for the Care of Mentally Disabled Persons without a decision of the competent civil court.<sup>141</sup> The European Court pointed out that the Constitutional Court found a violation of the rights under the European Convention in cases of the applicants, but that the competent authorities did not remove the mentioned deficiencies. In addition to finding the violation of rights under the European Convention and the Constitution of Bosnia and Herzegovina, the Constitutional Court also ordered certain general measures concerning the lawfulness of deprivation of liberty of persons who committed criminal offenses in a state of insanity, but as in the previous case, these measures were still not implemented<sup>142</sup> at the time the judgment by the European Court was rendered upon the applications of persons who previously addressed the Constitutional Court. Namely, while the Criminal Procedure Code has been amended, the persons who were placed in the Forensic-Psychiatric Department of the prison in Zenica were still waiting to be transferred to a health facility.

In one of the cases before the Constitutional Court, the appellant was found guilty of inciting ethnic, racial and religious hatred, discord or intolerance and was sentenced to one year in prison, suspended for three years. In the proceedings before the ordinary courts, it was established that the appellant, using a pseudonym, posted a series of messages on a publicly available online forum, in which he made statements about the way Bosniak citizens of the Brčko District of BiH should act in the event of war and secession of the Republika Srpska. The Constitutional Court examined and

138 See ECtHR, *Mirazović v. BiH*, Decision (2006) and *Raljević v. BiH*, Decision (2015).

139 According to data available on the website of the European Court, in 2021 the European Court decided on 589 applications filed against Bosnia and Herzegovina, of which 529 applications were rejected as inadmissible or deleted from the list of cases, and 60 applications were decided in judgments on the merits of the case. In 2022, the Court decided on 823 applications, of which 808 were rejected as inadmissible or deleted from the list. There have been 10 judgments were adopted, which included 15 applicants. For the period from January to July 2023, the following data are provided: the Court decided on 182 applications, six applications were rejected as inadmissible or deleted from the list, and the judgment was rendered. The data is available at the following link: CP\_Bosnia\_and\_Herzegovina\_ENG (coe.int); accessed on 8 February 2024.

140 See ECtHR, *Janjić et al. v. Bosnia and Herzegovina*, *Milinković v. Bosnia and Herzegovina*, *Mišković v. Bosnia and Herzegovina* and others.

141 See ECtHR, *Hadžimejlić v. Bosnia and Herzegovina*.

142 See ECtHR, *Halilović v. Bosnia and Herzegovina*.

dismissed the appellant's allegations of violation of Article 6 of the European Convention. Regarding the right to freedom of expression, the Constitutional Court pointed out that, in accordance with the case law of the European Court, the appeal in that part should be considered *ratione materiae* incompatible with the Constitution of BiH. However, having already previously examined and dismissed the appellant's allegations about the violation of Article 6 of the European Convention, the Constitutional Court concluded that it would dismiss the appeal in that part as well, given that "in



*The building of the European Court of Human Rights, Strasbourg, France*

this way, the substance of the decision regarding the allegations related to freedom of expression is not changed".<sup>143</sup> The appellant complained to the European Court, which concluded that, in the circumstances of that case, interference with the appellant's right to freedom of expression did not indicate a violation of Article 10 of the European Convention. With regard to the allegations related to the violation of the right to a fair trial, the European Court pointed out that the Constitutional Court, which had the authority to annul the disputed decisions and remit the case for renewal of trial, examined this complaint and dismissed it as manifestly unfounded. The European Court also pointed to the conclusion of the Constitutional Court that the lower courts correctly applied both procedural and substantive law and adopted well-reasoned and detailed decisions. The European Court did not see any reason to deviate from those findings.<sup>144</sup>

As already mentioned, there is a small number of cases in respect of which the decisions of the Constitutional Court and the European Court were different, especially given the period of slightly more than 20 years of jurisdiction of the European Court in relation to Bosnia and Herzegovina.

One of the cases was related to the complaints of the applicants about the criminal proceedings conducted before the Court of Bosnia and Herzegovina, where they were found guilty and punished under the provisions of the Criminal Code of Bosnia and Herzegovina from 2003 for crimes against the civilian population that they had committed during the war from 1992 until 1995. They complained that the refusal of the Court of Bosnia and Herzegovina to apply the Criminal Code of the SFRY from 1976, which was in force at the time the war crimes were committed, violated the rule prohibiting retroactive punishment contained in Article 7 of the European Convention. Unlike

<sup>143</sup> See Constitutional Court, decision no. AP-454/13 of 20 April 2016.

<sup>144</sup> See ECtHR, *Smajić v. BiH*, application no. 48657/16.

the Constitutional Court, which concluded that there was no violation of the European Convention, the European Court, in its judgment rendered in 2013, found a violation of Article 7 of the European Convention due to the retroactive application of the law.<sup>145</sup>

Regarding the right not to be tried or punished twice for the same offence, there was a case where the applicant previously filed an appeal with the Constitutional Court, complaining about the violation of this right because he was punished for an act related to the same event in both criminal and misdemeanour proceedings. The Constitutional Court dismissed the appeal, considering that although both decisions were adopted with regards to the same incident, the acts are different in terms of their nature and intent. However, the European Court of Human Rights found that the proceedings initiated against the applicant based on the Criminal Code essentially related to the same offense for which he had already been convicted under the Law on Public Order. Consequently, the European Court of Human Rights found a violation of Article 4 of Protocol No. 7 to the European Convention.<sup>146</sup>

In one of the cases related to the right to freedom of religion, the Constitutional Court was of the opinion that the limitation to the right to freedom of religion, manifested through the punishment of witness in criminal proceedings because he refused to remove a religious symbol (cap), passed the test of proportionality.<sup>147</sup> The Constitutional Court considered that the limitation in the specific case did not represent an excessive burden for the appellant, that the measure taken by the ordinary court pursued legitimate aims within the meaning of Article 9, paragraph 2 of the European Convention, and that in the instant case there was a reasonable relationship of proportionality between the limitations and the legitimate aim being pursued. However, the European Court found that punishing the applicant for contempt of court only based on his refusal to remove his cap was not necessary in a democratic society, and that the domestic authorities exceeded the wide margin of appreciation afforded to them. The European Court found that there was a violation of Article 9 of the European Convention, emphasizing that it is necessary to recognize the difference between public officials employed in judicial institutions and private citizens who “use the services” of judiciary or appear in court as witnesses, in the context of the duty of impartiality and neutrality.<sup>148</sup>

In a case decided by the European Court in 2020, the applicant turned to the European Court after the Constitutional Court had dismissed his appeal as manifestly (*prima facie*) unfounded. The applicant complained about the unfairness of the proceedings in a labour dispute. The European Court concluded that the ordinary courts in Bosnia and Herzegovina that dealt with the applicant’s case did not provide the applicant with a fair trial in this case, and that the Constitutional Court did not correct this either. The European Court found a violation of Article 6, paragraph 1 of the Convention.<sup>149</sup>

It is also important to mention the cases in which the applicants complained that the Constitutional Court denied them access to the court due to the lack of a majority vote.<sup>150</sup> Namely, the Constitutional Court sitting in a “chamber of eight judges” (as stated by the European Court<sup>151</sup>) dismissed the appeal, since the Chamber could not agree on a single proposed decision as a majority of five judges. The European Court found a violation of the right to access to court within the meaning of Article 6 of the European Convention. This decision of the European Court influenced the amendment of the Rules of the Constitutional Court. Thus, a new rule was introduced that “Exceptionally, in the event

145 See ECtHR, *Maktouf and Damjanović v. BiH* (2013), and Constitutional Court, decision no. AP-1785/06.

146 See *Maktouf and Damjanović v. BiH* (2013), and Constitutional Court, decision no. AP-1785/06.

147 See Constitutional Court, decision no. AP-3947/12.

148 See ECtHR, *Hamidović v. Bosnia and Herzegovina* (2017), and Constitutional Court, decision no. AP-3947/12 of 9 July 2015.

149 See ECtHR, *Lazarević v. BiH* (2020.); and Constitutional Court, Decision no. AP-155/15.

150 See ECtHR, *Avdić and others v. Bosnia and Herzegovina*, 28357/11 31549/11 39295/11, 19 November 2013.

151 In fact, the decision was made at the Plenary session, which was attended by eight out of nine judges, because during that period one position was not filled.

where less than the total of nine judges take part in the decision-making by a plenary Court, for the reasons referred to in Article 90 paragraph 1 or Article 98 of these Rules and in the event where not all judges have been elected, or where a judge/judges have been prevented from discharging their office due to illness for a prolonged period of time, unless at least five judges vote identically on the proposal of a decision on a request/appeal, in the case referred to in Article 98, the decision-making procedure shall be postponed for one of the next sessions or until the election of an absent judge provided that this period is no longer than six months, and if the same situation occurs again after the expiry of that time limit, the President's vote i.e. the vote of the judge replacing the President shall carry a weight of two votes (Article 42(5) of the Rules).<sup>152</sup>

Уставни суд Босне и Херцеговине у пленарном саизу, у предмету број У 5/15, рјешавајући захтјев деветнаесте посланика у Представничком дому Парламента српске заједнице у Босни и Херцеговини, на основу члана VI(3а) Устава Босне и Херцеговине, члана 57 став (2) таг суда Босне и Херцеговине – пре Херцеговине” број 94/14, у уставу

Мирсад Ђеман, председник  
Мато Тадић, потпредседник  
Златко М. Кнежевић, потпредседник  
Мargarита Цаца Николоска, председник  
Tudor Pantiru, судија  
Валерија Галић, судија  
Миодраг Симовић, судија  
Сеада Палаварић, судија  
Giovanni Grasso, судија

Ustavni sud Bosne i Hercegovine u plenarnom sazivu, u sastavu: predsjednica Valerija Galic, potpredsjednici Miroslav Simović, Tudor Pantarić i Seada Pavarić, sudije Constance Grewe, Mato Tadić, Mirsad Canan, Margarita Caka-Nikolovski i Zlatko M. Knežević, na sjednici održanoj 26. marta 2015. godine, u predmetu broj **U 18/13**, rješavajući zahtjev **trideset šest (36) poslanika Narodne skupštine Republike Srpske**, na osnovu člana VI/3.a Ustava Bosne i Hercegovine, člana 19. stav (1) tačka a) i člana 57. stav (2) tačka a) Pravila Ustavnog suda Bosne i Hercegovine – prečišćeni tekst („Službeni glasnik Bosne i Hercegovine“ broj 94/14), donio je

### ODLUKU O DOPUSTIVOSTI

Odbacuje se kao nedopušten zahtjev trideset šest (36) poslanika Narodne skupštine Republike Srpske za ocjenu ustavnosti:

## ОДЛУКУ О ДОПУСТИВОСТИ И МЕРИТУМУ

Ustavni sud Bosne i Hercegovine u plenarnom sazivu, u predmetu broj AP-1481/23, rješavajući apelaciju koju je podnio „Premier World Sport“ d.o.o. Čitluk, na temelju članka VI/3. (b) Ustava Bosne i Hercegovine, članka 57. stavak (2) točka b), članka 59. st. (1) i (2), članka 72. st. (2), (4) i (5) i članka 74. Pravila Ustavnog suda Bosne i Hercegovine, odlučuje:

Seada Palavrić, predsjednica  
Valerija Galić, dopredsjednica  
Angelika Nußberger, dopredsjednica  
Mirsad Ćeman, sudac  
Helen Keller, sutkinja  
Ledi Bianku, sudac  
Marin Vukoja, sudac

## ODLUKU O DOPUSTIVOS

Ustavni sud Bosne i Hercegovine, u Velikom vijeću, u predmetu broj AP 1285/17, riješavajući apelaciju **Opštine Livno**, na temelju članka VI/3.(b) Ustava Bosne i Hercegovine, članka 57. stavak (2) točka b) i članka 59. st. (1) i (3) Pravila Ustavnog suda Bosne i Hercegovine, odlučuje: **prećići tekst ("Službeni glasnik Bosne i Hercegovine")**

Ustavni sud Bosne i Hercegovine, u plenarnom sazivu, u predmetu broj **U-16/20**, na osnovu člana VI/3.a) Ustava Bosne i Hercegovine, člana 57. stav (3) i člana 72. stav (6) Pravila Ustavnog suda Bosne i Hercegovine – prečišćeni tekst („Službeni glasnik Bosne i Hercegovine“ broj 94/14), u sastavu:

Valerija Galić, predsjednica  
Mirsad Čeman, potpredsjednik  
Zlatko M. Knežević, potpredsjednik  
Helen Keller, potpredsjednica  
Seada Palavrić, sutkinja  
Angelika Nußberger, sutkinja  
Ledi Bianku, sudija  
na sjednici održanoj 19. januara 202

na sjednici održanoj 19. januara 2023. godine donio je

3. veljače 2019. godine donio je

## DOPUSTIVOSTI I MERITUMU

utemeljena apelacija Općine Livno podnesena protiv  
da Federacije BiH broj 09 0 U 013004 14 Uvp 2 od  
dine.

### RJEŠENJE

Utvrđuje se da Komisija za koncesije Bosne i Hercegovine u svojstvu Zajedničke komisije za koncesije, u smislu člana 4. stav 3. i člana 6. stav 2. Zakona o koncesijama Bosne i Hercegovine, nije izvršila Djelimičnu odluku Ustavnog suda Bosne i Hercegovine broj U-16/20 od 16. jula 2021. godine.

U skladu sa članom 72. stav (6) Pravila Ustavnog suda Bosne i Hercegovine, ovo rješenje dostavlja se Tužilaštvu Bosne i Hercegovine.

Rješenje objaviti u „Službenom glasniku Bosne i Hercegovine“, „Službenim novinama Federacije Bosne i Hercegovine“, „Službenom glasniku Republike Srpske“ i „Službenom glasniku Brčko distrikta Bosne i Hercegovine“.

152 The previous provision of the Rules read: Exceptionally, where less than the total number of nine judges participate in the decision making in the plenary session, due to the reasons stated in Article 93, paragraph 1 or Article 90, paragraph 6 of these Rules, and where all judges were not elected, or where the judge/judges are prevented from performing their duties for a long period of time due to illness, and if at least five judges do not vote identically on the proposal for a decision in connection with the request/appeal, it is considered that the decision has been adopted by which the request/ appeal is dismissed (Article 40(3) of the Rules (*Official Gazette of Bosnia and Herzegovina*, nos. 60/05, 64/08 and 51/09)).



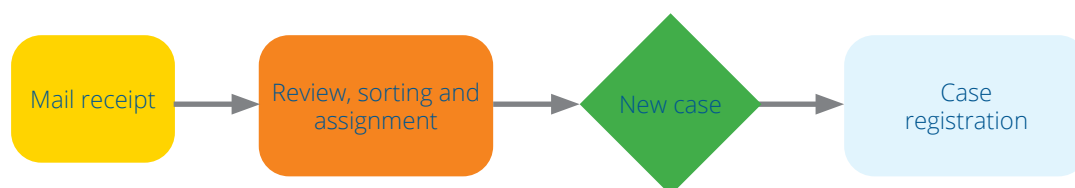
## The process of preparing and adopting a decision - from the receipt of the request/appeal to the decision

The process of preparing and adopting decisions in the Constitutional Court of Bosnia and Herzegovina is a complex and thorough procedure that takes place through a series of procedural steps. Through this process, the Constitutional Court ensures high quality, objective and transparent decision-making within its jurisdiction, thereby contributing to legal certainty and the integrity of the constitutional system. Internal mechanisms, such as case sorting/assignment, drafting of decisions, decision-making at court sessions, and post-production and transmittal of decisions contribute to preserving the integrity and authority of the Constitutional Court. This process is continuously improved and adapted, ensuring that the Constitutional Court responds effectively to all challenges and changes in the environment, and that it fulfils its key responsibility in protecting the constitutional order and human rights and fundamental freedoms in Bosnia and Herzegovina.

After the request/appeal is submitted to the Constitutional Court in accordance with the Rules of the Constitutional Court of Bosnia and Herzegovina<sup>153</sup>, the case goes through several stages. These are: *a) recording and registration in the Office of the Registrar of the Constitutional Court, b) case sorting/assignment procedure, c) thorough analysis of the case and drafting of the decision, d) deciding on the proposed decision at the session of the Constitutional Court, and e) post-production and transmittal procedure.*

### Registration of cases

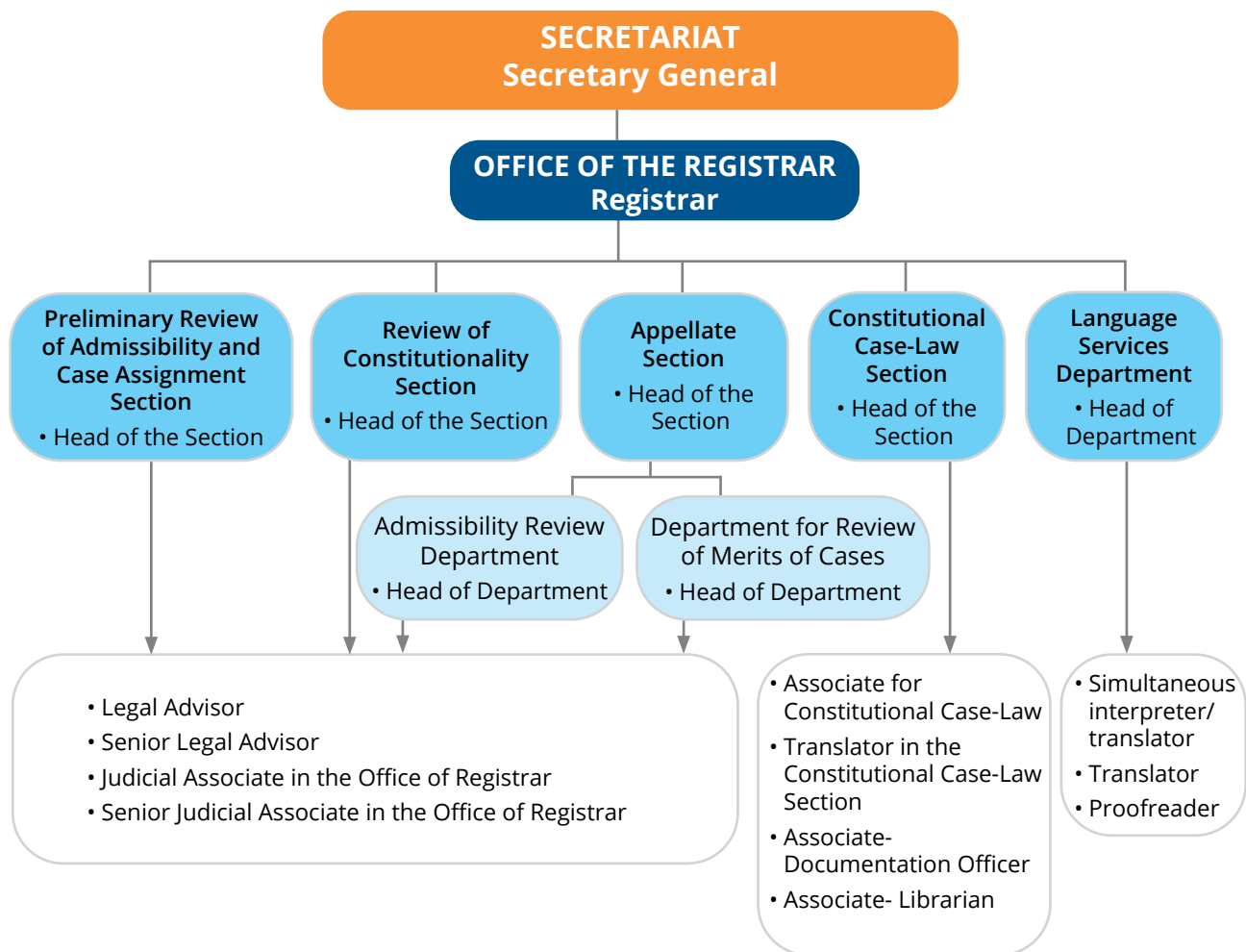
All documents (written documents) related to the request/appeal are received in the Office of the Registrar.<sup>154</sup> The Secretary General inspects the mail, sorts and signs it according to the type of mail, and after that, the Registrar of the Constitutional Court signs the mail related to cases under the jurisdiction of the Constitutional Court. For submissions related to an already registered case, an order is given to file it in the case file. If it is a new case, the Registrar issues an order to the Registry Office to create a new case. Case registration is carried out through the electronic/digital Case Management System (CMS) and the corresponding register, and such a case is automatically assigned a number depending on the type of proceedings initiated. This step enables systematic tracking of each case from the moment of its receipt. For cases related to the review of constitutionality, etc. (Articles VI(3)(a), VI(3)(c), IV(3)(f) and VI(4) of the Constitution of BiH), the case number with the initial mark “U” is assigned. The cases from appellate jurisdiction (Article VI(3)(b) of the Constitution of BiH) are assigned the case number with the mark “AP”. Applicants or appellants are provided with a confirmation of receipt of the appeal/request with the case number under which it is registered.



<sup>153</sup> See Articles 20 and 21 of the Rules of the Constitutional Court.

<sup>154</sup> Starting from 1 January 2020, the parties to the proceedings and their attorneys also have the possibility to communicate electronically with the Constitutional Court of Bosnia and Herzegovina. The conditions under which parties can communicate electronically with the Constitutional Court are prescribed by the Rulebook on Electronic Communication of the Constitutional Court of Bosnia and Herzegovina, which is applicable as from 1 July 2022 and is available on the website of the Constitutional Court of Bosnia and Herzegovina.

After that, the case is resubmitted to the Registry Office of the Constitutional Court. Within the Registry Office, work on cases is organized through work in departments, namely: Preliminary Review of Admissibility and Case Assignment Section, Review of Constitutionality Section, Appellate Section and Constitutional Case-Law Section. Within the Appellate Section, work on cases is further distributed to departments: Department for Review of Admissibility and the Department for Review of Merits. In addition, within the sections and departments, the cases are classified and distributed to the following divisions: civil law division, criminal law division and other cases division, for the sake of easier and faster resolution of cases.



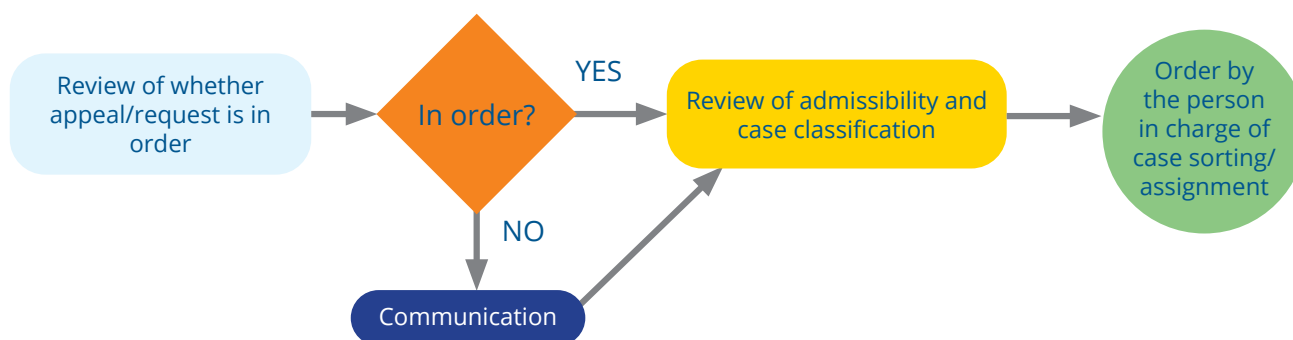
## Case sorting/assignment procedure

After the case has been registered in the CMS, it is submitted for case sorting/assignment to the Preliminary Review of Admissibility and Case Assignment Section. Within that section to which long serving senior legal advisers are assigned, the procedure of preliminary review of whether the appeal/request is in due form and complete is carried out, including the initial analysis of the allegations contained in them. Then, the admissibility of the request/appeal is checked according to the criteria under the Rules of the Constitutional Court.

For admissible appeals/requests, a preliminary analysis of the allegations is made in the context of the relevant case law of the Constitutional Court and the European Court of Human Rights, based on which an order is issued for further handling of the case.

The order of the advisor – person in charge of case sorting, contains a proposal for resolving the case (admissibility related case or merits related case, priority of the case, grouping, references, and existing case law). If it is necessary to examine the allegations on the merits of the case, an order is issued to prepare a decision on the merits; otherwise, an order is issued for the preparation of a decision on admissibility.

Case sorting/assignment ensures the efficient distribution of cases in accordance with priorities, complexity and importance, and facilitates the distribution and signing of cases by sections/departments. Therefore, this sets the framework for the activities of advisors and associates when processing cases.



### A thorough analysis of the case and drafting of the decisions of the Constitutional Court

Based on the order by senior advisor – who sorted/assigned cases, the case is automatically or manually assigned to advisors/associates in sections/departments for the preparation of a draft decision on admissibility and/or merits.

Assignment of cases is carried out according to the criteria of admissibility and the type and complexity of the case. For easier and faster resolution of cases, cases that are more complex are grouped and distributed to civil law division or criminal law division or other cases division. This step enables the distribution of the case to “specialized” professional staff who, in accordance with their experience, will thoroughly study the case and prepare the appropriate draft decision. At the same time, this will enable complex cases to be given special attention when drafting. Therefore, the analysis of the case and drafting of the decision is one of the most important stages in the process of preparation for decision making at the session of the Constitutional Court.

Preparation of the decision on admissibility and/or merit includes:

- consideration/analysis of requests/appeals and attachments and assessment of the need for further “communication of the case”, which implies seeking replies from the participants to the proceedings;
- Drafting of a decision, which implies analysis of legal arguments and relevant case law, and obtaining relevant regulations (laws, etc.).

If it becomes clear during the work on the case that the decision should be prepared in a different way compared to the one from the initial case sorting/assignment order, the advisor or associate will do so. This ensures that all relevant factors that at the time of case sorting/assignment were either insufficiently known or observed are taken into account.

The draft decision is prepared in a form that fully corresponds to the outward form and content of the final decision of the Constitutional Court and is harmonized with the Constitutional Court's technical rules of writing. The draft decision on admissibility contains a brief description of the facts of the case and reasons for the inadmissibility of the case. The draft decision on the merits contains the following: introduction, enacting clause, proceedings before the Constitutional Court, facts, complaints from the request/appeal, responses to the request/appeal, relevant regulations, reasons and conclusion.<sup>155</sup>

If there is a request for adoption of an interim measure, the analysis of the request and possible preparation of a decision on interim measure are simultaneously carried out. The draft decision on an interim measure contains relevant reasons and evidence for which an interim measure should or should not be adopted (in the interest of the parties and/or the proper conduct of the proceedings).

When drafting decisions, the priority of cases and the principle of chronological order in resolution of cases are taken into account.

An important mechanism in this process is cooperation with the Constitutional Case Law Section, consisting of associates trained to search the case law of the Constitutional Court, the European Court of Human Rights, and other relevant institutions, which contributes to versatile and objective analysis and decision-making. Assistance is offered through a rich collection of professional literature from various legal fields available in the library of the Constitutional Court and a documentation officer who is in charge of monitoring and submitting regulations relevant for analysis and decision-making.

After the advisor/associate prepares the draft decision, he/she submits it to the head of the section/department for the review purposes, which includes the analysis of the allegations in the request/appeal, the quality of the explanation in the context of relevant regulations and case law, and the compliance of the draft decision with the technical rules of writing.

The draft decision approved by the head of the section/department is submitted to the Registrar of the Constitutional Court for additional control according to all aspects mentioned above. If the draft decision does not meet all the requirements, it is sent back to the advisor/associate in charge along with instructions for review. This step ensures the quality and precision of the draft decision, while complying with the relevant rules and procedures, which is crucial for proper and efficient decision-making.

After the completion of the preparation of the draft decision within the Office of the Registrar, **a judge-rapporteur** is automatically assigned that case. The automatic assignment of the judge-rapporteur to the case takes place through the CMS according to the criteria of assignment of cases where the judges are tasked with different types of cases and decisions. The cases that are related to the review of constitutionality, etc. and considered at the plenary session are, as a rule, assigned to "international judges" (judges appointed by the President of the European Court of Human Rights). This mechanism speeds up and facilitates the process of assigning cases, and at the same time eliminates doubts about the existence of subjective factors in assigning as a judge-rapporteur.

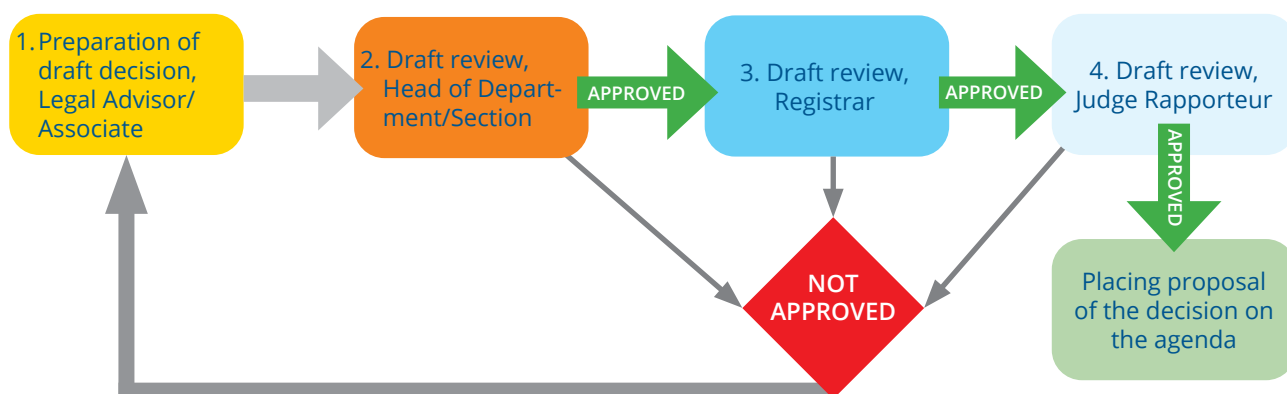
Only based on the approval of the judge-rapporteur does the draft decision acquire the status of a proposed decision. The administrative assistant puts the proposed decision on a list that serves the President of the Court to create draft agenda for the court session.

As shown, the process of preparing drafts and proposals for decisions is a complex and responsible process developed with the aim of quality and objective decision-making. This is especially indicated by the multiple quality review of the draft in the Office of the Registrar, then by the judge-rapporteur and finally at the session of the Constitutional Court during the discussion and decision-making. Each of these steps contributes to the integrity and objectivity of the decisions of the Constitutional Court, which is of key importance for legal certainty as an integral part of the principle of the rule of law.

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<sup>155</sup> See Article 33 of the Rules of the Constitutional Court of BiH.





## Deciding on the proposed decision at the session of the Constitutional Court

The draft decision is presented at the session of the Constitutional Court by a judge-rapporteur who gives arguments in this regard. According to the Rules of the Constitutional Court, each of the judges may make comments, remarks or suggestions, propose additional analysis and postponement for one of the next sessions, or express disagreement with the decision, etc. In this way, it is ensured that the decision is made based on reasoned discussion and legal analysis of the judges of the Constitutional Court.

Based on the proposal of the judge-rapporteur and/or the suggestions made during the discussion, the Court may decide to return the proposal for refining a decision and reconsideration of the case at the next session. In addition, the Court may order a new proposal for a decision to be made or for the case to be taken up as a matter of priority without making a separate decision on an interim measure, if a request for an interim measure has been made. As a rule, such a proposal for a decision is returned to the advisor/associate who, in agreement with the judge-reporter, refines the existing proposal or prepares a new draft in accordance with the instructions of the judge-reporter and along the lines of the discussion at the court session. In addition, there is a possibility of assigning another judge reporter and/or another advisor/associate. In either case, the case is returned to the initial stage of preparing the draft decision and goes through the described procedure again.

Upon the completion of the discussion on the case, the Constitutional Court makes a decision. Only a judge who was present at the session where the case was discussed can take part in decision-making. The voting process is conducted openly, by a show of hands, and the judge cannot abstain from voting. Voting is conducted according to the order in which the proposals were submitted. In addition, it is possible to conduct a preliminary non-binding vote on the proposed decision or on individual parts of the decision. The proposal that receives the majority of votes during the preliminary voting is considered the first proposal to be voted on, and in other cases, the proposal of the judge rapporteur is considered the first proposal to be voted on, unless the judge rapporteur suggests otherwise.

Decisions of the Constitutional Court in the plenary session and the Grand Chamber are adopted by a majority vote of nine judges of the Constitutional Court, while the decisions of the Chamber are made unanimously. Exceptionally, when less than the total number of nine judges take part in the decision making in the plenary session, due to the reason of disqualification or termination of office. Exceptionally, in the event where less than the total of nine judges take part in the decision-making by a plenary Court for the reasons of disqualification or termination of office, and in the event where not all judges have been elected, or where a judge/judges have been prevented from

discharging their office due to illness for a prolonged period of time, unless at least five judges vote identically on the proposal of a decision on a request/appeal, in the case referred to in Article 98 (Termination of Office), the decision-making procedure shall be postponed for one of the next sessions or provided that this period is no longer than six months, and if the same situation occurs again after the expiry of that time limit, the President's vote i.e. the vote of the judge replacing the President shall carry a weight of two votes.

## Post-production and transmittal of decisions

The post-production and transmittal of the decision is the last step in the process, which ensures that each decision adopted is carefully reviewed, proofread (if necessary), published in an appropriate manner and finally sent to the parties to the proceedings.

Decisions adopted at the court session are submitted to the Editorial Commission. The Editorial Commission carries out and determines the professional and technical editing of the text of decisions/rulings. The President of the Editorial Commission and the Registrar confirm with their signatures the final text of all adopted decisions.

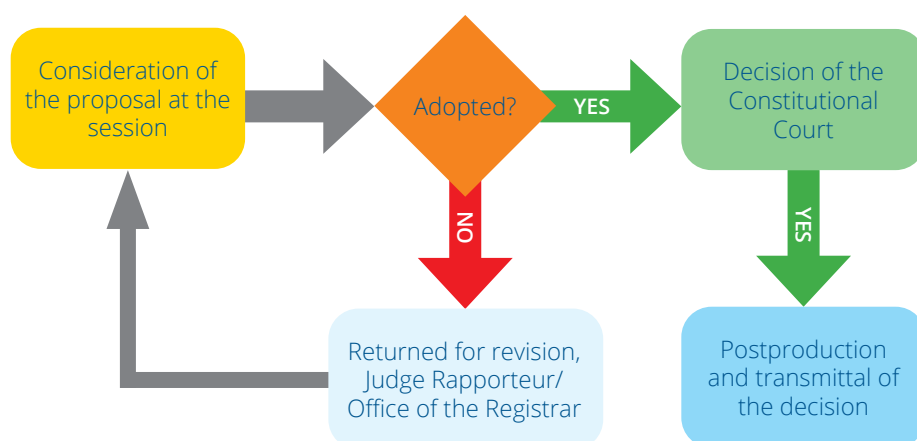
After the adoption of decisions, they are submitted to the Language Services Department for proofreading in the official languages of Bosnia and Herzegovina and translation into English.

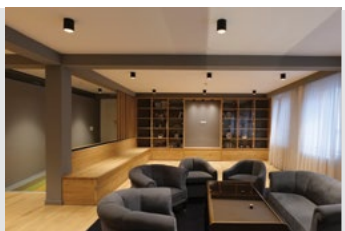
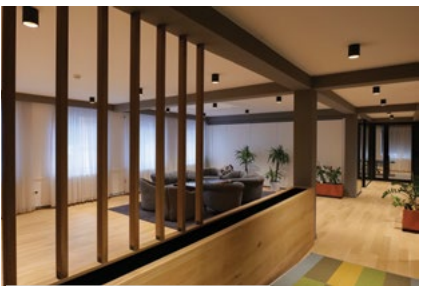
A copy of the decision/ruling published on the website of the Constitutional Court is sent immediately if there is no need for proofreading.

All decisions are published on the website of the Constitutional Court. Before publication on the website, all decisions are processed according to "keywords" through the CMS, and this process enables an easier search for the decisions of the Constitutional Court. Decisions published in official gazettes in BiH (*Official Gazette of BiH*, *Official Gazette of the Federation of BiH*, *Official Gazette of the Republika Srpska* and *Official Gazette of the Brčko District of BiH*) must be proofread and published in the official languages and scripts of Bosnia and Herzegovina, according to the decision of the Constitutional Court, while taking into account equal representation. In addition, the decisions considered at the plenary session of the Constitutional Court are translated into English and published in that language on the website of the Constitutional Court.

At the end of the procedure, the President of the Constitutional Court signs the edited decisions/rulings.

After receiving the transmittal order, the decision is sent to the appellants/applicants and other participants in the procedure. Printed versions are transmitted by post or courier, and in cases of agreed electronic communication, the decisions are sent in electronic form with protected e-communication. In this way, the procedure before the Constitutional Court is finalized.





**SECRETARIAT**



Iz OHR-a za "Avaz" o slučaju ANUBiH-a

## Odluke Ustavnog suda su konačne

Ustavni sud BiH utvrdio je u novembru prošle godine da je odbijanje zahtjeva Akademije nauka i umjetnosti Bosne i Hercegovine (ANUBiH) za upis u registar suprotno demokratskom principu utvrđenom Ustavom BiH te suprotno ustavnom načelu kontinuiteta zakonskih propisa, stoji u odgovoru OHR-a "Avazu".

Podsjećamo, iz ANUBiH-a je upućena apelacija OHR-u nakon što je Ministarstvo pravde BiH odbilo ovu instituciju upisati u Registar pravnih osoba.



OHR: Provesti odluke

Nedavno je Muris Čičić, predsjednik ANUBiH-a, rekao za "Avaz" da se odluke

ke 1  
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vrđ

Sud je naložio Ministarstvu pravde BiH da provede prethodnu i donese novu odluku po hitnom postupku u skladu sa zahtjevom za registraciju. Odluka mora biti u skladu s važećim članovima i načelima Ustava BiH. Prema odluci Suda, Ministarstvo pravde ima rok od tri mjeseca da provede odluku i obavijesti Sud o rezultatima.

Ustavni sud BiH uvažio apelaciju, ali mjere ostaju na snazi

## Neustavne odluke o obaveznom nošenju maski

Sporno je i ograničeno kretanje, koje se odnosi na period od 23 do 5 sati ujutro

Ustavni sud Bosne i Hercegovine ocijenio je jučer da odluke kriznih štabova o ograničenju kretanja i nošenja maski tokom pandemije koronavirusa predstavljaju kršenje osnovnih ljudskih prava. Ograničeno kretanje odnosi se na period od 23 do 5 sati ujutro.

Na taj način djelimično



### KNEŽEVIĆ

Bitno je da se pravo na slobodu stalno naglašava



SARAJEVO - Predsjednik Ustavnog suda BiH Zlatko Knežević izjavio je da iz godine u godinu opada broj ukidajućih odluka Ustavnog suda koje se odnose na lišavanje slobode i klevetu, te da to govori da redovno sudstvo primjenjuje ono što je u zakonu. Knežević, koji je juče učestvovao u promociji izvještaja "Praksa sudova u BiH u pogledu prava na slobodu i bezbjednost ličnosti i prava na slobodu izražavanja", koji je uz podršku Ambasade Velike Britanije u BiH pripremio Ustavni sud BiH, kazao je da je ovo prvi put za mnogo godina da se vrši pregled prakse ne samo najvišeg suda, nego i prakse okružnih i kantonalnih sudova čiji predmeti ne dođu do Ustavnog suda.

"Vrlo je bitno da se pravo na slobodu stalno naglašava jer, nažalost, koliko god se trudili, uvijek postoje elementi kada je došlo do povrede nečijeg prava na slobodu, pa i na ličnu bezbjednost", izjavio je Knežević. Ambasador Velike Britanije u BiH Metju Fild ocijenio je da je efikasna vladavina prava na prvom mjestu kada je riječ o povjerenju građana i investitora. (Sma)

## DOGAĐAJI

Dnevni list / Dnevni.ba

Petak • 8. 12. 2023.

9

Ustavni sud BiH već više od godinu dana nije kompletiran iz razloga što nadležne vlasti u Federaciji BiH i Republici Srpskoj nisu imenovale nedostajuće suce Ustavnog suda BiH, potvrdila je za BHRT predsjednica Ustavnog suda BiH Valerija Galić te dodala da će uskoro nedostajati i treći sudac, kolega Zlatko Knežević, koji odlazi u prijevremenu mirovinu i napušta Ustavni sud BiH, tako da sud neće biti u potpunom sazivu.

Iz tih razloga mi pokušavamo na sve moguće načine spriječiti blokadu rada Ustavnog suda. Najviše se to odražava na nemogućnost sazivanja velikog vijeća Ustavnog suda, koje čine domaći suci, dakle šest domaćih sudaca, već godinu dana od odlaska kolege Simovića u mirovinu. Ustavni sud nije mogao savjetovati veliko vijeće Ustavnog suda jer je prethodno u mirovinu otišao i kolega Mato Tadić. Na velikom vijeću, Ustavni sud BiH donosi najveći broj odluka iz apelacijske nadležnosti a to se odražava na način da ne možemo donositi veliki broj odluka iz te nadležnosti, pojasnila je predsjednica Galić i dodala da su u Ustavnom sudu BiH učinili sve kako bi se organizirali na takav način da se što veći broj odluka iz apelacijske nadležnosti donosi na plenarnoj sjednici Ustavnog suda BiH.

No, kako je napomenula, to iziskuje dodatne napore jer se mora provesti veći broj odluka za međunarodne suce da bi oni mogli sudjelovati u radu ravnopravno s domaćim sucima.

Dakle, Ustavni sud nastavlja sa radom, ali u otežanim uvjetima,



Valerija Galić, predsjednica Ustavnog suda BiH

## Pokušavamo na sve moguće načine spriječiti blokadu rada suda

naglasila je predsjednica Ustavnog suda BiH uz poruku da ne mogu dovesti da Ustavni sud bude blokiran.

Prema Ustavu BiH, kvorum za rad i odlučivanje Ustavnog suda je pet sudaca. Ustavni sud se na sve moguće načine pokušava boriti s izazovima te osigurati nastavak svog rada, kazala je Galić. Odgovarajući na pitanje o kriterijima pri izboru sudaca Ustavnog suda BiH, pojasnila je da je Ustavom BiH

propisano da je istaknuti pravnik visokih moralnih kvaliteta i da ima biračko pravo, što znači da je državljanin BiH.

Moje mišljenje je da prilikom izbora suca Ustavnog suda BiH treba prenostavno voditi računa o iskustvu, stručnosti, profesionalizmu u prethodnom radu koje je kandidat za suca ostvario, navela je sugovornica BHRT uz opasku da vlast u Republici Srpskoj već izvršeno vrije-

me pokušava urušiti rad i integritet Ustavnog suda BiH.

Samim neimenovanjem prvostupničkih sudaca, nedostajućih u Ustavnom sudu, pozivajem na ostavku sudaca Ustavnog suda BiH, što je rezultiralo podnošenjem zahtjeva za prijevremenu mirovinu kolege Kneževića, donošenjem Zakona o neprimjenjivanju odluka Ustavnog suda BiH i Zakona o neobjavljivanju odluka Ustavnog suda, da ne nabrskam dalje, argumentirala je Galić.

O mogućnosti da Ustavni sud BiH funkcioniše bez stranih sudaca, rekla je da, govoreći sa sadašnje pozicije, ako u Ustavnom sudu BiH ne bi djelovali tri međunarodna suca, Sud, odlaskom kolege Kneževića, ne bi mogao raditi, ne bi mogao odlučivati i donositi odluke jer ne bi imao kvorum potreban za odlučivanje.

Jedini zakon koji se, prema važećem Ustavu BiH, može donijeti je zakon kojim je predviđeno da, po isteku petogodišnjeg mandata međunarodnih sudaca, Parlamentarna skupština BiH može urediti drugačiji način izbora međunarodnih sudaca. Različit su tumačenja te odredbe ali, prema važećim ustavnim rješenjima, to je jedini zakon koji bi se moglo donijeti vezano za neka pitanja Ustavnog suda BiH, smatra Galić.

Kako je jedan od 14 prioriteta koje je Europska komisija postavila pred državne vlasti za otvaranje pregovora o članstvu u EU i reformu Ustavnog suda BiH, uključujući pitanje međunarodnih sudaca i izvršenje odluka Ustavnog suda, Galić je poručila da je jedino moguće rješenje u nadležnosti Parlamentarne skupštine BiH.

storu

avljaju kršenje navedenih prava i sloboda se u odluci, dižnim izvršnim i odavnim organima no je da se izjasne o odlukama, ali one kinute. M. Ai

Schmidt pozvao vlasti u BiH da osiguraju nesmetan rad Ustavnog suda BiH

Visoki predstavnik u BiH Christian Schmidt pozvao je predstavnike u BiH na svim razinama da na nj obavezu da se osigura nesmetan rad Ustavnog suda BiH u punom tetu, sukladno Ustavu BiH i lskom mirovnim sporazumu.

Nijedan sud niti pojedinac, bez obzira je li netko za njih ovim odlukama ili nije, ne biti izložen pritisku kojim se va njihovu neovisnost, poručio je Ureda visokog predstavnika u BiH a u jeku rasprava u javi upražnjenim mjestima u Ustavnom sudu BiH i o prijevremenom rovljenju potpredsjednika tog suca Zlatka Kneževića.

Ustavni sud BiH je 13. srpnja godine razriješio dužnosti suca Kneževića, jedinog suca iz Republike Srpske, te on od prijevremenu mirovinu.

## Brčko: Sjednica Ustavnog suda BiH

Ustavni sud BiH održat će 14. srpnja 2022. godine svoju 128. plenarnu sjednicu u Brčkom, a po okončanju Plenarne sjednice, 15. srpnja 2022. godine, u 9 sati će predstavnic Ustavnog suda BiH uprirediti i tiskovnu konferenciju u zgradi Osnovnog suda u Brčkom. U ime Ustavnog suda BiH, predstavnicima medija će se obratiti predsjednik Ustavnog suda BiH Mato Tadić i dopredsjednici Ustavnog suda BiH Miodrag Simović i Mirsad Čeman.

# Ustavni sud BiH zaštitio novinare od progona

Okružni sud u Bijeljini 2020. godine, nakon odluke Ustavnog suda, u cijelosti odbio tužbeni zahtjev Stanića

Ustavni sud BiH usvojio je apelaciju (broj AP 2751/19) „Avaz-rotu press“, koju je podnijela advokatica Almina Pilav protiv presude Okružnog suda u Bijeljini, a kojom je Milenku Staniću bila dodijeljena naknada štete u iznosu od čak 10.000 KM.

### Odbijena tužba

Riječ je o tekstu koji je objavio „Avaz“ 23. februara 2016. godine pod naslovom „Kandidat za vicegu-



### ODLUKA O DOPUSTIVOSTI I MERITUMU

Usvaja se apelacija „Avaz-rotu press“ d.o.o. Sarajevo.

Utvrđuje se povreda prava iz člana II(3.h) Ustava Bosne i Hercegovine i člana 10. Evropske konvencije za zaštitu ljudskih prava i osnovnih sloboda.

Ukida se Presuda Okružnog suda u Bijeljini broj 80 0 P 075406 18 Gž od 24. aprila 2019. godine.

Predmet se vraća Okružnom sudu u Bijeljini koji je dužan da po hitnom postupku donese novu odluku u skladu sa članom II(3.h) Ustava Bosne i Hercegovine i članom 10. Evropske konvencije za zaštitu ljudskih prava i osnovnih sloboda.

Nalaže se Okružnom sudu u Bijeljini da, u skladu sa članom 72. stav (5) Pravila Ustavnog suda Bosne i Hercegovine, u roku od 90 dana od donošenja ove odluke obavijesti Ustavni sud o rezultatima izvršenja.

## Secretariat

Activities of assistance to the Constitutional Court are organized within its Secretariat.

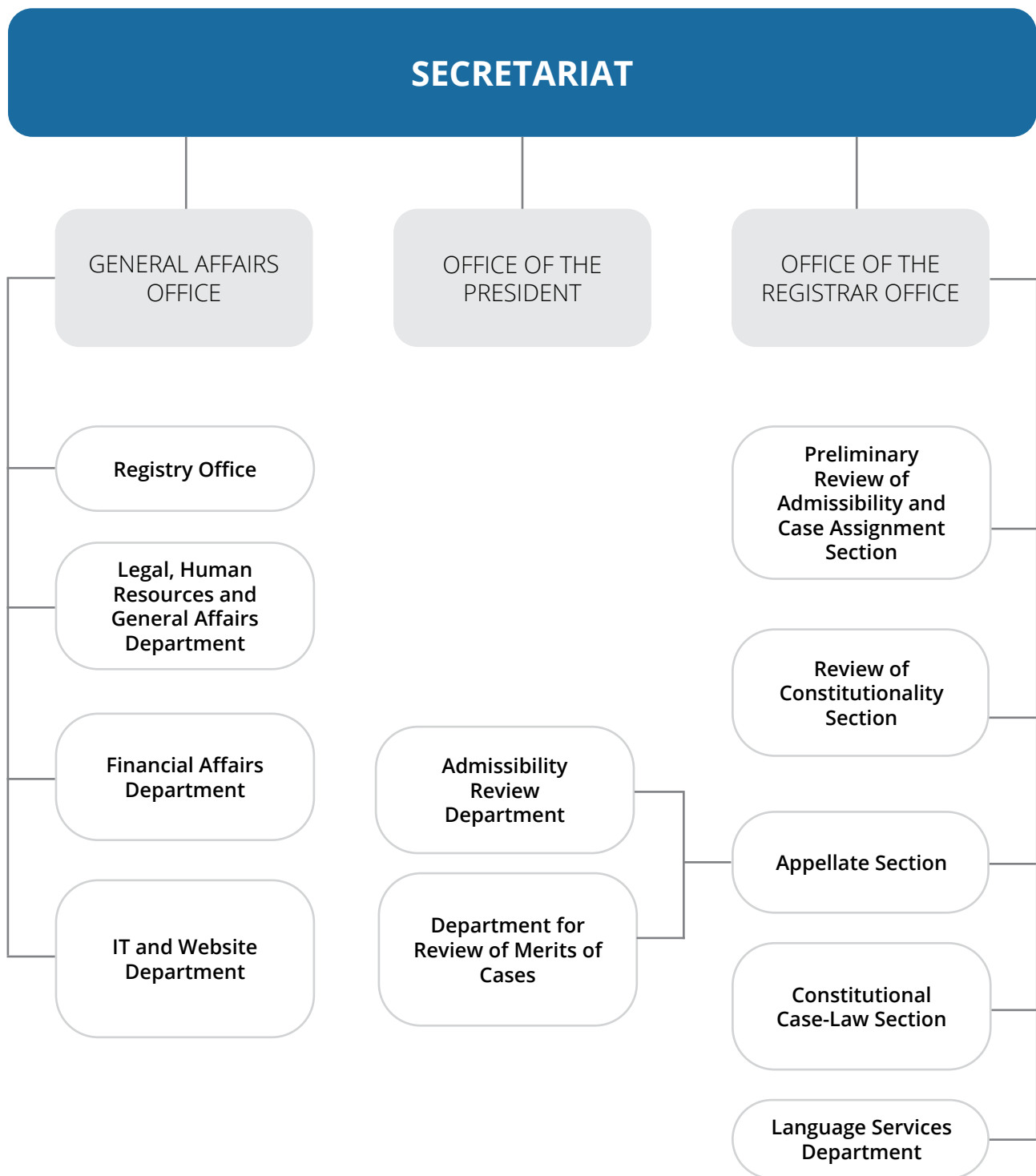
In the first year of its establishment, that is, in 1964, the Constitutional Court had around 10 employees in addition to judges. Over the years, the number of the employees increased slightly. After the first constitutive session in the so-called post-Dayton period, in 1997, the Constitutional Court had only some 15 employees in addition to judges. In July that year the Rules of Procedure of the Constitutional Court were adopted regulating, among other things, the internal organization of the Court. In accordance with the Rules of Procedure, professional, accounting, financial and technical duties for the needs of the Court were carried out by the Service of the Constitutional Court of Bosnia and Herzegovina, as the predecessor of today's Secretariat.

After the establishment of the Constitutional Court with the new composition of judges, in July 2005 the Rules of the Constitutional Court were adopted according to which the Secretariat, managed by the Secretary General, assists the Constitutional Court in performing professional and other tasks. The Decision on the Organization of the Secretariat from December 2005 stipulates that the Secretariat carries out research and analysis, legal, professional and operational, accounting and financial, information-related and documentation-related, administrative-technical, operational-technical and auxiliary tasks, and that the Secretariat consists of the Office of the Registrar, Administrative and Financial Office and the Office of the President, as the basic organizational units.

In the course of the past 20 years, in accordance with the requirements of the work, that is, with the increase in the number of cases before the Constitutional Court, so did the need increase for the establishment of new departments within the basic organizational units of the Secretariat and the hiring of additional employees in the Secretariat, especially legal professionals within the Office of the Registrar who carry out the duties falling within the scope of the basic jurisdiction of the Constitutional Court. The Secretariat currently has 92 employees, out of which 80% have university degree. At the time of the drafting of this publication, women made around 69% and men 31% of the employees of the Secretariat. The average age of the employees of the Secretariat is 48 years.

From the first days of the establishment until the present day, the Secretariat has constituted a key factor in rendering assistance to the functioning of the Constitutional Court. This is because the Secretariat carries out most complex research and analysis, legal, professional and operational tasks, accounting and financial tasks, information-related and documentation-related tasks, administrative-technical, operational-technical and different auxiliary tasks, necessary for the Constitutional Court to be able to exercise its jurisdiction under the Constitution. The Secretariat played a particularly prominent role at the time of the work in extraordinary circumstances during the Covid pandemic when the Secretariat, having adjusted to the new manner of operation (work outside the official premises for a considerable number of employees), maintained smooth process of work of the Constitutional Court in all segments, as well as in the period of the Constitutional Court's work with the insufficient number of judges, when, owing to the efforts made by the employees in all organizational units of the Secretariat, the continuity of the Constitutional Court's operations was secured.

The organization and all other issues relevant for the work of the Secretariat are closely regulated by the Decision on the Organization of the Secretariat. In application at the time of the drafting of this publication was the Decision on the Organization of the Secretariat adopted in June 2022, which systemized 47 workplaces with 114 employees. Under this Decision on the Organization, the Secretariat consists of three basic organizational units, as follows: the Office of the President, the Office of the Registrar and the General Affairs Office. The tasks carried out by the Offices are arranged into groups and organized within sections, departments and other organizational units, which are further divided into divisions.



- (1) The Secretariat of the Constitutional Court of Bosnia and Herzegovina (hereinafter: the Secretariat) shall assist the Constitutional Court in performing its professional and other duties.
- (2) Departments, the scope of whose work shall be established by a Decision on the Organization of the Secretariat taken by the Constitutional Court sitting in plenary, shall be formed within the Secretariat.
- (3) The Secretariat shall be managed by the Secretary General who shall assist the Constitutional Court in the performance of its functions and be responsible for the organization and activities of the Secretariat under the authorization of the President of the Constitutional Court.

(Article 106 of the Rules of the Constitutional Court of BiH)



## Secretary-General

Under Article 106(3) of the Rules of the Constitutional Court, the Secretariat shall be managed by the Secretary-General who shall assist the Constitutional Court in the performance of its functions and be responsible for the organization and activities of the Secretariat under the authorization of the President of the Constitutional Court. In the performance of the most complex duties, the Secretary-General shall be assisted by the Registrar, Heads of Departments and Sections, Head of Office of the President of the Constitutional Court, Assistant Secretary General of the Constitutional Court, legal advisors to the judges who are appointed and dismissed by the plenary Court. The Registrar shall perform duties of the Deputy Secretary-General in the event he/she is absent or otherwise prevented.



## Office of the President

The Office of the President, managed by the Head of the Office, carries out protocol-related activities and activities related to international cooperation of the Constitutional Court, public relations activities and other operational, administrative and technical activities.

## Office of the Registrar

The Registrar manages the Office of the Registrar. The Office of the Registrar carries out legal, research and analysis, professional and operational and other professional tasks related to the jurisdiction of the Constitutional Court under Articles VI(3)(a), VI(3)(b), VI(3)(c) and IV(3)(f) of the Constitution of Bosnia and Herzegovina, and tasks related to constitutional case law and documentation and the tasks of translating and language proofreading/editing of decisions and other texts and materials. The tasks are arranged into groups within the sections and departments, which are further divided into divisions.



The Office of the Registrar comprises the following organizational units: Preliminary Review of Admissibility and Case Assignment Section, Review of Constitutionality Section, Appellate Section, Constitutional Case law Section and Language Department. The Appellate Section consists of two departments: the Admissibility Review Department and the Department for Review of the Merits of Cases.



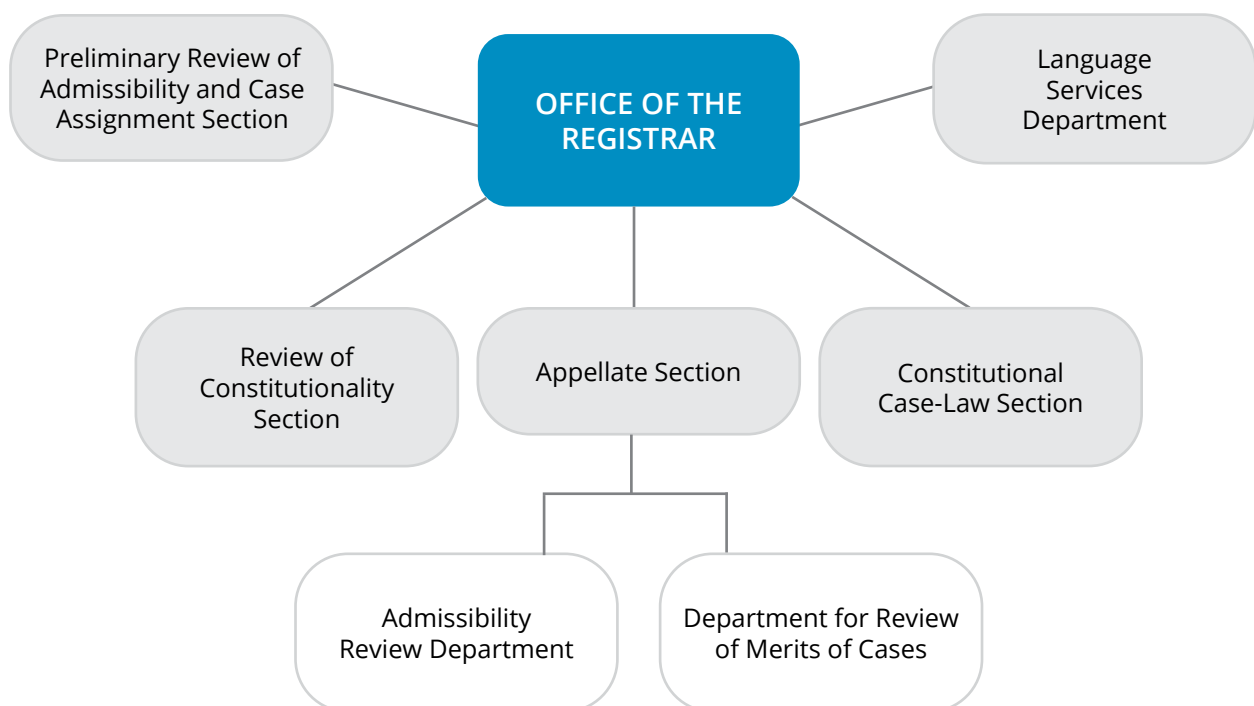
# Constitutional Court of Bosnia and Herzegovina 1964–2024

## Preliminary Review of Admissibility and Case Assignment Section

The Preliminary Review of Admissibility and Case Assignment of Section assesses the admissibility of requests from the constitutional jurisdiction of the Constitutional Court, that is, assesses the admissibility of appeals and other submissions; the aforementioned entails the analysis of constitutional and legal issues, the collection of appropriate documentation and data necessary for processing the requests/appeals, with support provided by the person carrying out administrative tasks, including the assignment of cases based on the fields of law and the referral of the cases to the Sections, so that the cases are assigned and transferred to the Appellate Section based on the admissibility of cases (Admissibility Review Department) and the cases to be decided on merits are assigned and transferred based on the types of cases (fields of law) to the criminal law division, the civil law division or other cases division within the Office of the Registrar, providing basic instructions about the ways to solve the cases, and other tasks as instructed by the Registrar.

## Review of Constitutionality Section

The Review of Constitutionality Section carries out legal, research and analysis, and other professional tasks related to the jurisdiction of the Constitutional Court under Articles VI(3)(a), VI(3)(c) and IV(3)(f) of the Constitution of Bosnia and Herzegovina. These tasks encompass the following: processing of requests for initiating proceedings and other submissions, which includes analysis of constitutional and legal issues, preparation of professional papers, analyses, notifications and information, draft decisions and rulings, as well as professional tasks including preparing for and holding of public hearings; and other tasks as instructed by the Registrar.



## Appellate Section

The Appellate Section carries out legal, research and analysis, and other professional tasks related to the jurisdiction of the Constitutional Court under Article VI(3)(b) of the Constitution of Bosnia and Herzegovina. These tasks encompass the following: processing of appeals and other submissions, which includes analysis of constitutional and legal issues, preparation of professional papers, analyses, notifications and information, draft decisions and rulings, as well as professional tasks related to preparing for and holding of public hearings, and other tasks as instructed by the Registrar. The tasks are arranged into groups within the departments, that is, divisions established within the departments.

The Appellate Section consists of the following Departments:

- a) Admissibility Review Department,
- b) Department for Review of the Merits of Cases.



## Language Services Department

The Language Services Department provides proofreading of decisions and all official texts that are to be published in the official languages in BiH and language proofreading/editing of decisions and materials for publications in the official languages in BiH. In addition, it provides translation of documents, draft decisions and proposed decisions, rulings and conclusions from English into the official languages in Bosnia and Herzegovina and *vice versa*. It also provides translation and submission of materials required for holding plenary sessions of the Constitutional Court, translation of the case law of the European Court of Human Rights and materials related to cooperation between the Constitutional Court and the international institutions, and other translation tasks for the needs of other organizational units of the Secretariat. The Department provides simultaneous interpreting at plenary sessions of the Constitutional Court and interpretation at the meetings of the Constitutional Court. It also provides consecutive and whispering (*chuchotage*) interpreting at formal visits and on official trips. The Department also provides translation of other documents and materials as required by the Constitutional Court. It also maintains the database of the Constitutional Court in English and keeps it up-to-date. In addition, it prepares decisions adopted by the Constitutional Court in English to be published on the Constitutional Court's website.

## Constitutional Case law Section

The Constitutional Case law Section follows up, processes and analyses the constitutional case law of the Constitutional Court of BiH, other constitutional courts and courts similar in jurisdiction, and the European Court of Human Rights, as well as other supranational courts; it prepares cases in accordance with the relevant case law and regulations and prepares periodical information on constitutional case law of other constitutional courts and courts similar in jurisdiction and the European Court of Human Rights; it prepares information on professional papers, articles, scientific papers and other materials important and interesting for the functioning of the Constitutional Court. It also carries out document-related tasks and library-related tasks and organizes and realizes cooperation with constitutional and other documentation and information services of other courts and institutions.



## General Affairs Office

The Assistant Secretary-General manages the Office. The tasks of the General Affairs Office are those related to the Registry and Archives, general and legal affairs, employment status of employees, human resource management, financial tasks, the management, maintenance, development and protection of the information system, the administration of the website of the Constitutional Court, the design, graphic and technical processing of the Constitutional Court's documents, and other administrative and technical activities necessary for the exercising of the functions and jurisdiction of the Constitutional Court. The tasks are carried out by the following organizational units: the Registry, the Legal, Human Resources and General Affairs Department, the Financial Affairs Department, and the Information Technology and Website Department.

### Registry

The tasks of the Registry are to receive and distribute mail; to receive and distribute cases; to maintain the registry of the cases and other submissions and supplementary books; to maintain electronic database and database of all cases pending before the Constitutional Court; to keep a file on the cases and their status; to submit the decisions of the Constitutional Court for publication in official gazettes, and to dispatch mail and archive the cases.



### Legal, Human Resources and General Affairs Department

The Legal, Human Resources and General Affairs Department performs general, legal and administrative tasks and those related to strategic planning and employment status of employees; it keeps and updates all files to reflect each employee's employment status; it carries out human resource management activities, as well as technical, auxiliary and other tasks.

### Financial Affairs Department

The Financial Affairs Department carries out accounting and financial tasks and tasks related to the updating of the financial management and control system; it carries out the tasks related to the calculation of employees' salaries, compensations and other financial rights, the tasks related to strategic planning and management of projects, the tasks related to the public procurement of services, goods and works, and other accounting and financial tasks in accordance with the regulations on financial operation and enactments of the Constitutional Court.

### Information Technology and Website Department

The Information Technology and Website Department ensures that the information system is of high quality, reliable and accessible; it ensures the security of the information system; it provides technical support and support to the information system users; it ensures unhindered functioning of the Internet service and administers the website of the Constitutional Court; it carries out the tasks related to graphic design and website, design, visual arts and technical processing of the Constitutional Court's documents in print or electronic form.



On its own initiative and where possible, the Constitutional Court shall regularly publish and update information on its website or in another convenient way, where it is in the interest of promoting the transparency and efficiency of the work of the Constitutional Court, as well as encouraging informed participation of the public in connection with matters of public interest.

(Article 10 of the Rulebook on Access to Information and the Re-use of Documents of the Constitutional Court)

## Public Character of the Work

The work of the Constitutional Court shall be public. By informing the public about its work, the Constitutional Court demonstrates its principled commitment as well as the obligation to comply with the principle of public character of its work as a general democratic standard. The Rules of

the Constitutional Court (Articles 13, 14 and 15) regulate in detail the issue of achieving the public character of work and restrictions in that respect.

The public character of work is achieved through the public character of the proceedings before the Constitutional Court (with justified restrictions, in accordance with the Rules) and the right of the general public to be informed about the work of the Constitutional Court as an institution of first-rate importance.





The provisions for the proceedings before the Constitutional Court to be public shall be made by means of informing the public of the preparations and holding of the sessions of the Constitutional Court and the public hearings before the Constitutional Court; providing notifications as to the course of the proceedings; issuing press releases to the media; holding press conferences; allowing the parties to the proceedings to have access to the cases under consideration before the Constitutional Court, to attend the public hearings of the Constitutional Court unless the President of the Constitutional Court, in the interest of ethics, public order or national security in a democratic society, decides otherwise; publishing the decisions taken; publishing the bulletin of the Constitutional Court containing the significant decisions, rulings and other acts; and in any other way determined by the Constitutional Court.

The public shall be excluded from the sessions of the Constitutional Court, except for a public hearing.

The press releases concerning the sessions and public hearings of the Constitutional Court (time, place and agenda) shall be posted on the notice board and the website of the Constitutional Court and sent to the media. All decisions adopted by the Constitutional Court are also available on the website.

Since 1997, the Constitutional Court of BiH has published bulletins in the official languages and alphabets in BiH. Conclusive with 2023, 34 annual volumes (two annual volumes for certain years) and five volumes in the English language (in 2006, 2011, 2016, 2018 and 2022) were published.

The bulletins containing the integral text of selected decisions of the Constitutional Court, Digest of the Case Law of the Constitutional Court of BiH, proceedings from international conferences and round tables organized by the Constitutional Court, and occasional other appropriate publications (monographs, information, etc.), make a significant and continuous publishing activity of the Constitutional Court of BiH.

## Article 13 (Public Character of the Work)

- (1) The work of the Constitutional Court shall be public.
- (2) The provisions for the proceedings before the Constitutional Court to be public shall be made by means of:
  - a) informing the public of the preparations and holding of the sessions of the Constitutional Court and the public hearings before the Constitutional Court;
  - b) providing notifications as to the course of the proceedings;
  - c) issuing press releases to the media;
  - d) holding press conferences;
  - e) allowing the parties to the proceedings to have access to the cases under consideration before the Constitutional Court, to attend the public hearings of the Constitutional Court, unless the President of the Constitutional Court, in the interest of ethics, public order or national security in a democratic society, decides otherwise;
  - f) publishing the decisions taken;
  - g) publishing the bulletin of the Constitutional Court, containing the significant decisions, rulings and other acts;
  - h) in any other way determined by the Constitutional Court.

## Article 14 (Excluding the Public)

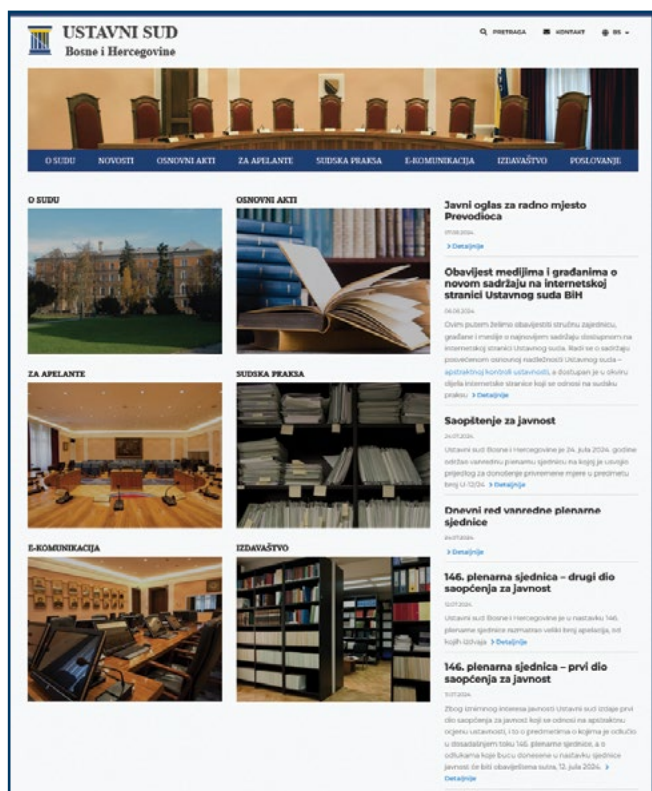
The public shall be excluded, in the proceedings before the Constitutional Court, from the working sessions, except for a public hearing.

## Article 15 (Press Releases)

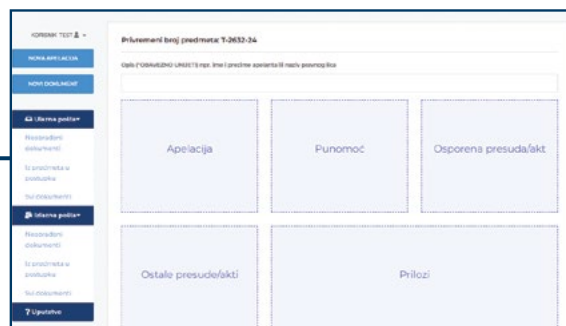
The press releases concerning the sessions and public hearings of the Constitutional Court (time, place and agenda) shall be posted on the notice board and the website of the Constitutional Court and sent to the media.

(Rules of the Constitutional Court of BiH)

# Constitutional Court of Bosnia and Herzegovina 1964–2024



The website of the Constitutional Court of Bosnia and Herzegovina is constantly updated and improved with new content such as: case law in all its segments (decision search, digest, enforcement of decisions, abstract review of constitutionality), business operations (plan documents, reports, public procurement, vacancies), news, publishing activity, etc.



With a view to faster, simpler and more efficient operations and exchange of documents and information with the appellants, attorneys and judicial institutions and the media, electronic communication has been introduced in two forms: electronic communication in restricted scope (e-mail) and electronic communication in full scope (communication with the attorneys via designated web application). In addition, electronic communication via e-mail is made possible to other natural and legal persons.

Within the project *Strengthening Judiciary Capacities in the Application of the European Convention for the Protection of Human Rights and its Standards in Bosnia and Herzegovina*, funded by the Government of the United Kingdom and implemented by the AIRE Centre, two videos were made: Informative video about the Constitutional Court of Bosnia and Herzegovina and the Instructions on Filing Appeal.



## International Cooperation

The international multilateral and bilateral cooperation, as well as the participation in international conferences, professional and scientific meetings, is the realm where the Constitutional Court continuously promotes its doctrine, experience and case law, particularly in the domain of the rule of law and the protection and promotion of the importance of respect for human rights and fundamental freedoms. It is in this manner that the Constitutional Court continuously contributes to the European civilization and the *acquis communautaire*.

As of 1997, the Constitutional Court has an ongoing cooperation with constitutional and other highest national courts performing the functions of constitutional justice in other countries. It also cooperates with the Council of Europe, particularly with the European Court of Human Rights and the European Commission for Democracy through Law (the Venice Commission). The Constitutional Court is a member of the Conference of European Constitutional Courts and the World Conference on Constitutional Justice. It cooperates with other international organizations and institutions as well. Since 2019, the Constitutional Court has actively been participating in the work of the Superior Courts Network within the European Court of Human Rights, primarily through responses to requests about certain legal issues.

### Membership in international organizations

#### The Conference of European Constitutional Courts

As of 2000, the Constitutional Court of BiH is a member of the Conference of European Constitutional Courts whose establishment was initiated by the constitutional courts of the Federal Republic of Germany, Republic of Austria, Republic of Italy and the former Socialist Federal Republic of Yugoslavia. The objectives of the Conference are promotion and exchange of information among its members about the methods of work and constitutional review case law and exchange of opinions about institutional, structural and operational issues related to public law and constitutional justice, and strengthening of independence of constitutional courts as a key factor in guaranteeing and implementing democracy and the rule of law, with particular emphasis on securing the protection of human rights. The Conference supports efforts to maintain regular contacts between the European constitutional courts and similar institutions. The Constitutional Court has regularly participated in the sessions of the Congress in the 2000-2024 period.



*President Galić attending the XIX Congress of the Conference of European Constitutional Courts in Chişinău, Moldova, May 2024*





*President Ćeman and Vice-President Tadić attending the 4th Congress of the World Conference on Constitutional Justice on the topic of "The Rule of Law and Constitutional Justice in the Modern World", Vilnius, Republic of Lithuania, September 2017*

## World Conference on Constitutional Justice

The Constitutional Court of BiH has been a full member of the World Conference on Constitutional Justice since January 2013.

The World Conference on Constitutional Justice was established upon an initiative of the Venice Commission with the aim of bringing together constitutional courts and other highest courts performing the function of constitutional review around the world. The following Congresses have been held so far: in 2009, in Cape Town, the Republic of South Africa, on the topic *Influential Constitutional Justice - Its Influence on Society and on Developing a Global Jurisprudence on Human Rights*; in 2011, in Rio de Janeiro, Federative Republic of Brazil, on *Separation of Powers and Independence of Constitutional Courts and Equivalent Bodies*; in 2014, in Seoul, Republic of Korea, on *Constitutional Justice and Social Integration*; in 2017, in Vilnius, Lithuania, on *The Rule of Law and Constitutional Justice in the Modern World*, and in 2022, in Bali, Republic of Indonesia, on *Constitutional Justice and Peace*.

## Cooperation with the European Court of Human Rights

The relationship with the European Court of Human Rights, apart from the professional domain, is also reflected in the fact that national courts accept judgments of the European Court, as an authority outside of the national judicial system. This is an exceptional fact, which resulted, through the development of relations between the European Court and national constitutional courts, inter alia, in the establishment of the universal system of the protection of human rights and fundamental freedoms as well as the rule of law. In that system, with mutual tolerance, the national constitutional and other national courts, as well as the European Court of Human Rights, establish high standards. The Constitutional Court of BiH contributes in that respect by both the high standard value of its decisions and the direct cooperation in the exchange of opinions and positions concerning the most sensitive issues of the protection of human rights and fundamental freedoms, as well as by its participation in conferences and seminars.

Since May 2019, the Constitutional Court has been a member of the Superior Courts Network set up upon an initiative and within the European Court of Human Rights. The aim of the Network is to enrich dialogue and the implementation of the Convention, that is, create a practical and useful means of exchanging relevant information on Convention case law and related matters.



*President Valerija Galić and Head of Office of the President Erda Začiragić on a working visit to the European Court of Human Rights in Strasbourg, France, January 2024*



## Constitutional Court of Bosnia and Herzegovina 1964–2024

Also significant are working visits to the European Court of Human Rights for the opening of the judicial year, organized by the European Court every year in late January.

Particularly important for the Constitutional Court of BiH was the visit of Mr. Robert Spano, President of the European Court of Human Rights, in March 2022. Mr. Faris Vehabović, judge of the European Court from BiH, and Ms. Anna Austin, jurisconsult, visited the Constitutional Court together with President Spano.



*Mr. Robert Spano, President of the European Court of Human Rights, Faris Vehabović, Judge of the European Court of Human Rights, and jurisconsult Anna Austin visiting the Constitutional Court, March 2022*

### European Commission for Democracy through Law (Venice Commission)

The Constitutional Court has had a continuous cooperation with the European Commission for Democracy through Law (Venice Commission) since 1997. The cooperation has intensified since 2002 when BiH became a member of the Council of Europe and acceded to a Partial Agreement of the Council of Europe establishing the European Commission for Democracy through Law in 1990.

Mr. Zlatko M. Knežević, former judge of the Constitutional Court of BiH, is a member of the Venice Commission on behalf of BiH. Previous member of the Commission was Mr. Ćazim Sadiković, PhD, former judge of the Constitutional Court of BiH.

Delegation of the Constitutional Court of BiH regularly participates at sessions of the Venice Commission.



*11th meeting of the Joint Council on Constitutional Justice, Venice Commission, Sofia, Bulgaria, 24 and 25 April 2023*

## Constitutional Court of Bosnia and Herzegovina 1964–2024



*Delegation of the Constitutional Court of Bosnia and Herzegovina on a working visit to the Constitutional Court of the Republic of Austria as part of program of direct bilateral cooperation between two the courts, Vienna, September 2019*



*Study visit of the delegation of the Constitutional Court to the Supreme Court of the United States of America, Washington, D.C., September 2019*



*Delegation of the Constitutional Court of Bosnia and Herzegovina on a working visit to the Constitutional Court of the Kingdom of Spain, Madrid, February 2020*



# Constitutional Court of Bosnia and Herzegovina 1964–2024



President Mato Tadić, Vice-President Zlatko M. Knežević and Head of Office of the President Erda Začiragić visiting the Constitutional Court of the Republic of Turkey, Ankara, April 2022



Vice-President Mirsad Ćeman attending an international conference "The Role of the Constitutional Courts in Concretising the Shared Values Uniting Europe", Riga, Latvia, March 2024

## Constitutional Court's Participation in International Symposiums and Conferences

The Constitutional Court of BiH continuously participates in numerous international symposiums and conferences, and makes study visits to and receives visits from constitutional and other highest international courts.

The Constitutional Court has had a particularly good cooperation with the Constitutional Courts of the Republic of Austria, the Republic of Turkey and the Federal Republic of Germany.



Judge Valerija Galić and Judge Miodrag Simović attending a regional conference "The role of the constitutional court and ordinary courts in protecting human rights and fundamental freedoms – joint responsibility", Budva, Montenegro, May 2018



Ms. Valerija Galić, President of the Constitutional Court of Bosnia and Herzegovina, and Mr. Mirsad Ćeman, Vice-President of the Constitutional Court of BiH, at the Regional Conference on the topic of "Protection of the Right to Privacy", Budva, Montenegro, October 2023

## Cooperation with Regional Constitutional Courts

Since 2003, the Constitutional Court has had regular contacts and cooperation with the constitutional courts of the countries that were created after the dissolution of the Socialist Federal Republic of Yugoslavia through participation in and organization of regional conferences. Particularly important are the Regional Conferences of Constitutional Courts, held in BiH as



*President Valerija Galić attending an international conference marking the 60th anniversary of the Constitutional Court of the Republic of Serbia, Belgrade, November 2023*



*President Valerija Galić and Head of the Constitutional Case Law Section Ermina Dumanjić attending an international conference on the topic of "Constitutional protection of freedom of thought and freedom of public expression of thought", Skopje, Republic of Northern Macedonia, March 2024*

well as in other countries of the region, namely, Croatia, Montenegro, North Macedonia and Serbia, at which the Constitutional Court of BiH takes part on regular basis. Some of the topics of these Conferences were: *Decisions of the European Court of Human Rights and their Impact on the Standards of the National Constitutional Courts; Constitutional Courts – Declared and Actual Independence; Tax Law and Constitutional Justice; Contribution to Enhancement of the Rule of Law through Decisions of Constitutional Court concerning Abstract Control; Freedom of Religion in Constitutional Case Law; Protection of Right to Respect for Family Life in Constitutional Case Law; Constitutional Courts – Guardians of the Environment and Protection of Right to Privacy.*



*Participants of a regional conference of constitutional courts on the topic of "Tax Law and Constitutional Justice" co-organised with the German Foundation for International Cooperation (IRZ), Brčko, BiH, April 2018*



## Conferences organized or co-organized by the Constitutional Court

With a view to contributing to the strengthening of the protection of human rights and fundamental freedoms, the rule of law, exchange of experience and constitutional case law, the Constitutional Court has actively participated in and often organized many conferences and round tables.

In the period from 1997 to 2001, in cooperation with the PHARE program, the Constitutional Court organized a series of conferences and round tables that served as basis for establishing the relationships between the Constitutional Court and other judicial instances in BiH. In this manner, the first steps were made to confirm the current system of constitutional judiciary and judicial system in BiH.

As early as 2003, the Constitutional Court initiated the gatherings of the regional constitutional courts with the aim of exchanging experience, views and case law related to the application of law and establishing expert cooperation in relation to other issues that are of common interest and importance to the constitutional courts in the region in which the constitutional judiciary shares common beginnings and foundations. The Constitutional Court has so far hosted five regional conferences organized in cooperation with the German Foundation for International Legal Cooperation (IRZ).

Since 2017, the Constitutional Court of BiH, together with the London-based AIRE Centre (Advice on Individual Rights in Europe), has organized annual conferences of the highest courts of BiH within the framework of the Judicial Forum for BiH. The aim of the Forum is to advance the cooperation between the highest judicial institutions in BiH and to harmonize the case law in BiH with the European standards.

In June 2023, the Constitutional Court of BiH held a very important conference entitled *Enforcement of Decisions of the Constitutional Court of Bosnia and Herzegovina*, organized with the assistance and support of the Delegation of the European Union to BiH and H.E. Ambassador Johann Sattler, Head of the EU Delegation to BiH and EU Special Representative in BiH.



*Conference of the Constitutional Court of Bosnia and Herzegovina entitled "Enforcement of Decisions of the Constitutional Court of Bosnia and Herzegovina", Jahorina, BiH, June 2023*



*President Seada Palavrić at the 8th annual conference as part of the Judicial Forum for Bosnia and Herzegovina on the topic of “The role of the highest courts and the Constitutional Court of BiH in the harmonisation of case law in trying organised crime and corruption cases”, Sarajevo, October 2024*

Also important is the cooperation through the Regional Law of Rule Forum for South East Europe, organized by non-governmental organizations with the support of the Constitutional Court of BiH and governments of friendly countries. The Tenth Forum was held in Sarajevo in November 2023 with the topic *Balancing Data Protection with Transparent Justice: The European Legal Framework*.



*President Valerija Galić at the 10th Regional Forum on the Rule of Law for South-East Europe on the topic of “Striking a balance between data protection and transparent judiciary: European framework”, Sarajevo, BiH, November 2023*

## Cooperation with international community representatives in Bosnia and Herzegovina

The Constitutional Court also has a considerable support of and continuous cooperation with foreign embassies, foundations and representatives of the international institutions such as: Delegation of the European Union, Council of Europe Office, OSCE Mission to BiH, Embassy of the United Kingdom in BiH and other relevant diplomatic missions with which it maintains regular working and courtesy visits and meetings.



*Visit by H.E. Ambassador Johann Sattler,  
November 2019*



*Visit by Mr. Roderick W. Moore, Principal Deputy High  
Representative and Brčko District Supervisor,  
October 2010*



*Visit by High Representative Christian Schmidt,  
October 2021*



*Visit by H.E. Julian Reilly, Ambassador of the United  
Kingdom of Great Britain and Northern Ireland in BiH,  
September 2022*



*Visit by H.E. Ambassador Luigi Soreca, October 2024*



## Library

The library operates within the Constitutional Case Law Section of the Constitutional Court and is located on the premises of the Court's seat. By its purpose, it is a specialized library exclusively intended for the professional and research work of the employees of the Constitutional Court of BiH. It is also available to other researchers by appointment. The operation of the library is regulated in accordance with the Library Regulations.



## Library Collection

The library resources, consisting of an impressive collection related to the field of legal science as well as other social sciences, are being continuously upgraded and expanded through purchases, exchanges and donations. The library resources are processed through application of a uniform method based on international standards. Online catalogue is equipped with search engine facilitating the search of the entire collection by different criteria (author, title, publisher etc.), including key-word option as the most interesting and very important search option.



## Publishing Activity

The Constitutional Court publishes periodical and monographic series publications as part of its publishing activity that is an important segment of achieving the public character of its work. The issuing of the publications, in addition to its informative dimension, constitutes a contribution to the building of the rule of law, protecting and promoting the value and importance of human rights and fundamental freedoms, thereby also to development of a democratic society as a whole. Bulletin with selected decisions of the Constitutional Court of BiH in the official languages and alphabets of BiH is printed periodically, once or twice a year. Also printed occasionally are the Bulletin in English, digest of case law of the Constitutional Court of BiH (in BiH official languages and in English), conference proceedings, and relevant publications of reporting and informative character. All publications are also published on the Court's website.

### Bulletin of the Constitutional Court of Bosnia and Herzegovina

No. 1 – 1997	No. 18 – 2008 - Vol. I
No. 2 – 1998	No. 19 – 2008 - Vol. II
No. 3 – 1999 – Vol. I	No. 20 – 2009
No. 4 – 1999 - Vol. II	No. 21 – 2010
No. 5 – 2000 - Vol. I	No. 22 – 2011
No. 6 – 2000 - Vol. II	No. 23 – 2012
No. 7 – 2001	No. 24 – 2013
No. 8 – 2002	No. 25 – 2014
No. 9 – 2003	No. 26 – 2015
No. 10 – 2004 - Vol. I	No. 27 – 2016
No. 11 – 2004 - Vol. II	No. 28 – 2017
No. 12 – 2005 - Vol. I	No. 29 – 2018
No. 13 – 2005 - Vol. II	No. 30 – 2019
No. 14 – 2006 - Vol. I	No. 31 – 2020
No. 15 – 2006 - Vol. II	No. 32 – 2021
No. 16 – 2007 - Vol. I	No. 33 – 2022
No. 17 – 2007 - Vol. II	No. 34 – 2023



### Bulletin of the Constitutional Court of Bosnia and Herzegovina

No. 1 – 2006
No. 2 – 2011
No. 3 – 2016
No. 4 – 2018
No. 5 – 2022

## Special Editions

- CONSTITUTIONAL COURT OF BOSNIA AND HERZEGOVINA – Information booklet (1999, 2006, 2007, 2008, 2011, 2013, 2015, 2018, 2021)
- CONSTITUTIONAL COURT OF BOSNIA AND HERZEGOVINA 1997-2017 (2017)
- RULES OF THE CONSTITUTIONAL COURT OF BOSNIA AND HERZEGOVINA (2015)
- CONSTITUTIONAL COURT OF BOSNIA AND HERZEGOVINA 1964-2014 (2015)



## Professional Publications

- ANALYSIS OF CASE LAW OF HIGHEST COURTS IN BIH IN ORGANIZED CRIME AND CORRUPTION CASES (2023)
- CASE LAW OF BOSNIA AND HERZEGOVINA COURTS ON THE RIGHT NOT TO BE SUBJECTED TO TORTURE OR TO INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT – Report (2021)
- CASE LAW OF BOSNIA AND HERZEGOVINA COURTS ON THE RIGHT TO PRIVATE AND FAMILY LIFE, HOME, AND CORRESPONDENCE – Report (2021)
- TRIAL WITHIN A REASONABLE TIME – Guide (2021)
- DIGEST OF THE CASE LAW OF THE CONSTITUTIONAL COURT OF BOSNIA AND HERZEGOVINA (2020)
- CASE LAW OF BOSNIA AND HERZEGOVINA COURTS ON THE RIGHT TO LIBERTY AND SECURITY OF PERSON – Report (2020)



- CASE LAW OF BOSNIA AND HERZEGOVINA COURTS ON FREEDOM OF EXPRESSION – Report (2020)
- Zlatko M. Knežević, Ermina Dumanjić SPECIAL INVESTIGATIVE MEASURES – Exercise Book (2019)
- A GUIDE ON THE RIGHT TO A REASONED DECISION (2018)

## Conference Proceedings

- SEPARATE OPINIONS IN CONSTITUTIONAL DECISIONS (2021)
- RIGHT TO A TRIAL WITHIN A REASONABLE TIME (2020)
- FREEDOM OF RELIGION IN THE CONSTITUTIONAL CASE LAW (2019)
- SPECIAL INVESTIGATIVE MEASURES (2019)
- TAX LAW AND CONSTITUTIONAL JUSTICE (2018)
- RIGHT TO A REASONED JUDGMENT – MANDATORY STANDARD IN COURT PROCEEDINGS (2018)
- CONSTITUTIONAL COURTS – DECLARED AND ACTUAL INDEPENDENCE (2017)
- DECISIONS OF THE EUROPEAN COURT OF HUMAN RIGHTS AND THEIR IMPACT ON THE STANDARDS OF THE NATIONAL CONSTITUTIONAL COURTS (2016)
- CONSTITUTIONAL COURT – BETWEEN A NEGATIVE LEGISLATOR AND POSITIVE ACTIVISM (2015)
- THE BUDGET OF THE CONSTITUTIONAL COURT: A DECISIVE FACTOR OF ITS INDEPENDENCE (2005)
- APPLICATION OF THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN BOSNIA AND HERZEGOVINA (2003)
- CONSTITUTIONAL COURT OF BOSNIA AND HERZEGOVINA AND OTHER JUDICIAL INSTANCES (2001)
- RELATIONS BETWEEN CONSTITUTIONAL COURTS AND OTHER JUDICIAL INSTANCES (2001)



# Registry of judges, presidents, secretaries-general and registrars

## JUDGES

Slobodan Marjanović	1964–1971	Dr. Kasim Trnka	1989–1993
Milutin Đurašković	1964–1967	Dr. Nedjeljko Milićević	1990–1998
Momir Jovanović	1964–1971	Dušan Obradović	1992–1996
Dr. Salamon Konforti	1964–1971	Želimir Juka	1994–1996
Olga Marasović	1964–1967	Prof. dr. Joseph Marko	1997–2002
Borivoje Popović	1964–1971	Dr. Hans Danelius	1997–2002
Dr. Zaim Šarac	1964–1965	Prof. dr. Louis Favoreu	1997–2002
Tahir Hadžović	1965–1975	Prof. dr. Ismet Dautbašić	1997–1998
Bisera Taušan	1967–1975	Prof. dr. Kasim Begić	1997–2002
Bogomir Brajković	1967–1979	Marko Arsović	1997–2000
Atijas Cevi	1971–1979	Prof. dr. Vitomir Popović	1997–2002
Ante Miljas	1971–1978	Mirko Zovko	1997–2002
Jovo Sojić	1971–1979	Zvonko Miljko	1997–2002
Dr. Gašo Mijanović	1971–1979	Azra Omeragić	1998–2002
Džemal Kapić	1974–1980	Prof. dr. Snežana Savić	2000–2002
Danilo Jakovljević	1976–1983	Prof. Didier Maus	2002–2003
Šefkija Puzić	1976–1983	Hatidža Hadžiosmanović	2003–2008
Ismet Brkić	1976–1981	Prof. dr. Ćazim Sadiković	2003–2005
Miroslav Krvavica	1978–1986	Jovo Rosić	2003–2006
Hazim Eminefendić	1979–1987	Prof. David Feldman	2003–2011
Eva Lett	1979–1987	Krstan Simić	2007–2010
Đuro Vekić	1980–1985	Tudor Pantiru	2002–2021
Anđelko Veljić	1981–1989	Mato Tadić	2002–2022
Enver Lihic	1981–1989	Valerija Galić	2002–
Ćazim Sadiković	1984–1993	Prof. dr. Miodrag Simović	2003–2022
Slavojka Todorović	1984–1990	Prof. dr. Constance Grewe	2004–2017
Đorđo Samardžić	1984–1986	Seada Palavrić	2005–
Anđelko Kovačević	1985–1989	Mirsad Ćeman	2008–
Ljubo Kovačević	1986–1989	Margarita Caca-Nikolovska	2011–2020
Nedjeljko Stipić	1986–1989	Zlatko M. Knežević	2011–2024
Pero Krijan	1988–1993	Giovanni Grasso	2017–2020
Alija Latić	1988–1998	Prof. dr. Angelika Nußberger	2020–
Milan Škoro	1989–1991	Prof. dr. Ledi Bianku	2021–
Dr. Drago Bago	1989–1991	Prof. dr. Helen Keller	2022–
Dr. Ismet Dautbašić	1989–1997	Marin Vukoja	2024–
Dr. Hasan Bakalović	1989–1995		



## PRESIDENTS

Slobodan Marjanović	1964–1971
Bogomir Brajković	1971–1979
Đuro Vekić	1980–1984
Ćazim Sadiković	1984–1986
Slavojka Todorović	1986–1988
Pero Krijan	1988–1989
Dr. Kasim Trnka	1990–1992
Dr. Ismet Dautbašić	1992–1997
Mirko Zovko	1997–1999
Prof. dr. Kasim Begić	1999–2001
Prof. dr. Snežana Savić	2001–2002
Mato Tadić	2003–2006
Hatidža Hadžiosmanović	2006–2008
Seada Palavrić	2008–2009
Prof. dr. Miodrag Simović	2009–2012
Valerija Galić	2012–2015
Mirsad Ćeman	2015–2018
Zlatko M. Knežević	2018–2021
Mato Tadić	2021–2022
Valerija Galić	2022–2024
Seada Palavrić	2024–

## SECRETARY GENERAL

Jakob Papo	1964–1980
Mladen Novak	1980–1982
Nedjeljko Milićević	1982–1988
Milica Dalagija	1989–1999
Biljana Potparić-Lipa (v.d.)	1999–2000
Dušan Kalember	2001–2008
Zdavko Đuričić	2008–2015
Nataša Vuković	2015–

## REGISTRARS

Faris Vehabović	2004–2007
Zvonko Mijan	2008–2022
Sevima Sali-Terzić	2022–



## Plenary sessions of the Constitutional Court of Bosnia and Herzegovina in the post-Dayton period

(2001)



Louis Favoreu (Judge), Hans Danelius (Judge), Zvonko Miljko (Judge), Davor Bogdanić (Legal Advisor), Kasim Begić (President), Snežana Savić (Judge), Mirko Zovko (Judge), Joseph Marko (Judge), Azra Omeragić (Judge), Vitomir Popović (Judge)

(2003–2006)



Constance Grewe (Judge), David Feldman (Judge), Hatidža Hadžiosmanović (Vice-President), Tudor Pantiru (Vice-President), Mato Tadić (President), Jovo Rosić (Judge), Valerija Galić (Judge), Miodrag Simović (Vice-President), Seada Palavrić (Judge)



(2006–2008)



Constance Grewe (Judge), Mato Tadić (Judge), David Feldman (Vice-President), Miodrag Simović (Vice-President), Dušan Kalember (Secretary General), Hatidža Hadžiosmanović (President), Faris Vehabović (Registrar), Valerija Galić (Vice-President), Tudor Pantiru (Judge), Seada Palavrić (Judge), Krstan Simić (Judge)

(2008–2009)



Constance Grewe (Judge), Tudor Pantiru (Judge), Valerija Galić (Vice-President), Miodrag Simović (Vice-President), Zdravko Đuričić (Secretary General), Seada Palavrić (President), Zvonko Mijan (Registrar), David Feldman (Vice-President), Mato Tadić (Judge), Krstan Simić (Judge), Mirsad Ćeman (Judge)



# Constitutional Court of Bosnia and Herzegovina 1964–2024

(2009–2012)



Margarita Tsatsa-Nikolovska (Judge), Mato Tadić (Judge), Valerija Galić (Vice-President), Seada Palavrić (Vice-President), Zdravko Đuričić (Secretary General), Miodrag Simović (President), Zvonko Mijan (Registrar), Constance Grewe (Vice-President), Tudor Pantiru (Judge), Mirsad Ćeman (Judge), Zlatko M. Knežević (Judge)

(2012–2015)



Margarita Tsatsa-Nikolovska (Judge), Constance Grewe (Judge), Seada Palavrić (Vice-President), Tudor Pantiru (Vice-President), Zdravko Đuričić (Secretary General), Valerija Galić (President), Zvonko Mijan (Registrar), Miodrag Simović (Vice-President), Mato Tadić (Judge), Mirsad Ćeman (Judge), Zlatko M. Knežević (Judge)

(2015–2018)



Seada Palavrić (Judge), Valerija Galić (Judge), Zlatko M. Knežević (Vice-President), Mato Tadić (Vice-President), Nataša Vuković (Secretary General), Mirsad Ćeman (President), Zvonko Mijan (Registrar), Margarita Tsatsa-Nikolovska (Vice-President), Tudor Pantiru (Judge), Miodrag Simović (Judge), Giovanni Grasso (Judge)

(2018–2021)



Seada Palavrić (Judge), Valerija Galić (Judge), Margarita Tsatsa-Nikolovska (Vice-President), Mato Tadić (Vice-President), Nataša Vuković (Secretary General), Zlatko M. Knežević (President), Zvonko Mijan (Registrar), Mirsad Ćeman (Vice-President), Tudor Pantiru (Judge), Miodrag Simović (Judge), Giovanni Grasso (Judge)



# Constitutional Court of Bosnia and Herzegovina 1964–2024

(2021–2022)



Angelika Nußberger (Judge), Seada Palavrić (Judge), Mirsad Ćeman (Vice-President), Tudor Pantiru (Vice-President), Mato Tadić (President), Miodrag Simović (Vice-President), Valerija Galić (Vice-President), Zlatko M. Knežević (Judge), Helen Keller (Judge)

(2022–2024)



Ledi Bianku (Judge), Seada Palavrić (Judge), Mirsad Ćeman (Vice-President), Nataša Vuković (Secretary General), Valerija Galić (President), Sevima Sali-Terzić (Registrar), Helen Keller (Vice-President), Angelika Nußberger (Judge)

(2024)



Ledi Bianku (Judge), Mirsad Ćeman (Judge), Valerija Galić (Vice-President), Nataša Vuković (Secretary General), Seada Palavrić (President), Sevima Sali-Terzić (Registrar), Angelika Nußberger (Vice-President), Helen Keller (Judge), Marin Vukoja (Judge)