

USTAVNI SUD
BOSNE I HERCEGOVINE



УСТАВНИ СУД
БОСНЕ И ХЕРЦЕГОВИНЕ

CONSTITUTIONAL COURT
OF BOSNIA AND HERZEGOVINA

COUR CONSTITUTIONNELLE
DE BOSNIE-HERZEGOVINE

S T F
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**Report: Bosnia and Herzegovina
(Vice-President: Mrs. Valerija Galić)**

I. Independence of Constitutional Court as an Institution

Bosnia and Herzegovina has a specific constitutional and legal system. The Constitution of Bosnia and Herzegovina constitutes a part (Annex 4) of the General Framework Agreement for Peace in Bosnia and Herzegovina, more popularly known as the Dayton Peace Accords. The Constitution of Bosnia and Herzegovina entered into force on 14 December 1995.

The Constitutional Court of Bosnia and Herzegovina was established for the first time on 15 February 1964 pursuant to the Constitution of the Socialist Federal Republic of Yugoslavia from 1963. The current Constitutional Court of Bosnia and Herzegovina, which is regulated under Article VI of the Constitution of Bosnia and Herzegovina, has little resemblance to the former Constitutional Court of Bosnia and Herzegovina. In other words, the new Dayton Constitution itself has brought a completely new organisation of the Constitutional Court of Bosnia and Herzegovina. The Constitutional Court of Bosnia and

Herzegovina was established after the selection and appointment procedures had been conducted, i.e. at the time when the first session of the Constitutional Court of Bosnia and Herzegovina was convened in May 1997.

The Constitutional Court of Bosnia and Herzegovina, reinforced by the power of the Constitution of Bosnia and Herzegovina, has a special place in the constitutional and legal system of Bosnia and Herzegovina. The Constitutional Court of Bosnia and Herzegovina is a **constitutional organ**¹ regulated under Article VI of the Constitution of Bosnia and Herzegovina. According to the Constitution of Bosnia and Herzegovina, the Constitutional Court is detached from the system of tripartite division of powers. Accordingly, the Constitutional Court is neither a part of legislative or executive or regular judicial power, which means that it has a special power granted under the Constitution and, based on the Constitution of Bosnia and Herzegovina, the Constitutional Court functions as a correction factor for other three segments of power. Thus, the influence of a legislative body on the constitutional and legal position of the Constitutional Court of Bosnia and Herzegovina is limited because changing and amending the Constitution of Bosnia and Herzegovina is the only legislative manner in which the Constitutional Court may be granted a different position. The legislative authority may not issue a general legal act which, in the hierarchy of normative legal acts, is lower than the Constitution and thus regulate the issues essential for the Constitutional Court of Bosnia and Herzegovina, in particular when those issues concern its competencies.²

Due to the fact that there was no constitutional basis for regulating the procedure and organisation of the Constitutional Court of Bosnia and Herzegovina, the Constitutional Court itself, in its *õrules of procedureö*, currently entitled **Rules**³, governs, in a very extensive

¹ The Constitutional Court does not make such categorization of the state authorities. Instead, the Constitutional Court of Bosnia and Herzegovina itself assigns these attributes not only to the Constitutional Court of Bosnia and Herzegovina but also to other organs under the Constitution (Case U 6/06 of 29 March 2008, paragraph 28).

² Thus, in Case U 66/02 (of 30 January 2004; available at: www.ustavisud.ba), the Constitutional Court of Bosnia and Herzegovina rejected the request of the Ministry of Internal Affairs of the Federation of Bosnia and Herzegovina for resolution of dispute between this Ministry and the Ministry of Civil Affairs of Bosnia and Herzegovina on the basis of Article 31 of the Law on Citizenship of the Federation of Bosnia and Herzegovina (*õOfficial Gazette of the Federation of Bosnia and Herzegovinaö*, No. 43/01) for the reason that the aforementioned Ministry is not authorised to initiate *õa dispute between organs of Stateö* within the meaning of Article VI.3(a) of the Constitution of Bosnia and Herzegovina.

³ Pursuant to Article VI.3(a) of the Constitution of Bosnia and Herzegovina, the Court shall adopt the Rules of the Constitution of Bosnia and Herzegovina by a majority of all members. The first Rules of the Procedure were adopted in 1997 (*õOfficial Gazette of Bosnia and Herzegovina, No. 2/97ö*) and were amended for several times (*õOfficial Gazette of Bosnia and Herzegovina, Nos. 16/99, 20/99, 26/01, 6/02 and 1/04ö*). The revised version was published twice, in 1999 and 2004 (*õOfficial Gazette of Bosnia and Herzegovina, Nos. 24/99 and 2/04ö*). Subsequently, in 2005, the Constitutional Court of Bosnia and Herzegovina adopted the *Rules of the*

manner, the constitutional and legal tasks under Article VI of the Constitution of Bosnia and Herzegovina. In view of the aforesaid, one may refer to dualistic model of the BiH judiciary. Certain structures of the so-called unique model are recognisable only in connection with the appellate jurisdiction of the Constitutional Court of Bosnia and Herzegovina. In fact, as a reviewing court in individual cases, the Constitutional Court of Bosnia and Herzegovina, pursuant to Article VI(3)(b) of the Constitution of Bosnia and Herzegovina, deals only with issues under the Constitution. However, ordinary courts are also called upon to interpret and apply the Constitution of Bosnia and Herzegovina. Nevertheless, it should be noted that the Constitution of Bosnia and Herzegovina is the only authority competent to establish whether a general legal act is inconsistent with the Constitution and, if so, to render it ineffective.⁴ In Article 1 of the Rules it is stipulated that "according to the Constitution of Bosnia and Herzegovina [í], the Rules shall govern [í] the organization of the Constitutional Court of Bosnia and Herzegovina [í], the proceedings before the Constitutional Court and other issues relevant for the activities of the Constitutional Court." In Article 2 of the Rules it is stipulated that "the Constitutional Court [í], shall be autonomous and independent of all other bodies in Bosnia and Herzegovina. No body in Bosnia and Herzegovina shall enact laws, other regulations and general acts that concern the activities of the Constitutional Court and its role prescribed by the Constitution."

Article 3 paragraph 2 stipulates that "the organization and functioning of the Constitutional Court shall be based on the principle of financial independence. The Constitutional Court shall be independent in allocating approved funds from the Budget of the institutions of Bosnia and Herzegovina pursuant to its annual budget and Law on Execution of the Budget." The **financial independence** and autonomy of the Constitutional Court of Bosnia and Herzegovina, particularly when viewed in connection with the constitutional and legal principle of separation of powers, is well explained in the case-law of the Constitutional Court of Bosnia and Herzegovina. Thus, in Case *U 6/06* (of 29 March 2008), the Constitutional Court of Bosnia and Herzegovina considered the request for review of the constitutionality of the State Law on Salaries and Other Remunerations in Judicial and Prosecutorial Institutions of Bosnia and Herzegovina ("Official Gazette of Bosnia and Herzegovina, No. 90/05"), whereby the salaries of Judges of the Constitutional Court of

Constitutional Court of Bosnia and Herzegovina ("Official Gazette of Bosnia and Herzegovina, No. 60/05") which resulted in the cessation of application of the Rules of Procedure. In the meantime, the Rules were amended for several times ("Official Gazette of Bosnia and Herzegovina, Nos. 64/08 and 51/09").

⁴ Compare, U 106/03 of 27 April 2004, paragraph 33.

Bosnia and Herzegovina were determined and, at the same time, reduced. The Constitutional Court noted that the Parliamentary Assembly shall decide upon the sources and amounts of revenues for the operations of the institutions of Bosnia and Herzegovina and international obligations of Bosnia and Herzegovina, which also includes the Constitutional Court (paragraph 25). However, the Constitutional Court emphasized that the principle of the rule of law and the independence of judiciary, as its inseparable part, and, in particular, the principle of the separation of powers, by no means imply that the legislator cannot regulate the issues important for functioning of the state institutions, even when relating to the Constitutional Court [1]. An opposite interpretation would be contrary to the rule of law, which also entails an exclusion of wide margin of appreciation by the state authorities, and equality before the law for all citizens, and, consequently, it would be contrary to the principle of separation of powers, which entails the existence of the mechanisms of mutual control over the authorities and of a balance of powers (paragraph 26). Furthermore, the Constitutional Court of Bosnia and Herzegovina concluded:

27. The Constitutional Court holds that the independence of the Constitutional Court constitutes a principle which must be secured by the legislator, taking account of the special position and role of the Constitutional Court in the Constitution of Bosnia and Herzegovina. The Constitutional Court finds it necessary to emphasize that this implies full financial independence reflected in autonomous planning and proposal of court budget, as well as in autonomous allocation of approved budget, which amount must be subject to appropriate control of a competent authority.

[1]

29. [1] The Constitution establishes the Presidency, the Parliament, the Council of Ministers, the Central Bank and the Constitutional Court as constitutional bodies. It confers to the latter the general task to uphold the Constitution (Article VI(3) as well as wide competencies of control of constitutionality. These functions which are exercised vis-à-vis the other constitutional bodies, particularly vis-à-vis the legislator, and which are reflected in the final and binding decisions with regard to all public authorities, clearly imply solid guarantees of independence and autonomy of Constitutional Court. It is therefore that in this way the Constitution of Bosnia and Herzegovina prescribes the election of judges by Parliament and provides for the adoption by the Constitutional Court of its own rules (Art. VI(2) (b)) If it does not go further into specifying those guarantees, it is nonetheless clear that in this regard it refers to the European tradition and aims at rendering the Constitutional Court fully independent. This conclusion asserts itself very particularly in the institutional context of Bosnia and Herzegovina, marked by the predominance of the Entities and the relative weakness of the central State. The central institutions of Bosnia and Herzegovina and the integrity of its Constitution would be jeopardized without a strong and independent Constitutional Court.

30. The independence of the Constitutional Court implies that it is governed by specific rules which are also imposed on the legislator; and these rules should therefore have a constitutional value. In the absence of constitutional laws, the Constitutional Court must be able to decide independently on its internal organization and functioning. The Parliamentary Assembly has the power to establish the budget of the institutions of Bosnia and Herzegovina, but it can do this only in compliance with the Constitution of Bosnia and Herzegovina. The Constitution of Bosnia and Herzegovina obliges the legislator not to infringe upon the independence of the Constitutional Court. The fact that the challenged law was adopted as such shows the extent to which the Constitutional Court needs to be protected from pressures which may be exercised by other public authorities. As stated above, the respect for the financial independence of the Constitutional Court requires as a minimum that the Constitutional Court proposes its own budget and the manner of use of its own budget to the Parliamentary Assembly to adopt it.

Pursuant to Article 80 paragraph 1 of the Rules of the Constitutional Court of Bosnia and Herzegovina, the Constitutional Court, in addition to the performance of its functions in accordance with the provisions of the Constitution, decides on **the internal organization** of the Constitutional Court and the Secretariat of the Constitutional Court (item 3) and status issues of the Secretary General of the Constitutional Court, the Registrar, Head of the Office of the President, the Assistant Secretary General of the Constitutional Court, the legal advisor to a judge and a legal advisor to the President of the Constitutional Court for international relations (item 5). Pursuant to Article 105 of the Rules of the Constitutional Court of Bosnia and Herzegovina, the Constitutional Court of Bosnia and Herzegovina established a special Commission for Administrative Affairs, which shall supervise and analyze the organization of the work of the Constitutional Court, prepare the proposal of the financial plan and annual financial statement and make proposals and deliver opinions for resolving other issues relating to the judges, the Secretary General of the Constitutional Court and persons who are appointed and dismissed by the Constitutional Court (Article 107). The administrative autonomy, particularly concerning the appointment and management of the personnel of the Constitutional Court, is incorporated in internal act titled *Decision on the Organisation of the Secretariat of the Constitutional Court of Bosnia and Herzegovina*.

Another element of the independence of the Constitutional Court of Bosnia and Herzegovina is reflected in the fact that it is the only authority competent to remove a Judge of the Constitutional Court from his/her office. Pursuant to Article VI(1)(c) of the Constitution *the term of judges initially appointed shall be five years, unless they resign or are removed for cause by consensus of the other judges*. Pursuant to Article 101 of the Rules of the Constitutional Court of Bosnia and Herzegovina, a Judge may be dismissed from office

before the end of his/her term and the body which elected that judge shall be informed accordingly.

The Constitutional Court of Bosnia and Herzegovina recently conducted proceedings concerning dismissal from office of a judge of the Constitutional Court of Bosnia and Herzegovina (the extraordinary plenary session held on 8 May 2010). Pursuant to Article VI(1)(c) of the Constitution of Bosnia and Herzegovina and Article 101 paragraph 1 line 5 of the Rules of the Constitutional Court of Bosnia and Herzegovina, the concerned judge was dismissed from office for "deliberately undermining the reputation and dignity of the Constitutional Court of Bosnia and Herzegovina and dignity of a judge". These proceedings were the proof that the Constitutional Court of Bosnia and Herzegovina enjoys but also protects its autonomy and independence effectively. However, in the end of its decision, the Constitutional Court of Bosnia and Herzegovina has emphasized that "it will have to bear the consequences of the aforementioned actions of Judge [] for a long time and that it will have to make an extra effort to regain the undermined confidence of the public and public authorities in its autonomy, independence, impartiality and professionalism".

A further aspect of the issue of autonomy and independence of the Constitutional Court of Bosnia and Herzegovina is the enforcement of its decisions by the competent authorities. The Constitution of Bosnia and Herzegovina stipulates that "decisions of the Constitutional Court shall be final and binding". The Constitutional Court of Bosnia and Herzegovina thereby has the right to take all appropriate and necessary measures in order for the Court's decisions to be complied with. The issue of enforceability is further specified in the Rules of the Constitutional Court of Bosnia and Herzegovina (Articles 74 through 76). All authorities are obliged, within the scope of their competence determined by the Constitution and law, to enforce decisions of the Constitutional Court. Anyone who has a legal interest may request the enforcement of decisions of the Constitutional Court. The authority which is obliged to enforce a decision of the Constitutional Court within the given time limit is obliged to submit information about the taken measures to enforce the decision of the Constitutional Court, as determined in the Court's decision. In case of failure to comply with the Court's decision, the Constitutional Court issues a ruling wherein it establishes that the decision of the Constitutional Court has not been enforced and it may determine the manner of enforcement of the decision. This ruling shall be transmitted to the competent prosecutor or another body competent to enforce the decision, as designated by the Constitutional Court (Article 74). In addition to this, the Criminal Code of Bosnia and Herzegovina (*Official Gazette of Bosnia*

and Herzegovina Nos. 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10), in Article 239, prescribes the criminal responsibility of an official person in the institutions of Bosnia and Herzegovina, institutions of the Entities and institutions of the Brčko District of Bosnia and Herzegovina, who refuses to enforce the final and enforceable decision of the Constitutional Court of Bosnia and Herzegovina or who prevents enforcement of such a decision, or who prevents the enforcement of the decision in some other way. After considering the enforcement of decisions in practice, the following conclusion may be made: Since 2001, the Constitutional Court of Bosnia and Herzegovina has made 22 decisions on the merits within the scope of abstract control of norms under Article VI(3)(a) and (c) of the Constitution of Bosnia and Herzegovina. Out of that number, the Court found violations in 12 cases. The Constitutional Court of Bosnia and Herzegovina immediately quashed the challenged general acts in 4 cases, and in 8 cases it gave a time limit for harmonization.⁵ Out of 8, 6 cases related to the harmonization of unconstitutional provisions. Out of 6, 3 decisions, which means 50%, had already been enforced at the moment of publication. When it comes to the individual constitutional complaints (the so-called appeal) under Article VI(3)(b) of the Constitution of Bosnia and Herzegovina, the statistical figures seem better. In the period from 1 January 2004 to 5 October 2010, the Constitutional Court of Bosnia and Herzegovina received 23 447 cases. During the same period, out of 4280 decided, 1323 cases were decided by making decisions on the merits (whereas out of 11 429, 8798 cases were declared inadmissible). Out of 1323, the Court found violations in 669 cases. According to the official statistical data relating to the aforementioned period, the Constitutional Court of Bosnia and Herzegovina issued 49 rulings on the failure to enforce decisions. Therefore, the percentage of failure to enforce decisions is *cca.* 7%.

Despite a relative success in the enforcement of decisions of the Constitutional Court of Bosnia and Herzegovina, an enormous influx of cases, on the one hand, and limited institutional capacities of the Constitutional Court of Bosnia and Herzegovina, on the other hand, have an impact on independency and autonomy of the Constitutional Court. For instance, during the first three years of its work (from 1997 to 2000), the Constitutional Court of Bosnia and Herzegovina received a total number of 211 cases, whereas in the first 10 months alone of 2010, it received 4247 cases. However, the competent legislator is not fully aware of the Constitutional Court's need to develop its capacities (personnel, technical and financial) in order to be capable of facing new challenges. This means that the Constitutional

⁵ Article 63 paragraph 4 of the Rules of the Constitutional Court of Bosnia and Herzegovina.

Court of Bosnia and Herzegovina has to work on increasing its output continuously, which is limited. The consequences of such developments might be unfavorable such as, for instance, the need of the Constitutional Court of Bosnia and Herzegovina to make a compromise between the quality and quantity of its decisions, or between the priority and principle method of its work, increase in the average time necessary for resolving a case etc. All the aforementioned undermines the reputation of the Constitutional Court of Bosnia and Herzegovina in the eyes of the general public but also in the eyes of the public authorities and creates tensions in their mutual relations.

The Constitutional Court of Bosnia and Herzegovina makes sure that its work is recognized in the public. Article 11 of the Rules of the Constitutional Court of Bosnia and Herzegovina stipulates that the work of the Court shall be public and transparent. Specifically, this means that the Constitutional Court of Bosnia and Herzegovina must inform the public about the preparations and holding of the sessions of the Constitutional Court and public hearings before the Constitutional Court, provide information as to the course of the proceedings, issue press releases to the media, hold press conferences, publish decisions taken, issue publications important to the general public and experts etc.

In principle, the Constitutional Court of Bosnia and Herzegovina is satisfied with the attitude of the public, particularly the media, towards the Court. However, there are two groups of problems with which the Constitutional Court of Bosnia and Herzegovina are facing continuously. On one hand, the Constitutional Court of Bosnia and Herzegovina notes that there is a certain lack of professionalism in journalism when it comes to matter the Constitutional Court of Bosnia and Herzegovina deals with. In particular, decisions are often interpreted erroneously or superficially in the media, or the media does not follow at all the work of the Constitutional Court of Bosnia and Herzegovina. The initiative to follow the work of the Constitutional Court of Bosnia and Herzegovina comes constantly from the Court. This is the reason why the Constitutional Court of Bosnia and Herzegovina has the intention to conduct a special procedure of training, certification and accreditation of journalists relating to the work of the Constitutional Court of Bosnia and Herzegovina. On the other hand, the Constitutional Court of Bosnia and Herzegovina is exposed to pressure or incorrect disapprovals coming from the media insofar as the decisions with political implications are concerned, since one can sense an open partiality to certain parties to the proceedings coming from the media. The media reports are often nothing but the one-sided understanding of certain problems. In both cases, the Constitutional Court of Bosnia and Herzegovina is forced

to issue official denials or additional explanations in order for the public to have correct and full information.

One should not forget that the Constitutional Court of Bosnia and Herzegovina operates in the post-war period and period of transition of the State and society. The confidence of the public in the Constitutional Court reinforces its independence, as the positive voice of the public protects the Court against attacks coming from other branches of power or other courts. Finally, a positive response to the work and activities of the Constitutional Court of Bosnia and Herzegovina has an influence on the respect and enforcement of its decisions. The best illustrative example of the confidence of the public in the Constitutional Court of Bosnia and Herzegovina is the fact that citizens often make public statement that "they will go all the way to the Constitutional Court in order to exercise their rights", comparing to the previous years when such statements related to the European Court of Human Rights.

II. Constitutional Independence of Judges

The basic procedure for **electing judges** of the Constitutional Court of Bosnia and Herzegovina is regulated by the Constitution of Bosnia and Herzegovina. A specific composition of the Constitutional Court of Bosnia and Herzegovina is based on the fact that in addition to six (6) national judges, there are three (3) international judges (for the time being) under Article VI(1)(b) and (d) of the Constitution of Bosnia and Herzegovina, who are not selected by the national authorities but by the President of the European Court of Human Rights. However, before the selection, the President of the European Court of Human Rights must consult with the Presidency of Bosnia and Herzegovina. The national judges are elected in accordance with the territorial principle: four members shall be selected by the House of Representative of the Federation of Bosnia and Herzegovina and two members by the Assemblies of the Republika Srpska (two Entities which Bosnia and Herzegovina is composed of - Article I.3 of the Constitution of Bosnia and Herzegovina). The appointment of international judges to the highest court of the State may be explained by the fact that the framer of the Constitution estimated that this Court would be very important in difficult post-war period.

When it comes to the election of judges of the Constitutional Court of Bosnia and Herzegovina, what catches one's attention first, is the fact that this procedure is not the

responsibility of the Entity's legislator. The Entity legislator makes decision by simple majority. Given the fact that the Constitutional Court of Bosnia and Herzegovina, *inter alia*, is called upon to substantially examine the work of its legislator, a certain asymmetry is present in the system of appointment of the judges selected by the legislator. On the one hand, the state legislator is subject to the control by the Constitutional Court of Bosnia and Herzegovina and, on the other hand, the state legislator does not have any influence on the composition of that Court through the election of judges.

In the recent past, there were official proposals to formally involve the High Judicial and Prosecutorial Council in the procedure for electing the judges of the Constitutional Court of Bosnia and Herzegovina. It is a special body established by the law in 2004, whose main task is to ensure the preservation of independent, impartial and professional judiciary in Bosnia and Herzegovina in accordance with its mandate as provided for by the law. The Constitutional Court of Bosnia and Herzegovina did not give an affirmative response to the proposal for the several reasons: the Constitution of BiH provided a special position for the Constitutional Court in the structure of State powers. According to the Constitution of BiH, the Constitutional Court is detached from the system of tripartite division of power. Therefore, the Constitutional Court is neither legislative nor executive nor ordinary judicial power but a special power under the Constitution of BiH being a guardian of the Constitution and corrective factor of all the three branches of power. It is indisputable that the Constitutional Court functionally and organizationally operates as an independent body of high authority. [1]. The issues relating to the constitutional matter [such as the election of judges of the Constitutional Court of Bosnia and Herzegovina] cannot be regulated by any ordinary law nor can they be regulated by other normative acts. [1 The constitutional complaint] is not an ordinary legal remedy and does not transform the Constitutional Court into a supreme court of appeal (*superrevision*), nor a third or fourth-instance court. It is therefore obvious that the relations between the Constitutional Court and ordinary courts must be defined as relations of cooperation, where the Constitutional Court remains functionally competent to apply specific constitutional law, and the ordinary courts functionally competent to apply ordinary law.⁶

⁶ The letter which the Constitutional Court of Bosnia and Herzegovina addressed to the Minister of Justice of Bosnia and Herzegovina, dated 24 June 2010, No. K-I-45710.

Judges shall be distinguished jurists of high moral standing [Article VI(1)(b) of the Constitution of Bosnia and Herzegovina]. The framer of the Constitution thereby opted for a *„juristiĉo* court, which corresponds to the constitutional tradition of the former Yugoslavia. The Constitution of Bosnia and Herzegovina does not prescribe further requirements for election of judges of the Constitutional Court of Bosnia and Herzegovina either with regards to the age of judges or with regards to the professional experience. Therefore, judges do not have to have prior judicial experience. The judges appointed after the initial appointment shall serve until age of 70.

When it comes to the criteria for selecting judges of the Constitutional Court of Bosnia and Herzegovina, the Constitution of Bosnia and Herzegovina is a very flexible one. The fact that the strict criteria are not prescribed, particularly with regards to the judicial experience, makes the authority electing the judges flexible so that not only legal practitioners (first of all judges) but also members of the academic community (such as professors) and other distinguished jurists who need not engage in strictly legal work (lawyers, judges, prosecutors), have the chance to become judges of the Constitutional Court of Bosnia and Herzegovina. Thus, a higher level of democratic thinking may be reached on the bench of the Constitutional Court of Bosnia and Herzegovina, i.e. a certain breadth of dialogue which jurists who have been exposed to the limitations prescribed by the substantive and procedural laws for years, are often lacking. On the other hand, the failure to stipulate the strict professional criteria (judicial practice and other practice, bar exam, etc.) may lead to the degradation of criteria in respect of the highest judicial authority, particularly if the authority electing judges has full freedom in the election but actually does not take account of these standards.

When it comes to **the dismissal of the judges** of the Constitutional Court of Bosnia and Herzegovina the situation is different. Only the Constitutional Court of Bosnia and Herzegovina has the competence to dismiss a judge of the Constitutional Court of Bosnia and Herzegovina from office. Under Article VI(1)(c) of the Constitution of Bosnia and Herzegovina *„a judge may be removed for cause by consensus of the other judges*. Pursuant to Article 101 of the Rules of the Constitutional Court of Bosnia and Herzegovina, a judge may be dismissed from office before the end of his/her term and the Constitutional Court of Bosnia and Herzegovina shall inform the authority that elected the judge concerned. The requirements for dismissal are as follows:

- if he/she requests it;

- if he/she is sentenced to an unsuspended prison sentence for committing a criminal offence that makes him or her unsuitable for the office;
- if he/she permanently loses the ability to perform his or her functions;
- if the circumstances indicated in Article 97 of these Rules occur (incompatibility of the office of a judge of the Constitutional Court of Bosnia and Herzegovina with other functions);⁷
- if he/she fails to perform the function of a judge in accordance with Article 94 of these Rules, which provides an obligation of a judge to perform the function of a judge conscientiously and to uphold the reputation and dignity of the Constitutional Court and the reputation and dignity of a judge .

Recently, the Constitutional Court of Bosnia and Herzegovina conducted a procedure of dismissal of one of the judges of the Constitutional Court of Bosnia and Herzegovina (Extraordinary Plenary Session of 8 May 2010) for undermining the reputation and dignity of the Constitutional Court of Bosnia and Herzegovina, as well as the dignity of a judge. The Constitutional Court of Bosnia and Herzegovina requires its judges to display a high degree of professionalism, independence and impartiality. The reason for this caution and high standard set for judges is best exemplified by the very reasoning of the Decision on dismissal dated 8 May 2010, which reads that the Constitutional Court of Bosnia and Herzegovina "operates in highly complex legal and political circumstances. At this stage of the constitutional development of Bosnia and Herzegovina, the role of the Constitutional Court is very important and difficult while, objectively, its decisions have a significant impact on political processes within the state. The Constitutional Court resolves, amongst other things, complicated constitutional issues with far-reaching implications, often involving legislative or executive authorities at the state or entity level as direct participants. This very fact shows that there exists an undeniable public interest for the Constitutional Court to build and maintain its reputation, independence and impartiality and not to allow these principles to be endangered or violated. Otherwise, the authority of the Constitutional Court as an institution and the authority of its decisions shall be lost. The Judges of the Constitutional Court, as the distinguished jurists of the highest moral standing, must be aware of these principles at any given moment" (paragraph 56).

The judges of the Constitutional Court of Bosnia and Herzegovina shall serve until age of 70. This provision, undoubtedly, provides a guarantee to the judges to be free,

⁷ Article 97 stipulates the following incompatibilities of the office of a judge of the Constitutional Court of Bosnia and Herzegovina with other functions: membership in a political party or a political organization in Bosnia and Herzegovina; membership in a legislative, executive and other judicial authority in Bosnia and Herzegovina or the Entities; any other position which could affect the impartiality of the judge. The judges cannot be members of an administrative or supervisory committee of public or private companies or other legal persons. A university professor (assistant professor, full-time or associate professor) of law elected as a judge of

independent and impartial in their work, without fear that the authority electing them will punish them because of their work. The guarantee of a long tenure combined with the exclusive jurisdiction of the Constitutional Court of Bosnia and Herzegovina to dismiss judges from office contribute all the more so to the independence of judges. Indeed, there is always a danger that the judges get lulled into at their positions,⁸ however, the Constitutional Court of Bosnia and Herzegovina has not had such experiences. What is more, the actual work results show the opposite. By accumulating knowledge and experience at the Constitutional Court of Bosnia and Herzegovina the judges have a possibility to genuinely understand the actual needs of the institution, and to meet those needs in the best way possible. An additional reason for such a decision of the Constitution-maker when it comes to the mandate of the judges of the Constitutional Court of Bosnia and Herzegovina is the fact that the Constitution of Bosnia and Herzegovina, in every sense of the word, constitutes a kind of a legal *novum*, which is why the work experience acquired at the Constitutional Court of Bosnia and Herzegovina ought to be appreciated and made use of. To recall, the new, Dayton Constitution has brought with it, *inter alia*, not only new constitutional organization of Bosnia and Herzegovina, but also a completely new Constitutional Court of Bosnia and Herzegovina, with new jurisdictions, procedures and substantive grounds for decision-making.

Article 97 of the Rules of the Constitutional Court of Bosnia and Herzegovina stipulates that the judges of this court shall not be active in some other areas (**incompatibility**): membership in a political party or a political organization in Bosnia and Herzegovina; membership in a legislative, executive and other judicial authority in Bosnia and Herzegovina or the Entities; any other position which may affect the impartiality of the judge. The judges cannot be members of an administrative or supervisory committee of public or private companies or other legal persons. A university professor (assistant professor, full-time or associate professor) of law elected as a judge of the Constitutional Court of Bosnia and Herzegovina may, on a reduced scale, continue to teach and work at the university as a professor of law.

The issue of the **immunity** of judges is regulated by the Rules of the Constitutional Court of Bosnia and Herzegovina. Article 99 prescribes that a judge, in exercising his or her

the Constitutional Court may, on a reduced scale, continue to teach and work at the university as a professor of law.

⁸ The German legal terminology speaks of a phenomenon of petrification of judges (*Versteinerungstheorie*).

functions, shall enjoy immunity with respect to criminal or civil liability for any action taken within his/her office as a judge of the Constitutional Court. A judge of the Constitutional Court shall not be held criminally liable, detained or sentenced for an opinion expressed or a vote cast at the Constitutional Court of Bosnia and Herzegovina. Nevertheless, the entitlement to immunity shall not prevent or postpone investigation in criminal or civil proceedings conducted against a judge of the Constitutional Court of Bosnia and Herzegovina according to law. A judge of the Constitutional Court of Bosnia and Herzegovina shall not be detained nor shall an indictment be brought against him/her without the consent given by the Constitutional Court of Bosnia and Herzegovina. The only exception happens in the event when he/she was caught committing a criminal offence punishable by a prison term exceeding five years. In that event, the competent body which imposed detention on the judge of the Constitutional Court of Bosnia and Herzegovina shall be obligated to inform the Constitutional Court immediately. The Constitutional Court of Bosnia and Herzegovina may decide at the plenary session (namely in full composition of 9 judges) by the majority of votes that the judge of the Constitutional Court of Bosnia and Herzegovina, for whom the Constitutional Court of Bosnia and Herzegovina approved the continuation of criminal proceedings and against whom the indictment was confirmed by the competent court, may be temporarily suspended from his/her office at the Constitutional Court of Bosnia and Herzegovina pending the outcome of the proceedings. In such event, that judge of the Constitutional Court of Bosnia and Herzegovina shall be entitled to salary. The judges at the plenary session of the Constitutional Court of Bosnia and Herzegovina, by the majority of votes of all judges, by exempting from voting the judge whom criminal proceedings were instituted against, shall adopt a decision granting or dismissing the request for detention, or for the institution of the proceedings against the judge, which shall be delivered to the applicant.

Financial status of the judges of the Constitutional Court of Bosnia and Herzegovina is, in principle, regulated by internal acts: Decision on Salaries of the President and the judges of the Constitutional Court of Bosnia and Herzegovina, Decision on Remunerations and other Financial Rights of the President and the judges of the Constitutional Court of Bosnia and Herzegovina, and Decision on Annual Leave and Absence from Work of the President and the judges of the Constitutional Court of Bosnia and Herzegovina.⁹ Therefore, the Constitutional Court of Bosnia and Herzegovina enjoys independence when it comes to the financial status

⁹ All from 2008.

of the judges of the Constitutional Court of Bosnia and Herzegovina, albeit the compliance with the said acts is subject to control by the competent authorities supervising the spending of budget funds (audit). In addition, the Constitution of Bosnia and Herzegovina (Article IX.2) prohibits the decrease in the compensation for the judges of the Constitutional Court of Bosnia and Herzegovina during a judge's tenure. As far as this prohibition is concerned, in its Decision No. U 6/06, the Constitutional Court of Bosnia and Herzegovina emphasized that economic situation in Bosnia and Herzegovina may indeed require a salary adjustment for all, including the salaries for the persons referred to in Article IX.2 of the Constitution of Bosnia and Herzegovina. However, such legislative action cannot be implemented without appropriate amendments to the Constitution of Bosnia and Herzegovina, since the explicit provision of Article IX.2 of the Constitution of Bosnia and Herzegovina prevents the legislator either from reducing or from allowing the possibility of reducing the salaries for the persons holding offices within the institutions of Bosnia and Herzegovina, during their tenure (paragraph 35).

There were attempts in the past to limit the financial status of the judges of the Constitutional Court of Bosnia and Herzegovina and the autonomy of the Constitutional Court of Bosnia and Herzegovina, and to get the legislative body to handle this issue. In the mentioned Decision No. U 6/06, the Constitutional Court of Bosnia and Herzegovina emphasized that the independence of the Constitutional Court implies that it is governed by specific rules which are also imposed on the legislator. These rules should therefore be of a constitutional nature. In the absence of constitutional laws, the Constitutional Court must be able to decide independently on its internal organization and functioning. The Parliamentary Assembly has the power to establish the budget of the institutions of Bosnia and Herzegovina, and to enact relevant laws, but it can do so only in compliance with the Constitution of BiH. The Constitution of BiH obliges the legislator not to infringe upon the independence of the Constitutional Court. [í] The respect for the financial independence of the Constitutional Court requires as a minimum that the Constitutional Court proposes its budget and the method in which it plans to use it to the Parliamentary Assembly which will adopt it (paragraph 30).

III. Procedure before the Constitutional Court

The Constitutional Court of Bosnia and Herzegovina is markedly autonomous when it comes to the decision-making procedures within the scope of its jurisdiction. A minor number of the provisions of the Constitution of Bosnia and Herzegovina regulate the procedure before

this court. In the remainder, the procedure is exclusively regulated by the Rules of the Constitutional Court of Bosnia and Herzegovina. The Constitutional Court of Bosnia and Herzegovina declared the Rules of the Constitutional Court of Bosnia and Herzegovina to be a constitutional category.¹⁰ No authority in Bosnia and Herzegovina shall enact laws, other regulations and general acts that concern the activities of the Constitutional Court and its role prescribed by the Constitution, including the procedure itself (Article 2 of the Rules).

The Constitutional Court has been entrusted with classical constitutional jurisdiction, such as abstract and concrete control of constitutionality, disputes between authorities of the state, as well as with the appellate jurisdiction. In concrete terms, certain provisions related to the jurisdiction are formulated in very broad and imprecise terms, so that they leave a possibility for broad interpretation. First of all, the clause stated in Article VI(3)(a) of the Constitution of Bosnia and Herzegovina "including but not limited to" is uncommon, and it finally bestows upon the Constitutional Court the jurisdiction to decide any dispute that arises under this Constitution. To use an example, it mentions the jurisdiction with regards to (a) disputes between the State and the Entities relating to the constitutionality of an Entity's decision to establish a special parallel relationship with a neighboring state and (b) the review of conformity of certain provisions of the Entities' Constitutions or laws with the Constitution of Bosnia and Herzegovina. In addition, the Constitutional Court of Bosnia and Herzegovina resolves blockages in the process of decision-making in the Parliamentary Assembly of Bosnia and Herzegovina, which arise in a situation whereby a majority of members of parliament from amongst one constituent people in the House of Peoples¹¹ declares a certain decision of the House of Representatives destructive for the vital national interest of a constituent people, such an assessment is opposed by a majority of members of parliament from amongst another constituent people [Article IV(3)(e) of the Constitution of Bosnia and Herzegovina], and the so-called Joint Commission fails to find a compromise [Article IV(3)(f) of the Constitution of Bosnia and Herzegovina].

This means that the Constitutional Court of Bosnia and Herzegovina, in principle, has no jurisdiction to interfere with the work of a legislative authority before a certain act has been enacted and has gone into force. The principle regarding other forms of authority is similar (such as, for instance, ordinary judiciary), because the Constitutional Court of Bosnia

¹⁰ U 6/06, *ibid*, paragraph 22.

and Herzegovina requires that all available legal remedies be exhausted, thereby offering a chance to the competent authorities to intervene and correct an error if they deem it necessary. Therefore, the constitutional protection has *ex post* nature. This, in a way, brings about respect for the principle of democracy¹² which requires that a specific competence be exhausted before the authorities which have original competence.

There are two exceptions to this rule. These are a concrete review of constitutionality and a mechanism for the protection of vital national interest. As to the concrete review of constitutionality [Article VI(3)(c) of the Constitution of Bosnia and Herzegovina],¹³ an ordinary court is obliged to refer issues concerning the constitutionality of the relevant legal basis for the particular case if the ordinary court has a reasonable suspicion of unconstitutionality. Thus, a priority has been given to the Constitution of Bosnia and Herzegovina and the Constitutional Court of Bosnia and Herzegovina, as a guardian of the Constitution, in comparison with the ordinary courts.¹⁴ In other words, the principle of constitutionality has priority over the principle of legality. Nevertheless, the fact that there have been a few cases brought to the Constitutional Court of Bosnia and Herzegovina by the ordinary courts supports the conclusion that the ordinary courts actually do not have a high regard for the priority given to the principle of constitutionality or they seem not to be aware of the fact that the principle of constitutionality has priority over the principle of legality.¹⁵

As to a mechanism for the protection of vital national interest, the Constitutional Court of Bosnia and Herzegovina intervenes during the formal procedure of enacting an act in Parliament. However, the Constitutional Court of Bosnia and Herzegovina does not make a decision on the constitutionality of the act, but it decides whether the act involves vital national

¹¹ Under Article IV(1) of the Constitution of Bosnia and Herzegovina, the House of Peoples shall comprise 15 Delegates, two-thirds from the Federation (including five Croats and five Bosniacs) and one-third from the Republika Srpska (five Serbs).

¹² Article I(2) of the Constitution of Bosnia and Herzegovina.

¹³ The aforementioned Article reads: "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."

¹⁴ U 106/03 of 27 October 2004, paragraph 33.

¹⁵ The principle of constitutionality has priority with regard to a political will of a parliamentary majority, as all legislative acts, which are subject to review by the Constitutional Court of Bosnia and Herzegovina, must also be consistent with the Constitution and the Constitutional Court of Bosnia and Herzegovina has exclusive jurisdiction over the matter. A request for abstract review of the constitutionality may be filed, *inter alia*, by a member of the Presidency of Bosnia and Herzegovina (which consists of three members), one fourth of members/delegates of any of the Houses of the Parliamentary Assembly or one fourth of members of any of the Houses of the Parliament of one of the Entities.

interests of one or more of the Peoples in Bosnia and Herzegovina and, if so, whether there is a violation of the vital national interests. The further procedure of actually passing the act in Parliament depends on the answer to these questions (a simple majority or a qualified majority).

It is also important to point out that both proceedings are initiated upon a request filed by a competent entity and cannot be initiated *ex officio*. This is essential for the Constitutional Court of Bosnia and Herzegovina as the principle of constitutional adjudication, according to which constitutional and judicial protection can only be activated upon a request, is thus complied with. This conclusion is closely related to the rules stipulating that the Constitutional Court of Bosnia and Herzegovina shall examine only those violations that are stated in the request/appeal (Article 32 of the Rules of the Constitutional Court of Bosnia and Herzegovina), and that the proceedings, in principle, shall be suspended if the applicant has withdrawn his/her request (Article 17, paragraph 1, item 3; Article 59 of the Rules of the Constitutional Court of Bosnia and Herzegovina). Nevertheless, the Constitutional Court of Bosnia and Herzegovina is quite flexible when it regards the legal formulation of a request (*iura novit curia*) and it holds that the factual basis of a case is a much more important criterion of self-limitation of its actions.

When it comes to the orders enshrined in the decisions aimed at redressing the unconstitutionality, the Constitutional Court of Bosnia and Herzegovina has at its disposal a wide range of possible measures. In general, the Constitutional Court of Bosnia and Herzegovina has to establish a violation of the Constitution of Bosnia and Herzegovina and give reasons for its decision (Article 61 of the Rules of the Constitutional Court of Bosnia and Herzegovina). As to the (un)constitutionality of general acts, the Constitutional Court of Bosnia and Herzegovina shall decide on the legal effect of a decision (*ex tunc* or *ex nunc*); it may quash the general act or some of its provisions wholly or partly. Exceptionally, the Constitutional Court may grant, by its decision establishing incompatibility with the Constitution, a time-limit for harmonization, which shall not exceed six months. If the established incompatibility is not removed within the aforementioned time-limit, the Constitutional Court shall, by a further decision, declare that the incompatible provisions cease to be in force (Article 63 of the Rules of the Constitutional Court of Bosnia and Herzegovina). As to its appellate jurisdiction, in a decision granting an appeal, the Constitutional Court shall quash the challenged decision and refer the case back to the court or to the body which made that decision, for renewed proceedings. Exceptionally, if the

Constitutional Court finds that an appeal is well-founded, it may, depending on the nature of the constitutionally established rights and fundamental freedoms, decide on the merits of a case and refer the decision to the competent body in order for that body to secure the appellant's constitutional rights. The Constitutional Court of Bosnia and Herzegovina has established on several occasions a violation of "positive obligations" of the State and ordered it to take certain measures and to bring certain situations in line with the Constitution of Bosnia and Herzegovina.

The past experiences of the Constitutional Court of Bosnia and Herzegovina lead to a conclusion that the three branches of government (legislative, executive and judicial) unenthusiastically accept the decisions of the Constitutional Court of Bosnia and Herzegovina, in which the incompatibility of their acts with the Constitution has been established. In such situations, the public authorities often openly attack the Constitutional Court of Bosnia and Herzegovina, attempting to diminish its dignity as well as the quality of its decisions and its role in protecting the constitutional and legal system. This is something that the Constitutional Court of Bosnia and Herzegovina has to cope with continuously. However, the past experiences of the Constitutional Court of Bosnia and Herzegovina show that detailed, thorough and quality reasoning offered in its decisions enhance the reputation of the Constitutional Court of Bosnia and Herzegovina with the public at large, irrespective of the affected party's attacks towards the Constitutional Court of Bosnia and Herzegovina and its disagreement with the decision.

Before considering some other elements of constitutional and legal procedures, it is necessary to mention the special relationship between the Constitutional Court of Bosnia and Herzegovina and international community operating in Bosnia and Herzegovina.¹⁶ This concerns the Constitutional Court's competencies and the orders that it can issue in its decisions. First, one should point out that certain international-legal entities, such as the Organization for Security and Co-operation in Europe, the Office of the High Representative for Bosnia and Herzegovina, the Office of the United Nations High Commissioner for Refugees, *etc.*, exercise sovereign powers in Bosnia and Herzegovina based on the Annexes to the Constitution of Bosnia and Herzegovina. Those sovereign powers should be exercised in accordance with constitutional and legal architecture by national bodies. However, taking

¹⁶ The notion "international community" is a common name referring to all international factors (EU, UN, diplomatic missions, international and supranational bodies, etc.) acting in their official capacities in Bosnia and Herzegovina.

into account a specific situation in Bosnia and Herzegovina, they have been transferred to the international factors. The competencies of the Constitutional Court of Bosnia and Herzegovina are restricted when it comes to decisions made by these international-legal entities, although their actions are founded on the Constitution of Bosnia and Herzegovina and Annexes to the General Framework Agreement for Peace in Bosnia and Herzegovina. Namely, the Constitutional Court of Bosnia and Herzegovina has concluded that it concerns the so-called "functional duality".¹⁷ Despite the restrictions, the Constitutional Court of Bosnia and Herzegovina has had a significant role in protecting the constitutionality even in cases relating to the actions of the international community, as it issued certain number of decisions corroborating that the international-legal entities, irrespective of their international mandate and immunity, must comply with the Constitution, the constitutional order and its elementary values.¹⁸

Any judge who has taken part in the deliberation of the case shall be entitled to state his/her opinion, concurring with or dissenting from the decision or a bare statement of dissent or joining a separate opinion. A separate opinion shall be reasoned and delivered in writing within 15 days. A separate opinion shall be annexed to the decision. This decision, together with the separate opinion, shall be published in official gazettes and the Bulletin of the Constitutional Court (Article 41 of the Rules of the Constitutional Court of Bosnia and Herzegovina). This is an essential component of a democracy-oriented work of the Constitutional Court of Bosnia and Herzegovina. Nevertheless, there are no indicators as to whether the separate opinions have reinforced the independence of the judges as well as of the Constitutional Court of Bosnia and Herzegovina as an institution.

Pursuant to Article 29 of the Rules of the Constitutional Court of Bosnia and Herzegovina, information about the course of proceedings pending before the Constitutional Court shall be given by the President of the Constitutional Court or the Registrar of the Constitutional Court. No person shall have the right to request information regarding the Judge Rapporteur and the legal advisor assigned to the case, or any other information pertaining to making of the decision in the case concerned. Therefore, information about the name of the Judge Rapporteur is confidential and this is a vital element in the procedure.

¹⁷ See Constitutional Court of BiH, Decision No. U-9/00 of 3 November 2000.

¹⁸ See Constitutional Court of BiH, Decision No. AP 953/05 of 8 July 2006, as well as "Order on the Implementation of the Decision of the Constitutional Court of Bosnia and Herzegovina in the Appeal of Milorad Bilbija and others, No. AP 953/05 of 23 March 2007" (available at: <www.ohr.int>).

Experiences show that, if such information has been made public, the parties to the proceedings or media frequently misuse the information and try to put pressure on the Judge Rapporteur. Therefore, in order to protect the Judge Rapporteur as well as other Judges from external pressure, the Constitutional Court of Bosnia and Herzegovina recently issued the following public statement: "Dealing with the cases within the scope of ordinary jurisdiction of the Constitutional Court of Bosnia and Herzegovina, the Judges have noticed that the appellants often try to make direct contact with them. The Constitutional Court of Bosnia and Herzegovina points out that the Constitutional Court makes no individual but collective decisions and, therefore, such communication is inconsistent with the Rules of the Constitutional Court of Bosnia and Herzegovina. Any letter addressed to a Judge shall be opened and communicated to the Office of the Registrar of the Constitutional Court of Bosnia and Herzegovina."¹⁹

The cases in which the Constitutional Court holds public hearings make an exception to the principle of confidentiality.²⁰ Public hearings before the Constitutional Court of Bosnia and Herzegovina shall be conducted only in cases where an issue relevant for making a decision has to be discussed in the proceedings before the Constitutional Court (Article 46 of the Rules of the Constitutional Court of Bosnia and Herzegovina). At the public hearing, a Judge Rapporteur shall outline the facts and the disputable legal issues relevant for the deliberation, without stating his/her position on taking of a decision (Article 53, paragraph 1 of the Rules of the Constitutional Court of Bosnia and Herzegovina).

¹⁹ Available at: <http://www.ustavisud.ba/bos/press/index.php?pid=4427&sta=3&pkat=125&kat=123>

²⁰ Usually, the proceedings before the Constitutional Court of Bosnia and Herzegovina are completed in closed deliberations. All the proceedings are adversarial in nature; this means that all parties to the proceedings are entitled to submit written comments and observations.

IV. CONCLUSION

The Constitutional Court of Bosnia and Herzegovina is a guardian of the objective constitutional and legal order and the subjective constitutional rights and freedoms. Under the Constitution of Bosnia and Herzegovina, the Constitutional Court of Bosnia and Herzegovina is a special body of the highest judicial authority, and its primary jurisdiction is reviewing the constitutionality of laws and the compliance with the human rights and fundamental freedoms guaranteed by the Constitution. Undisputedly, the position of the Constitutional Court of Bosnia and Herzegovina is determined by the Constitution so that it is functionally and organizationally independent of any government in Bosnia and Herzegovina. Taking into account that the Constitutional Court of Bosnia and Herzegovina, in accordance with its jurisdiction, supervises all levels of government, it is above the laws in Bosnia and Herzegovina. The Constitutional Court of Bosnia and Herzegovina deals with the laws and is subject to the Constitution of Bosnia and Herzegovina and the Rules enacted in accordance with its authority under the Constitution of Bosnia and Herzegovina.

In order for the Constitutional Court of Bosnia and Herzegovina to be effective in protecting the basic objectives, including the rule of law, and to contribute to the harmonization of social relations and the development of democracy, it is necessary to secure the organisational and functional independence of the Constitutional Court of Bosnia and Herzegovina in its relationship with the legislative, executive and judicial authorities and to ensure that the bodies at all levels of government comply with and enforce the decisions of the Constitutional Court of Bosnia and Herzegovina, irrespective of their position on a decision. Only in this way can the Constitutional Court of Bosnia and Herzegovina fulfil its constitutional role. Given the specific and complex constitutional and legal system in Bosnia and Herzegovina, it will take the time to understand the special position of the Constitutional Court of Bosnia and Herzegovina as the highest institutional guardian of all values that ought to be afforded constitutional protection.