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(VENICE COMMISSION)

Description of the Constitutional Court of **Bosnia and Herzegovina**
as well as précis published in the Bulletin on Constitutional Case-Law

Bosnia and Herzegovina Constitutional Court

Introduction

The Constitutional Court of Bosnia and Herzegovina, as a protector of the constitutionality and legality of rights and obligations of the Republic, was established by the Constitution of Bosnia and Herzegovina in April 1963. The Constitutional Court of Bosnia and Herzegovina started work on 15 December 1964. The Law on the Constitutional Court of Bosnia and Herzegovina (*Official Gazette of Bosnia and Herzegovina*, No. 2/64) and the Rules of Procedure of the Constitutional Court (*Official Gazette of Bosnia and Herzegovina*, No. 33/64), regulated jurisdiction and procedure in the Constitutional Court. The Constitution of the Socialist Republic of Bosnia and Herzegovina of 1974 also established a Constitutional Court with some changes in its role and competence. The Rules of Procedure of the Constitutional Court provided detailed provisions about jurisdiction (*Official Gazette of Bosnia and Herzegovina*, No. 29/74).

The basic jurisdiction of the Constitutional Court was making decisions about the conformity of laws with the Constitution of the Republic and about the conformity of other regulations with the Constitution and laws, resolving disputes about rights and obligations between the Republic and other socio-political communities, and at the same time resolving disputes about jurisdiction between courts and organs of socio-political communities. The Constitutions of 1963 and 1974 gave the Constitutional Court jurisdiction to follow cases of interest regarding legality and constitutionality and to inform the Assembly of the Republic about matters and problems of that kind and to make suggestions and provide opinions to the Assembly. Every citizen could initiate proceedings for judging legality and constitutionality.

From the time when the Constitutional Court began work in 1964 until the current Constitution came into force, the Constitutional Court dealt with 5739 disputes. An important number of cases related to an assessment of the constitutionality of laws (369 cases).

During the war in Bosnia and Herzegovina, the Constitutional Court carried out its work in very difficult circumstances. In this period the Court considered 499 cases. 91 cases concerned the constitutionality of laws.

The Constitution of Bosnia and Herzegovina of 1995 is contained in the General Framework Agreement for Peace in Bosnia and Herzegovina. The Constitutional Court of Bosnia and Herzegovina was established on 14 December 1995 with a new composition, jurisdiction and authority.

At present, the Constitutional Court of Bosnia and Herzegovina is the highest legal institution which provides judicial review of constitutionality as well as protection of human rights and basic freedoms in accordance with internationally recognised legal standards.

I. Basic texts

The Constitution of 1995 (Annex IV of the General Framework Agreement for Peace in Bosnia and Herzegovina).

II. Composition and organisation

1. Composition

The Constitutional Court of Bosnia and Herzegovina has nine members.

Four members are selected by the House of Representatives of the Federation and two members by the 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 lawyers of high moral standing. Any eligible candidate so qualified may serve as a judge of the Constitutional Court. The judges selected by the President of the European Court of Human Rights cannot be citizens of Bosnia and Herzegovina or of any neighbouring State.

The term of judges initially appointed is five years, unless they resign or are removed for cause by a consensus of the other judges.

The Constitutional Court elects the President and Vice-President of the Court from among the judges. The President of the Constitutional Court is elected by secret ballot by a majority of all judges' votes. The term of office of the President of the Court lasts six months and starts from the elections.

The judicial function is not compatible with membership of any political party or political organisation in Bosnia and Herzegovina or with membership of a legislative, executive or other legal authority in Bosnia and Herzegovina, including the entities, or with any other duties which could influence the impartiality of judges.

While carrying out their duties, judges are entitled to immunity, which is formalised in a special document issued by the Court.

Judges can be removed from office before the expiry of the period for which they were elected on their own request, if they are sentenced to imprisonment, if they lose permanently the capacity to fulfil their duties or if they hold public or professional duties incompatible with the duties of a judge of the Constitutional Court.

The Constitutional Court establishes the existence of reasons for removing judges before the expiry of the term of office and the judge is removed on the basis of the consensus of the other judges. The competent organ which selected that judge shall be informed.

2. Procedure

The Constitution provides that the majority of all members of the Court constitutes a quorum and that 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.

Procedure in the Court was established by the provisions of the Rules of Procedure (*Official Gazette of Bosnia and Herzegovina*, No. 2/97), which stipulate that the Court takes decisions by a majority of votes of all members. Sessions are held as required, as a rule, in the main office of the Court although the Court can decide that the session shall take place out of the main office of the Court. The Court holds a public hearing where, according to the procedure of the Court it is necessary to settle directly the relevant matter for making a decision.

The Court takes decisions as a rule on the basis of a written report in which a draft decision is included. Voting is public by show of hands but the Court can decide to take decisions in camera. A judge can abstain from voting but where he disagrees with a decision he has the right to deliver a separate opinion.

3. Organisation

The Court, in addition to the President and judges of the Constitutional Court, also has the Service of the Constitutional Court at its disposal.

The organisation of the Service of the Constitutional Court is regulated by the Decision on the organisation of the Service of the Constitutional Court.

The Service of the Constitutional Court is composed of:

The Secretary of the Court (1), advisors (7), the Office of Legal and Constitutional Practice (head and two professional assistants), archivist (1), editor (1), programmer (1), translators (2), persons for financial and general jobs (2), technical secretaries and typists (5), other personnel. At present, some positions are not filled.

III. Powers

The jurisdiction of the Constitutional Court is regulated in the provisions of Article VI.3 of the Constitution of Bosnia and Herzegovina which states:

"The Constitutional Court shall uphold this Constitution."

a. 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, including but not limited to:

- whether an Entity's decision to establish a special parallel relationship with a neighbouring State is consistent with this Constitution, including provisions concerning the sovereignty and territorial integrity of Bosnia and Herzegovina;

- whether any provisions of an Entity's constitution or law are consistent with this Constitution.

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

c. The Constitutional Court has jurisdiction over issues referred by any court in Bosnia and Herzegovina concerning whether a law on the validity of which its decision depends is compatible with this Constitution, with the European Convention on Human Rights and Fundamental Freedoms and its Protocols, or with 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.

The procedure may be initiated by:

- a member of the Presidency, the Chair of the Council of Ministers, the Chair or a Deputy Chair of either chamber of the Parliamentary Assembly, one-quarter of the members of either chamber of the Parliamentary Assembly, or one-quarter of either chamber of a legislature of an Entity, regarding disputes under Article VI.3.a of the Constitution;

- the President of the House of Peoples, regarding matters arising under Article IV.3.f of the Constitution;

- the Court which forwarded the issue to the Constitutional Court concerning Article VI.3.c of the Constitution;

- the applicant in an appeal against proceedings in any other court in Bosnia and Herzegovina, referring to issues contained in the Constitution of Bosnia and Herzegovina.

See also the rules of procedure of the Constitutional Court of Bosnia and Herzegovina (*Official Gazette of Bosnia and Herzegovina*, No. 2/97).

IV. Nature and effects of decisions

Decisions of the Constitutional Court shall be final and binding.

The Rules of Procedure established that the Constitutional Court, in making a decision, also decides about its legal effect (*ex tunc, ex nunc*). The Constitutional Court rules on disputes concerning Articles IV.3.f, VI.3.a and VI.3.c of the Constitution. In connection with a decision declaring an act incompatible with the Constitution according to Articles VI.3.a and VI.3.c of the Constitution, the body that adopted the act may be granted a period, not exceeding three months, within which to amend the act accordingly.

If incompatible provisions cannot be brought into line with the Constitution, the Constitutional Court shall declare by its decision that incompatible provisions are invalid. Incompatible provisions are no longer valid from the day of publication of the Court's decision in the *Official Gazette of Bosnia and Herzegovina*.

The decisions of the Constitutional Court are published in the *Official Gazette of Bosnia and Herzegovina* and the official gazettes of entities.

The seat of the Court is in Sarajevo.

As a rule, a session of the Court shall be held at the seat of the Court; the Court may also decide to hold the session outside the seat of the Court.

Conclusion

There are many questions which need to be clarified regarding the Dayton Constitution of Bosnia and Herzegovina and the new way in which the position and role of the Constitutional Court in Bosnia and Herzegovina are regulated. With reference to earlier legal and constitutional practice, a new feature is appellate jurisdiction, which the Constitutional Court now has in issues arising from the Constitution, when they become a matter of dispute in the Court because of a judgment of any Court in Bosnia and Herzegovina. Also, some other questions, such as the Court's current incapacity to act *ex officio* and to submit initiatives on behalf of citizens, will be discussed in this Court as well as outside it.

Bosnia and Herzegovina

Identification: BIH-2000-1-002

a) Bosnia and Herzegovina / b) Constitutional Court / c) / d) 29 and 30.01.2000 / e) U 5/98 / f) / g) *Službeni List Fed. BiH* (Official Gazette of the Federation of Bosnia and Herzegovina), no. 11/2000 / h).

Keywords of the systematic thesaurus:

- 1.2.1.1 **Constitutional Justice** - Types of claim - Claim by a public body - Head of State.
- 1.3.4.3 **Constitutional Justice** - Jurisdiction - Types of litigation - Distribution of powers between central government and federal or regional entities.
- 1.3.5.3 **Constitutional Justice** - Jurisdiction - The subject of review - Constitution.
- 1.4.9.1 **Constitutional Justice** - Procedure - Parties - *Locus standi*.
- 2.1.1.4.3 **Sources of Constitutional Law** - Categories - Written rules - International instruments - European Convention on Human Rights of 1950.
- 2.1.1.4.8 **Sources of Constitutional Law** - Categories - Written rules - International instruments - Vienna Convention on the Law of Treaties of 1969.
- 4.8.1 **Institutions** - Federalism and regionalism - Basic principles.
- 4.8.4 **Institutions** - Federalism and regionalism - Budgetary and financial aspects.
- 4.8.5.2.1 **Institutions** - Federalism and regionalism - Distribution of powers - Implementation - Distribution *ratione materiae*.
- 4.8.5.5 **Institutions** - Federalism and regionalism - Distribution of powers - International relations.

Headnotes:

The constitutionally established jurisdiction of the Constitutional Court of Bosnia and Herzegovina covers the Entity's constitutions, since according to Article VI.3.a of the Constitution the Constitutional Court has exclusive jurisdiction to review whether any provision of an Entity's constitution or law is consistent with the Constitution of Bosnia and Herzegovina. On 29 and 30 January 2000, the Court declared with a partial decision some provisions or parts of provisions of the Constitutions of the Republika Srpska and of the Federation of Bosnia and Herzegovina null and void on the ground that they were not in conformity with the Constitution of Bosnia and Herzegovina.

Summary:

On 12 February 1998 Mr Alija Izetbegovic, Chair of the Presidency of Bosnia and Herzegovina, requested the Constitutional Court of Bosnia and Herzegovina to evaluate the constitutionality of some provisions of the Constitutions of the Federation of Bosnia and Herzegovina ("the Federation Constitution") and of the Republika Srpska ("the RS Constitution").

The Court found that the request was admissible, since it was submitted by the Chair of the Presidency, who is among the institutions entitled to refer disputes to the Constitutional Court under Article VI.3.a of the Constitution of Bosnia and Herzegovina.

According to Article 31 of the Vienna Convention on the Law of Treaties it is necessary to clarify the terms used in the Constitution of Bosnia and Herzegovina by interpreting them in the context of the entire General Framework Agreement for Peace (signed in Paris on 14 December 1995). It followed from an analysis of these texts that there was a consistent terminology, according to which "border" and "boundary" are given different meanings: Article III of the General Framework Agreement refers to "the boundary demarcation between the two Entities", but the term "border" is used in Article X when referring to frontiers between states. In such circumstances, the use of a different terminology in the RS Constitution cannot be considered consistent with the Constitution of Bosnia and Herzegovina and Article 2.2 of the RS Constitution was declared unconstitutional in so far as the term "border" is used in the wrong context.

According to Article III.1.g of the Constitution of Bosnia and Herzegovina, the institutions of Bosnia and Herzegovina are responsible for international and inter-Entity criminal law enforcement.

Article 6.2 of the RS Constitution, as supplemented by Amendment XXX, refers to citizenship, exile and extradition. The Court found that there is no doubt that extradition of persons against whom the authorities of another state are proceeding for an offence or who are wanted by the said authorities to carry out a sentence or detention order is covered by the term international law enforcement. Article 6 of the RS Constitution thus regulates a matter which lies within the responsibility of the institutions of Bosnia and Herzegovina. The Court must, therefore, conclude that the words "or extradited" Article 6.2 of the RS Constitution are inconsistent with the Constitution of Bosnia and Herzegovina.

With regard to the challenged provision of Article 44.2 of the RS Constitution, the Entities cannot regulate the "asylum policy", since according to Article III.1.f of the Constitution of Bosnia and Herzegovina asylum policy and regulation are responsibilities of the institutions of Bosnia and Herzegovina.

With regard to the protection of fundamental rights in the RS Constitution, the question arises whether the Constitution of Bosnia and Herzegovina can be interpreted as prohibiting provisions in the Entity constitutions that are more favourable to the individual.

It is generally recognised in federal states that component entities enjoy "relative constitutional autonomy" granting their constitutions the right to regulate matters in such a way that they do not contradict the wording of the constitution of the respective state. The same principle can be seen as an inherent principle underlying the entire structure of the Constitution of Bosnia and Herzegovina.

Moreover, Article 53 (the former Article 60) ECHR provides that the protection granted by the European Convention on Human Rights is only a minimum protection and that States are not prevented by the Convention from granting the individual more extensive or favourable rights and freedoms. The same principle must apply to the interpretation of the Constitution of Bosnia and Herzegovina, which indeed makes the European Convention on Human Rights directly applicable in Bosnia and Herzegovina and grants it priority over all other law.

It follows from what has been stated that the Entities are free to provide for a more extensive protection of human rights and fundamental freedoms than required under the European Convention on Human Rights and the Constitution of Bosnia and Herzegovina. Amendment LVII, item 1, to the RS Constitution is therefore not in conflict with the Constitution of Bosnia and Herzegovina.

The Court found that the Entities have a right to establish representations abroad as long as this does not interfere with the power of Bosnia and Herzegovina to be represented as a State. Moreover, the Entities may propose their own candidates to be elected as ambassadors and other international representatives of Bosnia and Herzegovina; however such proposals must be regarded as nothing more than proposals and cannot restrict the right of the Presidency of Bosnia and Herzegovina to appoint either the persons proposed by the Entities' institutions or persons who have not been proposed by them.

Hence the contested provisions of Articles 80 and 90 of the RS Constitution concerning the power to appoint and recall heads of missions of Republika Srpska in foreign countries and the establishment of missions abroad are in conformity with the Constitution of Bosnia and Herzegovina.

With regard to the contested provisions of Article 98 of the RS Constitution the Court found that since the power for issuing currency and for monetary policy through Bosnia and Herzegovina is given by Article VII of the Constitution of Bosnia and Herzegovina to the Central Bank of Bosnia and Herzegovina, there is no power left in this respect for the Entities under Article III.3 of the Constitution of Bosnia and Herzegovina.

Hence, the challenged provisions of Article 98 of the RS Constitution must be declared unconstitutional.

Moreover, the Court found that Article 76.2 of the RS Constitution is also not in conformity with the Constitution of Bosnia and Herzegovina, because the Central Bank is vested with the exclusive responsibility to make legislative proposals in the field of "monetary policy" as referred to above.

According to Article VI.3.a of the Constitution of Bosnia and Herzegovina, the Constitutional Court of Bosnia and Herzegovina has "exclusive jurisdiction", when serving as a protective mechanism in "any dispute". Moreover, Article 75 of its Rules of Procedure allows for preliminary measures to be granted by the Court, and therefore there is no room left for unilateral measures to be taken by institutions of the

Republika Srpska. The Court thus found that Article 138 of the RS Constitution, as modified by Amendments LI and LXV, is unconstitutional.

With regard to the contested provisions of Amendment VII to Article II.A.5 of the Federation Constitution, the Constitutional Court found that the wording of this amendment simply refers to the citizenship requirements prescribed by Article I.7.a and I.7.d of the Constitution of Bosnia and Herzegovina. This contested provision must, therefore be considered to be in conformity with the Constitution of Bosnia and Herzegovina.

With regard to the power to appoint heads of diplomatic missions in the Federation of Bosnia and Herzegovina, as it has already been stated above, Article V.3.b of the Constitution of Bosnia and Herzegovina vests the power to appoint them in the hands of the Presidency of Bosnia and Herzegovina without limits to its decision-making. Therefore, the Court found that the provisions of Article IV.B.7.a.i and IV.B.8. of the Federation Constitution clearly contradict the Constitution of Bosnia and Herzegovina since the contested provisions, unlike those of the RS Constitution, vest the power to make such an appointment in the President of the Federation.

Languages:

Bosniac, Croatian, Serb, English.

Identification: BIH-2000-1-001

a) Bosnia and Herzegovina / **b)** Constitutional Court / **c)** / **d)** 20.01.2000 / **e)** U 1/99 / **f)** / **g)** *Službene Novine Fed. BiH* (Official Gazette of the Federation of Bosnia and Herzegovina), no. 41/99 / **h)**.

Keywords of the systematic thesaurus:

- 1.1.4.2 **Constitutional Justice** - Constitutional jurisdiction - Relations with other institutions - Legislative bodies.
- 1.3.4.10 **Constitutional Justice** - Jurisdiction - Types of litigation - Litigation in respect of the constitutionality of enactments.
- 1.5.4.3 **Constitutional Justice** - Decisions - Types - Finding of constitutionality or unconstitutionality.
- 1.6.2 **Constitutional Justice** - Effects - Determination of effects by the court.
- 1.6.5.3 **Constitutional Justice** - Effects - Temporal effect - *Ex nunc* effect.

Keywords of the alphabetic index:

Constitutional Court, decisions, execution.

Headnotes:

In Article 59 of the Rules of Procedure of the Constitutional Court of Bosnia and Herzegovina it is established that the Constitutional Court, in a decision declaring an act unconstitutional under Article VI.3.a of the Constitution, may grant to the body that adopted the act a period of three months within which the act must be brought into line with the Constitution. If the incompatibility is not eliminated within the said period, the Court shall declare, in a decision, that the incompatible provisions cease to be valid on the day of publication of that decision in the Official Gazette of Bosnia and Herzegovina.

Summary:

The Constitutional Court of Bosnia and Herzegovina established with Decision no. U1/99 dated 14 August 1999 that some Articles of the Law on the Council of Ministers and the Ministers of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, no. 4/97) were inconsistent with the Constitution of Bosnia and Herzegovina.

The Parliamentary Assembly was given a three-month period from the date of publication of this decision in the Official Gazette to amend the Law so as to bring the provisions into line with the Constitution of Bosnia and Herzegovina.

The period determined in the decision elapsed on 28 December 1999 and the Parliamentary Assembly failed to comply with the decision within this period.

Hence, on 20 February 2000 the Court adopted a new decision. In this decision the Court specified which parts of Articles 3, 7, 19, 28 and 29 of the Law were in conflict with the Constitution and declared, pursuant to Articles 26 and 59 of the Rules of Procedure, that these provisions as well as the other provisions mentioned in its decision of 14 August 1999 shall cease to be valid on the day of publication of this decision in the Official Gazette.

Cross-references:

Decision U1/99 of 14 August 1999 was published in précis form in Bulletin 1999/3 [BIH-1999-3-003].

Languages: Bosniac, Croatian, Serb, English.

Identification: BIH-1999-3-005

a) Bosnia and Herzegovina / **b)** Constitutional Court / **c)** / **d)** 25/09/1999 / **e)** U 6/99 / **f)** / **g)** *Sluzbeni List BiH* (Official Gazette of Bosnia and Herzegovina), no. 20/99; *Sluzbene Novine Fed. BiH* (Official Gazette of the Federation of Bosnia and Herzegovina), no. 47/99 / **h)**.

Keywords of the Systematic Thesaurus:

4.7.6 **Institutions** - Jurisdictional bodies - Supreme court.

5.2.32 **Fundamental Rights** - Civil and political rights - Right to property.

Keywords of the alphabetical index:

Municipal inspector / Public property, use / Land, right of use.

Headnotes:

In deciding whether the right to property has been violated, only the current legal situation can be taken into account.

Summary:

The request to review the constitutionality of the judgment was submitted on 8 December 1998.

The following facts were presented by the appellant.

The applicant was for 30 years the owner of a car-service in Sarajevo. During the same period a billboard advertising for the car-service was installed on a piece of land, which is now a grass corridor next to the street in which the car-service was located.

On 14 March 1997 the Municipal Inspector of the City Secretariat for Inspection Affairs ordered the applicant to remove the billboard because it had been put up without any official authorisation. Upon the applicant's appeal the Federal Ministry for Urbanism and Environment confirmed the Municipal Inspector's Decision on 16 July 1997. The applicant filed an appeal against this decision with the Supreme Court of the Federation. He claimed that the land was still his property.

In its judgment of 14 October 1998, the Supreme Court of Bosnia and Herzegovina confirmed the Municipal Inspector's finding that the billboard had been installed without any permission. Moreover the Supreme Court noted that it could be seen from the real estate record that the piece of land in question was in fact public property, that the applicant had the right to use two-thirds of it, and that the billboard was situated on the remaining part which formed the "green stripe" for the street.

Regarding the applicant's complaint that the decision of the Supreme Court violated his right to property, the Constitutional Court noted that the applicant admitted in the proceedings before the Supreme Court of the Federation and in his application to the Constitutional Court that he was not the owner of the land where the billboard is placed.

Regarding the applicant's claim that the land in question had been in the possession of his family for a long time and that a law on the restitution of private property is due to be passed, the Court stressed that it has to base its findings on the current legal situation. It follows that it is irrelevant whether the applicant may under future legislation obtain property rights over the land where the billboard is placed. Nor can the Court take into account any rights to the land which the applicant or his family may have had in the past.

The Constitutional Court, consequently, found that the applicant did not have any property rights to the piece of land in question, or even any right of use of that land. Nor was it demonstrated that this judgment was in any other way inconsistent with the applicant's constitutional rights. Therefore the application was rejected.

Languages:

Bosniak, Croatian, Serb, English, French.

Identification: BIH-1999-3-004

a) Bosnia and Herzegovina / **b)** Constitutional Court / **c)** / **d)** 24/09/1999 / **e)** U 2/99 / **f)** / **g)** *Sluzbeni List BiH* (Official Gazette of Bosnia and Herzegovina), no. 20/99; *Sluzbene Novine Fed. BiH* (Official Gazette of the Federation of Bosnia and Herzegovina), no. 47/99 / **h)** .

Keywords of the Systematic Thesaurus:

- 2.1.1.4 **Sources of Constitutional Law** - Categories - Written rules - European Convention on Human Rights of 1950.
- 4.7.6 **Institutions** - Jurisdictional bodies - Supreme court.
- 4.7.7 **Institutions** - Jurisdictional bodies - Ordinary courts.
- 5.2.9.2 **Fundamental Rights** - Civil and political rights - Procedural safeguards and fair trial - Access to courts.
- 5.2.28 **Fundamental Rights** - Civil and political rights - Inviolability of the home.
- 5.2.32 **Fundamental Rights** - Civil and political rights - Right to property.

Keywords of the alphabetical index:

Occupancy right, conditions.

Headnotes:

A judicial decision which prevented access to both judicial and administrative authorities thereby depriving an applicant of the possibility of obtaining a decision on a dispute violated the applicant's right to access to a court under Article 6.1 ECHR.

An interference by a court with an individual's apartment without legal basis violated the right to respect for the home under Article 8 ECHR.

Occupancy rights may be considered as "possessions" in the sense of Article 1 Protocol 1 ECHR. Since an individual may only be deprived of his possessions subject to the conditions provided by law and since no legal basis existed in the present case, the right to peaceful enjoyment of one's possessions under Article 1 Protocol 1 ECHR had been violated.

Summary:

The appellants requested the Constitutional Court to review the constitutionality of a judgment of the Supreme Court of the Republika Srpska.

The following facts were presented by the first appellant and were not contested by the defendant.

The first appellant was the occupancy right holder of an apartment in Banja Luka until she died on 27 July 1998. From 1986 the second appellant was a member of the common household and from April 1991 she fulfilled the legal conditions to obtain the occupancy right in the case of the first appellant's death.

On 24 August 1995 the defendant forced the appellants to leave the apartment. The defendant is now living there and prevents the second appellant and her family from re-entering the apartment.

The appellants initiated proceedings before the Municipal Court in Banja Luka which held that the defendant should vacate and hand over a one-roomed apartment in Banja Luka to the first appellant free of persons and personal belongings within 15 days, failing which the judgment would be implemented forceably.

The District Court in Banja Luka established that the matter in question had to be decided by administrative authorities, and not by ordinary courts. The Supreme Court of the Republika Srpska confirmed the District Court's decision.

As far as the admissibility of the request is concerned, the Constitutional Court accepted that the second appellant had the right to bring the case, since she was a member of the common household and as the first appellant's heir had a legal interest in continuing the legal proceedings after the latter died.

The Constitutional Court found that all other domestic remedies had been exhausted and that the request had been filed in due time. Consequently the Constitutional Court declared the appeal admissible.

Moreover, the Court found that the judgment of the Supreme Court of the Republika Srpska did in fact prevent the second appellant from returning to the apartment and from carrying out judicial proceedings in this respect. The present case might therefore raise issues under Article 6.1 ECHR, under Article 8 ECHR and Article 1 Protocol 1 ECHR.

By confirming the judgment of the District Court of Banja Luka, the Supreme Court of Republika Srpska excluded any possibility for the second appellant to obtain a decision by the ordinary courts on the dispute about the apartment.

This finding is supported by a judgment of the Supreme Court of Bosnia and Herzegovina of 19 May 1988. The Supreme Court found that, according to Article 10 of the Law on Housing Relations of the Republika Srpska, disputes over housing relations are handled in general by the competent court and administrative authorities are competent only when specified by this law. In the present case no such competence was specified. The access to administrative authorities was therefore legally excluded for the appellant too.

It follows that the judgment of the District Court in Banja Luka as confirmed by the judgment of the Supreme Court prevented the appellant from having access both to judicial and administrative authorities and therefore, from any possibility of obtaining a decision on the dispute about the apartment. Consequently, this judgment violated the appellant's right to access to a court under Article 6.1 ECHR.

Moreover, the Court found that the judgment of the Supreme Court in Banja Luka interfered with the appellant's right to respect for her home in the sense of Article 8.1 ECHR. Since this interference was not justified, as it was not "in accordance with the law", the Constitutional Court found that this judgment violated the appellant's right to respect for her home under Article 8 ECHR.

With regards to Article 1 Protocol 1 ECHR, the Court found that the occupancy right entails, *inter alia*, the right to use an apartment undisturbed and permanently and the possibility for cohabiting members of the holder's household to obtain the occupancy right after the holder's death. The Constitutional Court found that the second appellant's right to keep the first appellant's occupancy right after her death constituted a "possession" in the sense of Article 1 Protocol 1 ECHR.

The Court established that the judgment of the Supreme Court in Banja Luka of 19 August 1998 deprived the second appellant of her possession in the sense of the second rule of Article 1 Protocol 1 ECHR.

According to this provision this deprivation may only be justified in the public interest and subject to the conditions provided for by the law. The Constitutional Court has, however, already found that the judgment of the Supreme Court of Banja Luka was in fact not in accordance with the Law on Housing Relations of Republika Srpska. The interference was therefore not justified. Consequently, the judgment violated the appellant's right to peaceful enjoyment of her possession under Article 1 Protocol 1 ECHR as well.

Languages:

Bosniak, Croatian, Serb, English, French.

Identification: BIH-1999-3-003

a) Bosnia and Herzegovina / **b)** Constitutional Court / **c)** / **d)** 14/08/1999 / **e)** U1/99 / **f)** / **g)** *Sluzbeni List BiH* (Official Gazette of Bosnia and Herzegovina), no. 16/99, *Sluzbene Novine Fed BiH* (Official Gazette of the Federation of Bosnia and Herzegovina), no. 41/99 / **h)** .

Keywords of the Systematic Thesaurus:

- 1.3.9 **Constitutional Justice** - Types of litigation - Litigation in respect of the formal validity of enactments.
- 1.7.2 **Constitutional Justice** - Effects - Determination of effects by the court.
- 1.7.5.3 **Constitutional Justice** - Effects - Temporal effect - Postponement of temporal effect.
- 1.7.6 **Constitutional Justice** - Effects - Influence on State organs.
- 4.5.2 **Institutions** - Legislative bodies - Powers.
- 4.6.2 **Institutions** - Executive bodies - Powers.

Keywords of the alphabetical index:

Parliamentary Assembly / Council of Ministers / Presidency / Minister, appointment / Time-limit for amending a law.

Headnotes:

Legal provisions which regulate in detail the functions of the Co-chairs and Vice-chair of the Council of Ministers and, accordingly, the Council of Ministers as a whole are unconstitutional since the Constitution clearly establishes the traditional function of a Prime Minister designate who also appoints Ministers.

Summary:

The request to review the constitutionality of the law was submitted by the Deputy Speaker of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina on 11 February 1999.

The applicant requested review of the constitutionality of the Law on the Council of Ministers of Bosnia and Herzegovina and the Ministers of Bosnia and Herzegovina, annulment of the confirmation of appointment of the Co-chairs and the Vice-chair of the Council of Ministers of Bosnia and Herzegovina and the abrogation of all decisions and other acts of the Council of Ministers of Bosnia and Herzegovina "from the day of the unlawful confirmation by the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina until the day of annulment of such an unconstitutional and unlawful confirmation by the Constitutional Court of Bosnia and Herzegovina".

The applicant argued that Article 6.1 and 6.2 of the Law on the Council of Ministers contravene Article V.4 of the Constitution of Bosnia and Herzegovina. He further explained that Article 6.1 of this law contains the term Co-chair who is appointed by the Presidency of Bosnia and Herzegovina and paragraph 2 starts with the office of Vice-chair, which is not foreseen by the Constitution. It further specifies that the Ministers and Deputy Ministers are appointed by the Co-chair, after obtaining the opinion of the Presidency, and they assume office after they have been approved by the House of Representatives.

On 10 March 1999 the institutions which enacted the disputed acts - the Parliamentary Assembly of Bosnia and Herzegovina, the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina and the Council of Ministers of Bosnia and Herzegovina - were requested to provide, within 30 days, their response to the allegations in the request which are related to acts within their competence.

The Council of Ministers, in its response of 12 May 1999, stated: "The Council of Ministers believes that first of all it should be established whether the Law on the Council of Ministers of Bosnia and Herzegovina and the Ministries of Bosnia and Herzegovina is in line with the Constitution of Bosnia and Herzegovina, and only after that it is possible to raise the question of the legality of decisions and other acts which the Council of Ministers of Bosnia and Herzegovina adopted according to its authority set forth in the Law on the Council of Ministers of Bosnia and Herzegovina and the Ministers of Bosnia and Herzegovina".

According to Article VI.3.a of the Constitution of Bosnia and Herzegovina, the Constitutional Court is competent, *inter alia*, to decide whether a law of Bosnia and Herzegovina is consistent with the Constitution. The law in question can, therefore, be the subject of a dispute in terms of Article 3.a of the Constitution.

Having accepted that the appellant's claim covers not only the explicitly contested provisions of Article 6.1 and 6.2 of the law in question, but all the provisions which contain the term Co-Chair and Vice-Chairs, the Court found that all these provisions were not in accordance with Article V.4 of the Constitution, since this provision clearly establishes the traditional functions of a Prime Minister designate who also appoints the ministers.

Regarding the request to annul the confirmation of appointment of the Co-chairs and Vice-chair of the Council of Ministers, the Constitutional Court found that the confirmation of appointment had been made through the decision of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina on the basis of the Constitution and Article 6 of the Law on the Council of Ministers.

As the Constitutional Court gave the Parliamentary Assembly a time-limit within which to harmonise the disputed provisions of the law with the Constitution, there were no grounds for the Court to annul the above mentioned decision.

With regard to the request to abrogate all decisions and other acts of the Council of Ministers "from the day of unlawful confirmation of appointment," the Constitutional Court did not take a specific position because the request was not made in accordance with Article 14.1 of the Rules of Procedure of the Constitutional Court.

With respect to the request to evaluate the constitutionality of certain provisions of the Law on the Council of Ministers of Bosnia and Herzegovina and the Ministries of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, no. 4/97) the Constitutional Court established that Articles 3, 5-7, 9-13, 15 and 19-21.3, 22, 24-29 of the above mentioned law were not in conformity with the Constitution of Bosnia and Herzegovina.

According to Article 56.2, 56.3 and 56.4 of the Rules of Procedure of the Constitutional Court of Bosnia and Herzegovina (Article 59 of the consolidated Rules of Procedure of the Constitutional Court of Bosnia and Herzegovina) the Parliamentary Assembly is given a time-limit of three months within which the said provisions of the law shall be brought into line with the Constitution of Bosnia and Herzegovina.

Moreover, the said Article stipulates that if the established inconsistency is not eliminated within the set time-limit, the Court shall, by its decision, rule that the inconsistent provisions cease to be in force from the day of publication of the Court's decision on cessation of application of inconsistent provisions in the Official Gazette of Bosnia and Herzegovina.

Languages:

Bosniak, Croatian, Serb, English, French.

Identification: BIH-1999-2-002

a) Bosnia and Herzegovina / **b)** Constitutional Court / **c)** / **d)** 07/06/1999 / **e)** U 12/98 / **f)** / **g)** *Sluzbeni Glasnik BiH*, no. 11/99; *Sluzbeni Glasnik FedBiH*, no. 28/99 / **h)** .

Keywords of the Systematic Thesaurus:

- 1.3.2 **Constitutional Justice** - Types of litigation - Distribution of powers between State authorities.
- 1.6.4.7 **Constitutional Justice** - Decisions - Types - Interim measures.
- 1.7.5 **Constitutional Justice** - Effects - Temporal effect.
- 2.1.1.1 **Sources of Constitutional Law** - Categories - Written rules - Constitution.
- 4.3.2 **Institutions** - Languages - National.
- 4.5.9 **Institutions** - Legislative bodies - Relations with the executive bodies.
- 4.6.2 **Institutions** - Executive bodies - Powers.
- 4.8.4 **Institutions** - Federalism and regionalism - Distribution of powers.

Keywords of the alphabetical index:

Law, contradicting provisions / Alternative request / Treaty, ratification / Constitution, transitional provision.

Headnotes:

The Constitutional Court declared Decrees on the ratification of international agreements unconstitutional because they were not passed in accordance with the Dayton Constitution.

Summary:

The Constitutional Court declared the Decrees on the Ratification of the Agreements on Customs Co-operation and on Economic Co-operation between the Government of the Republic of Croatia and the Government of Bosnia and Herzegovina as well as the Government of the Federation of Bosnia and Herzegovina (Official Gazette of the Republic of Bosnia and Herzegovina, nos. 7/96 and 10/96) unconstitutional. The Court further decided that these decrees ceased to be valid *ex nunc* on the day of the adoption of this decision.

The request to review the constitutionality of the Decrees had been submitted by the Deputy Chairman of the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina, on 10 September 1998. He argued that the ratification of these agreements by decree of the Government of the Republic of Bosnia and Herzegovina did not comply with Article V.3.d and Article IV.4.d of the Constitution of Bosnia and Herzegovina since, according to these provisions, the Presidency of Bosnia and Herzegovina has the responsibility to ratify treaties with the consent of the Parliamentary Assembly.

Alternatively, if the Constitutional Court did not accept the request to review the constitutionality of the decrees, the applicant claimed that his request should be seen as a dispute between Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina according to Article VI.3.a of the Constitution of Bosnia and Herzegovina since both agreements would have "big detrimental consequences for the Federation of Bosnia and Herzegovina which cannot be overcome".

The applicant further asked the Constitutional Court to issue an interim measure to the effect that the Decrees should temporarily not be enforced. In its session on 22 December 1998 the Court, however, rejected the proposal for interim measures according to Article 70 of its Rules of Procedure. The Court found that the applicant could not prove that the further implementation of the Agreements would, in the language of Article 70 of the Rules of Procedure, cause "detrimental consequences" for the Federation of Bosnia and Herzegovina "which cannot be overcome."

As far as the admissibility of the request is concerned two problems were raised.

The first was whether the constitutional review of decrees of the Government of Bosnia and Herzegovina fell within the responsibility of the Constitutional Court, insofar as normative acts to be reviewed under

Article VI.3.a.2 of the Constitution of Bosnia and Herzegovina do not *expressis verbis* include law of Bosnia and Herzegovina. The Court found that Article VI.3.a of the Constitution states that the exclusive jurisdiction of the Court to decide disputes is "not limited to" the following provisions which are thus illustrative examples and that it must follow from the reference to the "Chair or Deputy Chair of either Chamber of the Parliamentary Assembly" on the one hand and the provision of Article III.3.b of the Constitution on the other (which states that the Constitution, *inter alia*, "supersedes inconsistent provisions of the law of Bosnia and Herzegovina") that the Constitutional Court has the power to review decrees of the Government of Bosnia and Herzegovina.

Second, Article 27 of the Rules of Procedure prescribes that the Court may judge the constitutionality only of those general acts which are in force. The Court had to take the Law on Customs Policy of Bosnia and Herzegovina (Official Gazette of BiH, no. 21/98) into consideration since some of the provisions of the respective Agreements might seem to be abrogated by contradicting provisions of this Law. The Court found that it followed from Article 217 of the Law that the Law does not generally abrogate all other laws and regulations which were in force before. Moreover, the applicant claimed that the decrees on the ratification of the respective Agreements are unconstitutional "insofar as they were issued by an incompetent organ" so that the adoption of the decrees as such might be affected by the alleged unconstitutionality.

The Court found the application admissible and therefore not necessary to pursue the alternative request made by the applicant.

Regarding the merits of the request, the following problems were raised. Both Agreements were signed by the responsible representatives of the Republic of Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina before the Constitution of BiH came into force, and, on the basis of the Law on Government, lawfully ratified by the Government of Bosnia and Herzegovina after the Dayton Constitution had come into force.

The Court noted that the Dayton Constitution altered the legal regime for the ratification of international treaties entirely. According to Article V.3.d of the Constitution of Bosnia and Herzegovina the Presidency shall have responsibility for "ratifying treaties of Bosnia and Herzegovina...[with the consent of the Parliamentary Assembly]" and Article IV.4.d of the Constitution of Bosnia and Herzegovina explicitly refers to the decision-making power of the Parliamentary Assembly "whether to consent to the ratification of treaties."

The Court further noted that the solution to this problem had to be found in the Transitional Arrangements of Annex II of the Constitution which provide in particular for the continuation of laws, judicial and administrative proceedings, offices and treaties under the new Constitution.

The Constitutional Court found that the ratification was not effected by the competent organs according to the Constitution. Nor did previously existing institutions take any measures to effect the ratification in accordance with the Constitution. Moreover, it followed from Article 18 of the Agreement on Customs Cooperation and Article 16 of the Agreement on Economic Cooperation that both Agreements were to be applied provisionally as from the time of signature.

Based on Article 56.1 of its Rules of Procedure the Constitutional Court declared the decrees on the ratification of the respective Agreements void *ex nunc*, and returned the procedure of concluding the respective Agreements to the *status quo ante*, allowing the responsible institutions of BiH to fulfil their obligations in accordance with international public law and constitutional requirements.

Languages:

Bosnian.

Identification: BIH-1999-2-001

a) Bosnia and Herzegovina / **b)** Constitutional Court / **c)** / **d)** 26/02/1999 / **e)** U 7/98, 8/98, 9/98, 10/98, 11/98 / **f)** / **g)** *Sluzbeni Glasnik BiH*, no. 9/99; *Sluzbeni Glasnik FedBiH*, no. 23/99 / **h)** .

Keywords of the Systematic Thesaurus:

- 1.1.4.4 **Constitutional Justice** - Constitutional jurisdiction - Relations with other institutions - Courts.
- 1.2.3 **Constitutional Justice** - Types of claim - Referral by a court.
- 1.3.1 **Constitutional Justice** - Types of litigation - Litigation in respect of fundamental rights and freedoms.
- 1.3.8 **Constitutional Justice** - Types of litigation - Litigation in respect of jurisdictional conflict.
- 1.4.12 **Constitutional Justice** - The subject of review - Court decisions.
- 2.2.1.5 **Sources of Constitutional Law** - Hierarchy - Hierarchy as between national and non-national sources - European Convention on Human Rights and other non-constitutional domestic legal instruments.
- 2.3.2 **Sources of Constitutional Law** - Techniques of interpretation - Concept of constitutionality dependent on a specified interpretation.
- 2.3.3 **Sources of Constitutional Law** - Techniques of interpretation - Intention of the author of the controlled enactment.
- 4.7.5 **Institutions** - Jurisdictional bodies - Relations with bodies of international jurisdiction.

Keywords of the alphabetical index:

Human Rights Commission for Bosnia and Herzegovina / Human Rights Chamber for Bosnia and Herzegovina / Human Rights, highest domestic tribunal for the protection / Decision, final and binding, appeal / General Framework Agreement (Dayton) / Constitutional Court, jurisdiction.

Headnotes:

The Constitutional Court does not have jurisdiction over appeals against Decisions of the Human Rights Chamber.

Summary:

The Constitutional Court decided to reject the appeals lodged by the Public Attorney's Office on behalf of the Federation of Bosnia and Herzegovina (Cases 7/98, 8/98, 9/98 and 11/98) and by the Co-Chair of the Council of Ministers (Case no. 10/98) against Decisions of the Human Rights Chamber for Bosnia and Herzegovina. The reasons were as follows.

The Constitutional Court noted that, according to Articles II and VI.3.b of the Constitution, the Constitutional Court has jurisdiction over human rights issues under the Constitution arising out of a judgement of any other court in Bosnia and Herzegovina. However, Article II.1 of the Constitution also provides that, in order to ensure the highest level of internationally protected human rights and fundamental freedoms, there shall be a Human Rights Commission for Bosnia and Herzegovina as provided for in Annex 6 to the General Framework Agreement.

The Constitutional Court found it significant that the Constitution and the Agreement on Human Rights were adopted at the same time, on 14 December 1995, as Annexes to the General Framework Agreement. The provisions of these two Annexes should therefore be considered to supplement each other, and in view of the link between these two texts there would be at least a strong presumption that the rules contained in the Agreement on Human Rights are not contrary to the Constitution.

The appellate jurisdiction of the Constitutional Court is based on Article VI.3.b of the Constitution which provides for such jurisdiction in regard to "a judgement of any other court in Bosnia and Herzegovina". Although the Chamber of Human Rights exercises judicial functions in respect of alleged violations of human rights in Bosnia and Herzegovina, the Chamber is an institution of a special nature. According to Article II.1 of the Agreement on Human Rights, the Chamber is one of the two parts of the Commission on Human Rights and, according to Article XIV of the Agreement on Human Rights, the Commission on Human Rights will only function in its present form during a transitional five year period, unless the Parties to the Agreement agree otherwise. In the terminology of the Agreement on Human Rights, the Chamber is not a court or an institution of Bosnia and Herzegovina. Indeed, Article XIV of the Agreement specifically refers to the transfer of responsibility to "the institutions of Bosnia and Herzegovina".

The Constitutional Court further found it significant that the Constitution of Bosnia and Herzegovina refers to the concept of "court in Bosnia and Herzegovina" not only in Article VI.3.b but also in Article VI.3.c. The

latter provision confers competence on the Constitutional Court in respect of issues referred by "any court in Bosnia and Herzegovina" concerning whether a law, on whose validity its decision depends, is compatible, in particular, with the Constitution or the European Convention on Human Rights and its Protocols. It is highly unlikely that the authors of this provision intended the Chamber of Human Rights to be included among those institutions competent to refer human rights issues to the Constitutional Court for a preliminary ruling.

The Constitutional Court took into account that, according to Article VI.4 of the Constitution, the decisions of the Constitutional Court, and, under Article XI.3 of the Agreement on Human Rights, the decisions of the Human Rights Chamber shall be both final and binding. The Court noted that the correct interpretation must be that the authors did not intend to give one of the institutions competence to review the decisions of the other, but rather considered that, in regard to human rights issues, the Constitutional Court and the Human Rights Chamber should function as parallel institutions, neither of them being competent to interfere in the work of the other and it being left in some cases to the discretion of applicants to make a choice between alternative remedies.

Finally the Court accepted that such a system could result in conflicting jurisprudence in regard to some human rights issues and that it might also have the disadvantage of making it difficult for the individual to decide whether to appeal to the Constitutional Court or to bring a case before the Commission on Human Rights. This, however, is a consequence of the system created by the Constitution and the Agreement on Human Rights. Moreover, the difficulties which might arise are likely to be of a temporary nature, since the responsibility for the operation of the Commission on Human Rights will, after the initial transitional period, be transferred to the institutions of Bosnia and Herzegovina, unless the Parties to the Agreement agree otherwise.

Languages:

Bosnian.

Identification: BIH-1998-2-002

Full text: English

a) Bosnia and Herzegovina / b) Constitutional Court / c) / d) 05/06/1998 / e) / f) / g) / h) .

Keywords of the Systematic Thesaurus:

- 1.2.1.2 **Constitutional Justice** - Types of claim - Claim by a public body - Executive bodies.
- 1.5.9.1 **Constitutional Justice** - Procedure - Parties - *Locus standi*.
- 2.2.2.2 **Sources of Constitutional Law** - Hierarchy - Hierarchy as between national sources - The Constitution and other sources of domestic law.
- 2.3.2 **Sources of Constitutional Law** - Techniques of interpretation - Concept of constitutionality dependent on a specified interpretation.
- 4.6.2 **Institutions** - Executive bodies - Powers.

Keywords of the alphabetical index:

Council of Ministers, co-chair, powers / Council of Ministers, Rules of Procedure / Sub-constitutional norms, constitutionality / Effectiveness, principle.

Headnotes:

The Co-Chair of the Council of Ministers of Bosnia and Herzegovina is competent to refer a dispute to the Constitutional Court in accordance with Article VI.3.a of the Constitution.

Summary:

Dr Haris Silajdžić, "Co-Chair" of the Council of Ministers, seized the Constitutional Court to review the constitutionality of the "Law on Privatisation of Enterprises" of the Republika Srpska (Official Gazette of

SR no. 15/96, 13/97 and 26/97 - re-promulgated text) and the "Law on privatisation of Enterprises" of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina, no. 27/97).

Under Article VI.3.a of the Constitution of Bosnia and Herzegovina the Constitutional Court has exclusive jurisdiction to decide whether any provision of a constitution of an entity or law is consistent with this Constitution. Such a dispute may be referred to the Constitutional Court by, among others, the "Chair of the Council of Ministers".

Hence the preliminary question is raised whether Dr Haris Silajdić, who is "Co-Chair" according to the Law on the Council of Ministers, is entitled to refer a dispute to the Constitutional Court of Bosnia and Herzegovina under the Constitution of Bosnia and Herzegovina.

The office of a "Co-Chair" of the Council of Ministers is regulated by Article 3.1 and Article 5 of the "Law on the Council of Ministers of Bosnia and Herzegovina and Ministries of Bosnia and Herzegovina" (Official Gazette of Bosnia and Herzegovina, no. 4/77) which state that there are two "Co-Chairs" who "will take turns as Chair in accordance with the Rules of Procedure". According to Article 2.2 of the Rules of Procedure of the Council of Ministers of Bosnia and Herzegovina, the "Co-Chairs will take turns as Chair, rotating weekly". Moreover, a Co-Chair performing the duties of the Chair is, according to Article 24.a-e, responsible for more or less procedural tasks in connection with chairing meetings of the Council of Ministers, whereas the two Co-Chairs are, according to Article 25, "jointly responsible" for the co-ordination of the work of the Council of Ministers (lit. **a**) and the "representation" of the Council of Ministers (lit. **d**), i.e. in a more substantive way.

Although it was verified by the Constitutional Court that Dr Silajdić was the Chair "in turn", it remained unclear under Articles 24 and 25 of the Law on the Council of Ministers of Bosnia and Herzegovina whether the two Co-Chairs have to act jointly when referring a dispute to the Constitutional Court according to Article VI.3.a of the Constitution.

The other Co-Chair in office, Mr Boro Bosnić, did not react to a request made by the Constitutional Court to submit an opinion on the legal problems outlined.

The provisions of the Law on the Council of Ministers and the respective Rules of Procedure refer to the authority under Article VI.3.a of the Constitution insofar as all the statutory provisions quoted above deal with the responsibilities of the Co-Chairs acting on behalf of the Council of Ministers as a legal body in itself. However, the authority under Article VI.3.a of the Constitution is not assigned to the Council of Ministers, but to the "Chair" as the competent individual legal person.

Insofar as the Constitution does not contain any further definition of a "Chair" of the Council of Ministers, it could nevertheless be argued that one has to define this term in conjunction with the sub-constitutional provisions of the Law on the Council of Ministers and the respective Rules of Procedure. The substantive character of referring a dispute to the Constitutional Court could thus lead to the conclusion that the two Co-Chairs must act jointly when referring such dispute.

Interpreting the Constitution on the basis of sub-constitutional provisions can be seen as a variant of the principle of interpretation which requires that all sub-constitutional norms should be in conformity with the Constitution insofar as there is a legal hierarchy based on the supremacy clause of Article III.3.b of the Constitution. From that follows the general principle of interpretation that all statutes under review are supposed to be in conformity with the Constitution. In the examined case the problem raised concerns the interpretation of the Constitution in light of the sub-constitutional statute which would reverse the legal hierarchy that has to be derived from Article III.3.b of the Constitution.

From an interpretation that the two Co-Chairs must act jointly, it could follow that any access to the Constitutional Court by the Chair of the Council of Ministers may effectively be excluded if they block each other. Such an interpretation could thus have the effect that neither of the two Co-Chairs can exercise this responsibility. This would violate the principle of effectiveness which is to be derived from Article VI.3 of the Constitution.

The principle of interpretation of the conformity of sub-constitutional norms with the Constitution raises serious doubts about the conformity of the Law on the Council of Ministers with the Constitution of Bosnia and Herzegovina - the review of which was, however, not requested by the applicant. It can be derived thus as a principle of interpretation that the function of the Constitution must not be undermined by way of

interpretation. In case of doubts, therefore, the Constitution must not be interpreted in such a way as to allow the "ordinary" legislation to reach its goals without amendment of the Constitution.

Based on the priority of the principle of functional conformity which has to be applied in this case due to the doubts on the constitutional compatibility of the Law on the Council of Ministers, Article VI.3.a of the Constitution must not be interpreted in light of the statutory provisions on the Co-Chairs. Thus, as already stated above, the preliminary question of whether Dr Silajd i was acting as a Co-Chair according to the Law on the Council of Ministers and the respective Rules of procedure is constitutionally irrelevant. The problem of whether Dr Silajd i was authorised under Article VI.3.a to refer the dispute must thus be resolved on the basis of the Constitution itself.

The rule concerning the authority to refer a dispute to the Constitutional Court refers to the "Chair" of the Council of Ministers as a legal person without any further specification. However, the "Chair" as a legal person cannot exercise this responsibility on its own. Insofar as there are no specific constitutional provisions that two or more persons in office have to act jointly, every person in office may exercise the responsibility of the "Chair" of the Council of Ministers under Article VI.3.a of the Constitution.

On the basis of the established facts, the Constitutional Court is of the opinion that Dr Haris Silajd i is authorised to initiate a legal dispute before the Constitutional Court of Bosnia and Herzegovina in line with Article VI.3.a of the Constitution.

Taking into account the aforementioned, the Constitutional Court has decided, by the majority of votes 5:4, that the request of Dr Haris Silajd i is admissible.

The Constitutional Court will decide subsequently on the substance of the request.

Supplementary information:

One judge submitted a separate opinion.

Languages:

Bosnian.

Identification: BIH-1998-2-001

a) Bosnia and Herzegovina / **b)** Constitutional Court / **c)** / **d)** 05/06/1998 / **e)** 3/98, 4/98 / **f)** / **g)** Official Gazette of Bosnia and Herzegovina, the Official Gazette of the Federation of Bosnia and Herzegovina, the Official Gazette of Republika Srpska / **h)** .

Keywords of the Systematic Thesaurus:

- 1.1.4.4 **Constitutional Justice** - Constitutional jurisdiction - Relations with other institutions - Courts.
- 1.3.8 **Constitutional Justice** - Types of litigation - Litigation in respect of jurisdictional conflict.
- 1.4.12 **Constitutional Justice** - The subject of review - Court decisions.
- 4.7.12 **Institutions** - Jurisdictional bodies - Other courts.

Keywords of the alphabetical index:

Human Rights Chamber for Bosnia and Herzegovina / Decision, final and binding, appeal / *Nova producta*.

Headnotes:

Even if it were possible to appeal a decision of the Human Rights Chamber, parties to the proceeding cannot be allowed to present their comments and arguments for the first time in the appellate proceedings.

Summary:

Dr Haris Silajdić, co-Chair of the Council of Ministers of Bosnia and Herzegovina, and Mr Plamenko Custovic, Public Attorney of Bosnia and Herzegovina, filed appeals with the Constitutional Court of Bosnia and Herzegovina against decisions of the Human Rights Chamber.

Article VI.3.b of the Constitution provides that the Constitutional Court has appellate jurisdiction over issues under this Constitution when they become subject to dispute arising out of a judgment of any court in Bosnia and Herzegovina. Therefore, a question arises whether the Human Rights Chamber should be considered a court in Bosnia and Herzegovina according to this provision of the Constitution. It is significant to note within this context that, according to Annex 6, Article XI.3 of the Agreement of Human Rights, which is the part of the General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Agreement), the decisions of the Human Rights Chamber are final and binding, subject to review by the Chamber itself in some cases.

The Constitutional Court did not decide the case on the merits and rejected the appeal. The fact that the State remained completely inactive throughout the proceedings before the Human Rights Chamber meant that it could not present arguments in the appellate proceedings.

Languages:

Bosnian, English (translation by the Court).