BALKAN CONSTITUTIONAL
COURTS FORUM

Countries' Experience with Providing Citizens Access to Constitutional Justice

26-28 October 2023,
Sofia, Bulgaria

PROGRAMME

October 27th, Friday

9:00 - 9:30	Registration of participants
9:30 - 9:45	Opening remarks – Pavlina Panova, President, Constitutional Court of the Republic of Bulgaria
9:45 - 10:00	Greetings address – Mariya Gabriel, Deputy Prime Minister and Minister of Foreign Affairs of the Republic of Bulgaria
10:00 - 10:15	Greetings address – Atanas Slavov, Minister of Justice of the Republic of Bulgaria
10:15 - 10:30	Greetings address – Věra Jourová, Vice-President, European Commission
10:30 - 10:50	Ceremony of signing of the Memorandum of the Balkan Constitutional Courts Forum
10:50 - 11:00	Official photo of the participants
11:00 - 11:30	Coffee break
11:30 - 12:00	Keynote speaker – Koen Lenaerts, President, Court of Justice of the European Union
12:00 - 12:30	Keynote speaker – Marko Bošnjak, Judge and Vice-President, European Court of Human Rights
14:00 - 15:30	**Panel 1** Presentations and discussions *Moderator:* Prof. Boris Velchev, Ph.D., Rector of The Higher School of Insurance and Finance
14:00 - 14:15	Presentation by Holta Zaçaj, President, Constitutional Court of the Republic of Albania
14:15 - 14:30	Presentation by Yanaki Stoilov, Judge, Constitutional Court of the Republic of Bulgaria
14:30 - 14:45	Presentation by Anna Kalogeropoulou, Councilor of State, Hellenic Council of State
14:45 - 15:00	Presentation by Gresa Caka-Nimani, President, Constitutional Court of the Republic of Kosovo

15: 00 - 15:30	Discussion
15:30 - 16:00	Coffee break
16:00 - 18:00	**Panel 2** Presentations and discussions *Prof. Daniel Valchev, Ph.D.,* *Dean of the Faculty of Law, Sofia University "St. Kliment Ohridski"*
16:00 - 16:15	Presentation by Budimir Šćepanović, President, Constitutional Court of Montenegro
16:15 - 16:30	Presentation by Dobrila Kacarska, President, Constitutional Court of the Republic of North Macedonia
16:30 - 16:45	Presentation by Marian Enache, President, Constitutional Court of Romania
16:45 - 17:00	Presentation by Hasan Tahsin Gökcan, Vice-President, Constitutional Court of the Republic of Türkiye
17:00 - 17:30	Discussion
17:30 - 17:40	Remarks by Valerija Galić, President, Constitutional Court of Bosnia and Herzegovina
17:40 - 17:50	Remarks by Snježana Bagić, Deputy President, Constitutional Court of the Republic of Croatia
17:50 - 18:00	Closing remarks – Pavlina Panova, President, Constitutional Court of the Republic of Bulgaria
19:30 - 22:00	Official dinner

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Constitutional Crossroads: A Comparative Look at the Access to Constitutional Justice


ANNA KALOGEROPOULOU
Councellor of State
Hellenic Council of State


BALKAN
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Promoting the Rule of Law in the Countries from the Balkan Region through Judicial Diplomacy and Institutional Dialogue

Promoting the rule of law and establishing a system of democratic practices in the Balkan countries is of utmost importance for the future of Europe. In pursuing this goal, the EU institutions and the countries of the region have cooperated for many years and put significant joint efforts in the development of cohesion policies.

In addition to the general focus on legislative reforms in civil, commercial, criminal, and anti-corruption laws, it is of paramount importance to strengthen the partnership between the judicial institutions which are the guardians of the constitutional values and guarantors for democratic development and protection of human rights.

In this respect, the time is ripe for the development of a platform for exchange of good practices between the constitutional jurisdictions in the Balkan region and primarily to share and learn from the experience of each other, especially in the light of the future enlargement of the European Union. We have established such a platform in the face of the Balkan Constitutional Courts Forum which has all the potential to showcase a real joint action initiative where independent constitutional jurisdictions can uphold the rule of law without political interference, and it can serve as an example of how EU member states' institutions and institutions from the EU candidate countries can team up and work together.

Promoting the rule of law is both a political and a legal concept. It depends not only on the political will of the leaders of the EU and the countries of the region, but also on the active role of other institutions committed to safeguarding democratic values, upholding the principles of equality before the law and independence of the judiciary, and promoting respect for human rights, and thus contributing to better governance.

In this regard, the Court of Justice of the European Union is an excellent example of an institution playing a crucial role in the process of advancing the rule of law via "informal contacts and channels", such as the President of the CJEU's serving as a patron of the annual Balkan Constitutional Courts Forum.

The Balkan Constitutional Courts Forum is a platform of dialogue between the constitutional jurisdictions of the countries from Southeast Europe and the Court and other institutions of the European Union and the Council of Europe.

The Balkan Constitutional Courts Forum can serve as a network for the exchange of best practices, ideas, know-how and experience in constitutional adjudication among the judges of the member jurisdictions through conferences and seminars in the field of constitutionalism, apart from its official annual meeting. It can also become a good platform for partnership between the administrations of the member jurisdictions to develop administrative capacity by organising training programmes for staff, workshops, and seminars. The Forum can further develop joint research activities, comparative studies, and publications.


CONGRESS
ENGINEERING

Pavlina Panova, Ph.D., President
Constitutional Court
Republic of Bulgaria

President Panova obtained her Master's and Doctorate's degree in Law, and a Master's degree in European Union Law at Sofia University "St. Kliment Ohridski".

Between 1996 and 2006 she was an assistant professor of Criminal Law at Sofia University. She was a lecturer at the National Institute of Justice (2000), and at the Attorneys' Training Center "Krastyu Tsonchev" (2008).

Between 1992 and 2018 she was a magistrate, including Deputy Chair of the Supreme Court of Cassation.

In 2018 she was elected judge of the Constitutional Court by the General Assembly of Judges of the Supreme Court of Cassation and the Supreme Administrative Court. In 2021 she was elected President of the Constitutional Court.

Mr President of the Court of Justice of the European Union,

Mr Vice-President of the European Court of Human Rights,

Madam Vice-President of the European Commission,

Madam Deputy Prime Minister,

Honourable Minister of Justice,

Honourable Constitutional Judges,

Your Excellencies,

Dear Colleagues and Guests,

It is a great honour for me to welcome you all here in Sofia to the first annual meeting of the Balkan Constitutional Courts Forum.

It would hardly be an overstatement to say that modern constitutionalism is a unique and unsurpassed achievement of the human thought. Thanks in large to the ideas of constitutionalism, today's Europe enjoys unprecedented historical success in its efforts to ensure democracy, the protection of human rights and the rule of law. These most precious civilisational achievements are the fruit of enormous, admirable joint efforts on the part of those who, having learned the bitter lessons of history, have seen that the prosperity and well-being of modern societies can only be accomplished when the interests and freedoms of the individual are protected from all encroachment.

Some of the most valuable tools at our disposal for strengthening democracy, the rule of law and the protection of human rights are the dialogue and the cooperation between institutions whose mission and highest purpose is to be the ultimate guardians of constitutionalism. Such are the jurisdictions we represent today gathered here to hold the first meeting of an entirely new entity - the Balkan Constitutional Courts Forum. Namely the realisation of this vital role of judicial dialogue in upholding and strengthening the principles of the democratic rule of law guaranteeing the protection of human rights is what really brought us here and, I hope, will do so every year in the future – for us to share experiences, raise pressing issues, exchange views and ideas. I believe and

hope that this cooperation will be beneficial for us all. United, we are wiser and stronger, and we can surpass the outcome of any individual effort.

Why set up a new association of the constitutional jurisdictions of the Balkan states, one might ask. The answer to this question is actually quite clear - because the paramount importance of regional cooperation has not only not diminished, but has probably even grown in the largely globalised world we live in today. For judicial diplomacy can be instrumental in fostering cohesion in the region, in strengthening the rule of law and the independence of courts in the region, and in sending a powerful message both domestically and abroad. Our true value as members of the constitutional jurisdictions of our respective countries spans beyond us simply administering justice. We could, and some would say we must, be the custodians and ambassadors of constitutionalism and its ideas.

That is why, on behalf of the Constitutional Court of the Republic of Bulgaria, I would like to thank you - all of you who accepted our invitation to join efforts and lay the foundations of this new project for cooperation and networking between our institutions. I would also like to express my gratitude to our distinguished guests for being here today and for showing their support for our new endeavour.

History teaches us that often significant discoveries or social phenomena neither have one "parent" nor have they one "birth date." This is even more valid of the emergence of informal groupings of people brought together by common interests, beliefs and goals. This event, and the Balkan Constitutional Courts Forum itself, which we are bringing to life today - whatever form of existence it may take in the future - are also not the fruit of individual design. The intention of bringing together the constitutional courts of the Balkan countries was born out of the synergy of different ideas, thoughts and plans of not just one or two inspirers. We who have gathered here today are, on the one hand, starting a journey and, on the other hand, building on conceptual foundations for the realisation of which the time is ripe. Building on the already well-established tradition of bilateral cooperation and cultivating the dialogue and the exchange between our jurisdictions, we are now taking the next big step towards embarking on a multilateral cooperation journey and building a new network of the jurisdictions we represent. It has been quite an experience to get to where we are today. With all of you we have already started working together, collaborating on the drafting of the Memorandum of Understanding we are to sign. The ease with which we communicated with each of the institutions represented here to organize today's event gives me great hope this Forum will live to be, so thank you again.

The theme we have chosen for the first annual meeting of the Balkan Constitutional Courts Forum is "Countries' Experience with Providing Citizens Access to Constitutional Justice". It is my deep conviction that the protection of citizens' rights and the means to seek such protection are topics that will always be worth discussing by those of us who are called upon to defend and strengthen the rule of law. The question of how each and every individual can seek and gain access to constitutional justice is a matter of common concern. I am convinced that each country has travelled its own unique path and has valuable experience to share with others. The initiation of this discussion here in Sofia was no accident. Our own country has embarked on a path to amend and enhance our current Constitution, including by providing citizens with the future possibility to take cases to the Constitutional Court. At the same time this issue is not and cannot be viewed as a matter of legislation alone. Ultimately, it is the judiciary which, through its caselaw, gives life to statutory provisions and turns them into real, living law. It will therefore be extremely interesting and curious for us to hear everyone's thoughts on this ever-present issue.

I hope and believe that we will become involved in inspiring and fruitful discussions, hear interesting and important arguments, and at the end of the day leave this room enriched, with broader horizons and a sense of satisfaction. I also sincerely hope that today we are laying the foundations for more than just institutional cooperation. One could argue that even more important than institutional dialogue is the informal professional dialogue. This Forum would be an even greater success if we started a new tradition of friendly relations and mutual assistance among the people who work in our jurisdictions - both judges and administrative officials. Because no matter which country we work in, we are likely to face similar challenges, think our way out of similar daily conundrums, avow similar values and standards, and ultimately strive for the same goal - to defend and develop the principles of constitutionalism and to contribute to democracy through the rule of law and the protection of human right – our main cause.

With the firm conviction we are all among friends and supporters, I would like to hereby declare the first annual meeting of the Balkan Constitutional Courts Forum open! I wish everyone a fulfilling and productive day, at the end of which I hope we will have ample reason to congratulate each other and celebrate a job well done.

Thank you!


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Bulgaria

Mariya Gabriel, Deputy Prime Minister and Minister of Foreign Affairs

Council of Ministers of
the Republic of Bulgaria

Mariya Gabriel has obtained a Bachelor's degree in 'Bulgarian and French Philology' at the Plovdiv University "Paisii Hilendarski". She graduated with a Master's degree in Comparative Politics and International Relations at the Doctoral Academy of Political Science, Bordeaux.

Three times a Member of the European Parliament. Between 2014 and 2017 she was Vice-Chair of the EPP Group. She is the first Vice-President of the EPP and Vice-President of EPP Women.

Mariya Gabriel was the European Commissioner for Digital Economy and Society (2017-2019). Before taking office as Minister in 2023, she was the European Commissioner for Innovation, Research, Culture, Education and Youth (2019-2023).

Esteemed Mr President of the Court of Justice of the European Union,

Esteemed Madam President of the Constitutional Court of the Republic of Bulgaria,

Esteemed Madam Vice-President of the European Commission, dear Věra,

Esteemed Minister Slavov,

Your Excellencies,

Esteemed Judges of the Constitutional Court,

Esteemed Participants and Guests of the Balkan Constitutional Courts Forum,

First of all, I would like to cordially thank the Constitutional Court of the Republic of Bulgaria and its President, Ms. Pavlina Panova, for the organization of the Forum. Thank you for the invitation to be part of the key messages which I believe that you will send out today for the whole of Europe. I would also like to thank the President of the Court of Justice of the European Union, Mr. Koen Lenaerts, as well as the Vice-President of the European Commission, Ms Věra Jourová, for your presence here with us is a strong message for a Europe committed to the rule of law and democracy.

I would also like to thank all representatives of the constitutional jurisdictions of Albania, Bosnia and Herzegovina, Bulgaria, Greece, Kosovo, Romania, North Macedonia, Türkiye, Croatia and Montenegro. Thank you for your participation in the Forum today with your knowledge and expertise, which I do believe will contribute to a valuable discussion that will provide input on significant issues of constitutional jurisprudence.

The establishment of the Balkan Constitutional Courts Forum and its first annual meeting are a continuation of the good cooperation which has been developed between the Constitutional Courts of the Balkan Peninsula. However, the Forum does not stop to the idea of cooperation only. The Forum's vision is to become a platform for exchange of best practices, ideas and experience among the participating jurisdictions in the field of constitutional justice.

Constitutional jurisdictions are the guardians of the Constitution. They have a key role in the implementation of the principle of the rule of law in the national legal order of

the state. The Constitutional Court of Bulgaria has an important role to play, from providing binding interpretations of the Constitution and pronouncing on petitions to establish unconstitutionality of the laws to settling any competence disputes between the National Assembly, the Council of Ministers and the President, as well as between the central executive authorities and the bodies of local self-government, etc. The contribution of the Constitutional Court of Bulgaria to our country's transition to democracy is indisputable and the level of representation at today's Forum proves that the Bulgarian Constitutional Court is an authoritative and respected institution both in European and international terms.

It is accepted that one constitutional jurisdiction operates only within one national legal system. Constitutional Court judges do rule in accordance with the supreme and basic law of their country. But constitutional justice has a very clear European perspective which exists through our common shared values and principles. The rule of law, the separation of powers, the protection of civil rights, the right to a fair trial are all a common European achievement which is one of the cornerstones of the idea of a united Europe for those who are member states and those who aspire to become part of the great European family.

As the President of the Constitutional Court said, the meeting of the Balkan Constitutional Courts Forum comes at a crucial moment for our country. We are right in the middle of a constitutional debate which in a little over a month should lead to the adoption by the National Assembly of amendments to the Constitution. We all know that these changes are comprehensive, but they are part of an ongoing process that is typical of all constitutional democracies, that of the gradual refinement of the basic law, of the natural development of the institutions, of the growth of the Constitution.

It is not by accident that I say the Constitution grows. The very act of its creation implies and sets this direction. The constituent power starts, first of all, from the idea of values and morale and by reason and principles it does not create a simple system of norms but establishes a philosophy and a value consensus. The concepts of freedom, justice, equality cannot be limited to a single act. They set forward a horizon to future generations who will rediscover and develop their meaning. However, the foundations laid down in our basic law have also paved the way for our civilizational choice that our country made by joining NATO and the European Union.

Today's event has a very specific topic: Countries' Experience with Providing Citizens Access to Constitutional Justice. I am sure that today you will have the opportunity to hear also from the Minister of Justice more details concerning the direct access of citizens to

constitutional justice in Bulgaria. But what is important for me today is that we hear of your experience, that you share with us how you turn challenges into opportunities. It is not by chance that in this process all who are present here today send a strong message of commitment in that there are good practices, there are opinions and expertise and more than ever one fruitful discussion is the way to a good solution through exchange of views and experience. And this is precisely the purpose of today's Forum – to hear the experience and best practices that exist in your countries. The high level of representation and expertise underlying the presentations and discussion panels allows to highlight extremely valuable views and opinions.

I am convinced that everything that is to be said during this Forum will be useful and will also have a high added value to our efforts to improve our constitutional system as well as in the process of establishing a stronger and stable democracy. I would like to end here and once again express my gratitude especially to the Vice-President of the European Commission, Věra Jourová, for being with us today. Thank you for the excellent communication we have with the European Commission. Thank you for your support in our joint efforts as regards rule of law issues, transparency, the protection of our shared common European values.

I wish every success to the Forum and may this edition become a tradition. And it has all the strengths to become such due to each and every one of you, since it is based on your expertise, on your knowledge. I indeed wish that in many years' time we all say again that the rule of law and democracy are our core values for good cooperation and exchange of best practices. We stand stronger together! Thank you!


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Atanas Slavov, Minister of Justice
Council of Ministers of the Republic of Bulgaria

Atanas Slavov is a lawyer and a specialist in Constitutional Law . He did postgraduate studies in constitutional law at Sofia University "St. Kliment Ohridski", holds a doctor's degree from the University of Glasgow, and is an associate professor teaching public law.

Mr. Slavov contributed to drafting the amendments to the Constitution in 2015, to work out the Updated Judicial Reform Strategy, and to write dozens of bills. A member of the Anti- Corruption Fund team (2017-2021). A MP in several National Assemblies. Chairman of the Parliamentary Committee on Constitutional Affairs.

Esteemed President of the Constitutional Court of the Republic of Bulgaria,

Madam Panova,

Esteemed President of the Court of Justice of the European Union, Mr Lenaerts,

Esteemed Madam Vice-President of the European Commission, Madam Jourová,

Esteemed Madam Deputy Prime Minister, Mariya Gabriel,

Honourable Judges of the Constitutional Court,

Honourable Presidents of Constitutional Courts,

Honourable Judges from the Court of Justice of the European Union,

Honourable Judges from the European Court of Human Rights,

Esteemed Guests,

I am honoured to have been invited as Minister of Justice to deliver a greeting address to you this morning, at the first meeting for establishment of the Balkan Constitutional Courts Forum. Now I have a background in constitutional law, and this brings the topic close to my heart.

Constitutional courts in the past years have proved to be the guardians of the rule of law, not only of the Constitution. Going back to the main definitions of what constitutional justice is all about, we will often see a paradigm of opposition between different parties as to what constitutional justice is. For example, one of my favourite definitions is that constitutional courts are called upon to provide a moral reading of the Constitution, to interpret the Constitution as a charter of values, not simply a supreme law. According to another paradigm, also very influential, the constitutional jurisdictions are meant to eliminate the barriers to democratic political representation, to open the political system and enable representation of different groups of citizens from society.

I also need to mention a very influential paradigm, a third one, which is connected to the idea that the constitutional court is meant to be the place from which the reason and morale of society should be voiced. Now that is a very challenging task.

In some national doctrines, constitutional courts are seen as counter-majority institutions, ones that need to protect the will of all citizens as voiced in the Constitution, against that of a particular, often conjunctural, majority expressed in the format of ordinary legislation and in parliament.

The challenge comes when constitutional jurisdictions go beyond the closed national constitutional system, wherein the hierarchy of legislation is most clear. Especially when constitutional courts work in integrated, broader communities, this brings life to a different challenge.

Constitutional courts across the European Union are in constant ongoing dialogue with the Court of Justice of the European Union as well as with other constitutional courts in order to bring life to the so-called common European values. And this is when we see these values on the one hand being rooted in our countries' constitutional traditions, but at the same time constitutional courts also have to guarantee for the national constitutional identity. Very often between these two terms, the common European values and national constitutional identity there is some sort of tension, not contradiction, but tension. And this is what we see even in the case law of the Bulgarian Constitutional Court but not only there. It is obvious that in this quasi-federal community which we call the European Union, the constitutional courts have a most important role, together with the Court of Justice of the European Union, to make the voice of values stronger against the different interests of different member states, communities or stakeholders.

Now a few words as to where Bulgaria is positioned currently. In the parliament several months ago a draft amendment of the Constitution was presented. One purpose was to expand the rights of citizens by making it possible for them to file a direct individual constitutional complaint to the Bulgarian Constitutional Court. Now this is a topic which has been discussed for decades among law professionals and academics. At first glance there is a consensus on this topic but it will surely be a challenge for the Constitutional Court of Bulgaria, for the judiciary and for the political system as well if such rights of citizens are to be granted. But I am hopeful that such an important step will be made with reason and balance so that we can provide constitutional justice for the best interests of citizens rather than end up in an even more confused situation.

A lot of challenges have to be overcome by all of our constitutional systems, but in my opinion what is important is to bring common European values in line with those values that actually outline us as free and democratic societies.

I would like to wish you all the best of luck and a very fruitful discussion. Thank you!


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Věra Jourová, Vice-President
European Commission

Věra Jourová was the European Commissioner for Justice, Consumers and Gender Equality between 2014 and 2019. Since 2019 she has been European Commission Vice-President for Values and Transparency. Among her responsibilities are leading the Commission's work on values and transparency, upholding the rule of law, as well as ensuring the democratic system is open, transparent, and protected from external interference.

Keynote remarks at the Balkan Constitutional Courts Forum

Key Messages

Introduction

Dear President Panova, dear President Lenaerts, dear Vice-President Bošnjak, dear Deputy Prime Minister Gabriel, dear Minister Slavov, Presidents and judges of the Constitutional jurisdictions, dear participants, Ladies and Gentlemen,

I am honoured to be here with you in Sofia at this first edition of the Balkan Constitutional Courts Forum.

I very much welcome the initiative of our host, the Constitutional Court of the Republic of Bulgaria, to focus the dialogue on constitutional justice in Southeast Europe and to bring together almost all of the constitutional jurisdictions in this region.

Today, you will have the opportunity to exchange on access to constitutional justice.

I am convinced that today's discussions will further strengthen our common rule of law culture, not only within the European Union, but also within those countries aspiring to become part of it. This is the best guarantee for the respect of our values, of which you, as judges, are also the guarantors.

I am also very pleased to see the presence of President Lenaerts and Vice-President Bošnjak. Both the Court of Justice of the European Union and the European Court of Human Rights have played a key role in promoting and upholding the values on which the European Union is based, and will continue to do so. Values like fundamental rights and the rule of law, which will undoubtedly be at the centre of the discussion today.

These values form the foundations of the Union's political identity and legal order and are moreover common to the Member States, in the legal systems of which they are deeply rooted.

The exchanges you will have today are particularly timely and important for a number of reasons.

On the importance of constitutional justice

Constitutional justice is a key component of the checks and balances in a constitutional democracy.

Constitutional courts play a crucial role in being the ultimate guardians of fundamental rights and in upholding the fundamental principles that constitute the rule of law.

In parallel, the rule of law plays a particular role among the values referred to in Article 2 of the Treaty on European Union. It guarantees the protection of all other fundamental values.

The rule of law also guarantees the effective application of EU law and mutual trust, which is the driving force for the proper functioning of the European Union.

However, in recent years we have been confronted with situations where the rule of law has come under strain, showing that respect for the rule of law can never be taken for granted.

On the key role of constitutional and European courts

Constitutional jurisdictions, including at the EU level, play a key role when the rule of law is called into question. They contribute to giving concrete shape to the fundamental principles that constitute the rule of law.

This collective work of both national and European courts to uphold the law that we have in common has been very important for the effective protection of rights of individuals within the European Union. It has made our founding text more dynamic and practical in protecting the rights of individuals within the EU.

Applying EU law, national courts – including constitutional courts – act as EU courts. This requires that these courts must be independent, since only that independence may guarantee effective judicial protection of EU rights required by the EU Treaties as well as by the European Convention of Human Rights.

This is also why the Commission is following closely the developments relating to constitutional justice in the Member States, including in the context of the EU Justice Scoreboard and the annual Rule of Law Reports.

On the importance of dialogue on the rule of law

Ladies and gentlemen, it is clear that, in times of crises, constant proactive action is needed to promote and safeguard our common values.

The Commission is determined to facilitate and encourage discussions about promoting and upholding our shared values, EU law, and common constitutional traditions, both at EU and at national level.

Structures for such discussions have already been created and have established a certain rhythm and a continuity to these discussions. Each of these structures fulfils a specific role.

For example, in the General Affairs Council of the European Union, Ministers conduct a 'Rule of Law Dialogue' at regular intervals, centred around the Commission's annual Rule of Law Report. These exchanges allow for a well-structured and in-depth exchange on the situation of the rule of law within the EU and its 27 Member States.

Important debates on the rule of law are also regularly taking place in the European Parliament.

As regards the Commission's annual Rule of Law Report, let me also recall that, as announced by President von der Leyen in her State of the Union address of 2023, the Commission will open its Rule of Law Reports also to those accession countries who get up to speed even faster.

This is an opportunity for accession countries, placing them on an equal footing with Member States early on. It will support and focus their reform efforts and help them to make progress in the accession process and to be ready to maintain high standards after accession.

The Commission aims to include the first accession countries in the annual rule of law process as early as next year.

Constitutional Courts of countries aspiring to join the European Union – your Constitutional Courts – will have a particularly important role in the process of accession. Their work is essential to ensure the stability of institutions that guarantee democracy, the rule of law, human rights, and respect for and protection of minorities.

Conclusion

Ladies and Gentlemen,

I would like to emphasise the essential role that your distinguished Courts play in promoting and safeguarding the rule of law.

I am convinced that your discussions during this conference will be profound and inspiring, and I wish you a very fruitful discussion.

Thank you for your attention.

Koen Lenaerts, President
Court of Justice of the European Union

President Koen Lenaerts holds a Ph.D. in Law (University of Leuven), a Master's in Law and a Master's in Public Administration (Harvard University).

He has been a Professor of European Law at the University of Leuven since 1983. Previously, he was a Professor at the College of Europe, Bruges (1984-89) and a lawyer in private practice at the Brussels Bar (1986-89), as well as a Visiting Professor at the Harvard Law School (1989).

He was a Judge at the Court of First Instance of the European Communities (now the General Court), from 25 September 1989 to 6 October 2003. He has been a Judge at the Court of Justice since 7 October 2003, serving as Vice-President from 9 October 2012 to 7 October 2015 and as President since 8 October 2015.

Individual Access to Constitutional Justice in the EU Legal Order

Koen Lenaerts [1]

I am delighted to be here today and to deliver the keynote speech before such a distinguished audience. I welcome the initiative of creating the 'Balkan Constitutional Courts Forum', since it provides the right venue for constitutional courts from Southeast Europe to engage in fruitful discussions. As a patron of the first edition of this forum, I feel deeply honoured.

I am happy to see that the Balkan Constitutional Courts Forum is open to European constitutional courts from non-EU Member States. This openness allows those courts to become acquainted with 'EU constitutionalism', the respect of which is a *conditio sine qua non* for accession.

I would also like to congratulate the organisers of this Forum for having chosen a topic that is so vital for democratic societies at present. Respect for democracy, the rule of law and fundamental rights requires individual access to constitutional justice. *Without that access*, democracy would become tantamount to the tyranny of the majority, since a sphere of individual freedom would not be protected. *Without that access*, the rule of law would become no more than an empty promise, since the enforcement of the law would be subject to political considerations. *Without that access*, individuals would be deprived of any means of standing for the rights that EU law confers upon them.

Individual access to constitutional justice is therefore integral to the values on which the EU is founded. It forms part of the constitutional traditions common to the Member States and is part of our heritage as Europeans.

[1] President of the Court of Justice of the European Union and Professor of European Union Law, Leuven University. All opinions expressed herein are personal to the author.

In the EU legal order, individual access to constitutional justice may be seen from two, albeit interrelated, perspectives. Those two perspectives are interrelated because they both seek to uphold the rule of law within the EU.

On the one hand, the EU institutions must comply with primary EU law, including the Charter of Fundamental Rights of the EU (the 'Charter'). This means, in essence, that individuals must have access to justice in cases of judicial review of EU measures. On the other hand, since the application of EU law is largely decentralised, it is for national authorities to apply that law. In doing so, those authorities must respect the rights that EU law confers on individuals. It follows that individuals must therefore have access to justice in cases where the Member States adversely affect the exercise of those rights. I shall therefore divide my speech into two parts, mirroring those two perspectives.

However, when examining those two perspectives, one must bear in mind that the EU judiciary is vertically integrated. Within the EU, judicial power is shared between the Court of Justice and national courts.[2] Whilst it is for the Court of Justice to say what the law of the EU is, it is for the national court to apply that law to the case before it. This means that the Court of Justice and national courts are called upon to cooperate, notably by means of the preliminary ruling mechanism. This also means that the EU system of judicial protection, in general, and access to justice, in particular, must be examined in the light of that judicial cooperation.

I. A Justice and Judicial Review of EU Measures

When it comes to the judicial review of EU measures, the EU Courts – the Court of Justice and the General Court – enjoy exclusive jurisdiction. In order to safeguard the uniformity of EU law, national courts lack the power to annul or declare invalid EU measures.[3]

Before the General Court – and on appeal before the Court of Justice –, individuals

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[2] Judgment of 27 February 2018, ***Associação Sindical dos Juízes Portugueses,*** C-64/16, EU:C:2018:117, para. 32 (holding that ' Article 19 TEU, which gives concrete expression to the value of the rule of law stated in Article 2 TEU, entrusts the responsibility for ensuring judicial review in the EU legal order not only to the Court of Justice but also to national courts and tribunals').

[3] See, e.g., judgment of 22 October 1987, ***Foto-Frost***, 314/85, EU:C:1987:452, para. 20; of 3 October 2013, ***Inuit Tapiriit Kanatami and Others v Parliament and Council***, C-583/11 P, EU:C:2013:625, para. 96, and of judgment of 22 February 2022, ***RS (Effect of the decisions of a constitutional court)***, C-430/21, EU:C:2022:99, para. 71.

may therefore bring an action for annulment against any EU acts that are intended to produce legal effects *vis-à-vis* third parties, provided that they enjoy standing to do so.[4]

In that regard, the authors of the Treaties have laid down three types of acts in relation to which individuals may enjoy standing. Broadly speaking, those three types of acts relate to EU measures that are either addressed to the applicant or that are of direct and individual concern to him or her. Applicants may also enjoy standing to challenge regulatory acts – which may be defined as non-legislative acts of general application – that are of direct concern to them and do not entail implementing measures.[5]

This means that it is very difficult for individuals to challenge EU legislative acts before the EU Courts, since it will be very likely that they lack standing to do so. This does not mean, however, that individuals do not have access to justice. It is for national courts to provide that access.[6] In that regard, individuals may challenge before national courts national measures which implement the EU legislative act in question. Allow me to illustrate this point by looking at an example taken from the case law of the Court of Justice.

In *Schwarz*,[7] a German citizen applied for a German passport but refused to have his fingerprints taken. His application was rejected by German authorities, on the basis of an EU regulation requiring Member States to provide for passports and travel documents that contain a chip in which a facial image and two fingerprints had to be stored.[8]

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[4] The fourth paragraph of Article 263 TFEU provides that '[a]ny natural or legal person may, under the conditions laid down in the first and second paragraphs, institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures'.

[5] Judgment of 3 October 2013, ***Inuit Tapiriit Kanatami and Others v Parliament and Council***, C-583/11 P, EU:C:2013:625, para. 61.

[6] ***Ibid***., para. 93 (holding that 'natural or legal persons who cannot, by reason of the conditions of admissibility stated in the fourth paragraph of Article 263 TFEU, challenge directly European Union acts of general application do have protection against the application to them of those acts. … Where that implementation is a matter for the Member States, such persons may plead the invalidity of the European Union act at issue before the national courts and tribunals and cause the latter to request a preliminary ruling from the Court of Justice, pursuant to Article 267 TFEU').

[7] Judgment of 17 October 2013, ***Schwarz***, C-291/12, EU:C:2013:670.

8 Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States (OJ 2004 L 385, p. 1), as amended by Regulation (EC) No 444/2009 of the European Parliament and of the Council of 6 May 2009 (OJ 2009 L 142, p. 1; corrigendum: OJ 2009 L 188, p. 127).

It seems to me that Mr Schwarz would not have standing to challenge that EU regulation, a legislative act, before the EU Courts. He could nevertheless challenge the decision adopted by the German authorities rejecting his application, which he did. Before the competent German court, he argued that the EU regulation in question was not adopted under the appropriate legal basis. He also argued that the requirement of having his fingerprints taken was a disproportionate limitation on the exercise of his fundamental rights to privacy and data protection. Having doubts as to whether those arguments were well-founded, the German court was obliged to refer the matter to the Court of Justice, since it lacked jurisdiction to possibly declare invalid the EU Regulation in question.

Therefore, it is the cooperation between national courts and the Court of Justice, via the preliminary reference mechanism, that ensures individual access to justice in cases of judicial review of EU legislative acts.

As to the merits of the case, the Court of Justice reasoned that the EU regulation in question was adopted under the appropriate legal basis. Whilst the wording of the relevant Treaty provision did not explicitly refer to issues relating to passports, it did authorise the EU legislator to adopt 'Measures … which shall establish … standards and procedures to be followed by Member States in carrying out checks on persons at [the external] borders [of the EU]'. Those checks necessarily concern documents that must be presented at those borders, such as passports. Moreover, the Court of Justice acknowledged that the EU Regulation at issue imposed a limitation on the exercise of the fundamental rights of privacy and data protection of passport holders. However, that limitation – the requirement of obtaining the two fingerprints – pursued two legitimate objectives, namely first, to prevent the falsification of passports and second, to prevent fraudulent use thereof (i.e. use by persons other than their genuine holders). It was also proportionate, since the data stored was not accessible to everyone and the EU legislator had provided for specific and effective guarantees that sought to prevent the personal data stored in the passports from being misused and abused.

Cases like *Schwarz* are not isolated events, but point towards the procedural path that individuals must follow when calling into question the validity of EU legislative mea-

sures. Similarly, cases like *Test-Achats*,[9] *Digital Rights Ireland*,[10] *Schrems*,[11] *VYSOČINA WIND*,[12] and *Orde van Vlaamse Balies*[13] *show that individuals, companies and associations which represent collective interests (e.g. consumer and professional associations) can be successful on the merits of their claims.*

Individuals play a pivotal role in securing the respect of the rule of law within the EU. This is because individuals seek not only to protect their fundamental rights but also to uphold the allocation of competences sought by the authors of the Treaties.

II. Access to justice before national courts: the environment

A. Right to effective remedies

As the Court of Justice famously held in *van Gend en Loos*,[14] the judicial protection of EU rights is based on a system of 'dual vigilance': in addition to the supervision carried out by the European Commission and the Member States, individuals are entitled to defend their EU rights in the Member State courts.

It is, first and foremost, for national courts to afford effective judicial protection to the rights that EU law confers on individuals. With the entry into force of the Treaty of Lisbon in 2009, this obligation was codified in the second subparagraph of Article 19(1) TEU, which reads as follows: 'Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.' This provision gives concrete expression to the rule of law within the EU,[15] and reaffirms the fundamental right to effective judicial protection enshrined in Article 47 of the Charter.[16]

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[9] Judgment of 1 March 2011, ***Association belge des Consommateurs Test-Achats and Others***, C-236/09, EU:C:2011:100.

[10] Judgment of 8 April 2014, ***Digital Rights Ireland and Others***, C-293/12 and C-594/12, EU:C:2014:238.

[11] Judgment of 6 October 2015, ***Schrems***, C-362/14, EU:C:2015:650.

[12] Judgment of 25 January 2022, ***VYSOČINA WIND***, C-181/20, EU:C:2022:51.

[13] Judgment of 8 December 2022, ***Orde van Vlaamse Balies and Others***, C-694/20, EU:C:2022:963.

[14] Judgment of 5 February 1963, ***van Gend & Loos***, 26/62, EU:C:1963:1.

[15] Judgments of 25 July 2018, ***Minister for Justice and Equality (Deficiencies in the system of justice)***, C-216/18 PPU, EU:C:2018:586, para. 50; of 24 June 2019, ***Commission v Poland (Independence of the Supreme Court)***, C-619/18, EU:C:2019:531, para. 47; and of 5 November 2019, ***Commission v Poland (Independence of ordinary courts)***, C-192/18, EU:C:2019:924, para. 98.

[16] Judgments of 27 February 2018, ***Associação Sindical dos Juízes Portugueses***, C-64/16, EU:C:2018:117, para.

Article 19(1)TEU also preserves the vertical allocation of powers sought by the authors of the Treaties. This is because, in the absence of EU harmonisation, it is for the domestic legal system of each Member State to determine the remedies in accordance with the principle of procedural autonomy, provided that they are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not render impossible in practice or excessively difficult the exercise of rights conferred by the EU legal order (principle of effectiveness).[17]

The entire European enterprise revolves around granting rights which are always accompanied by effective remedies. The EU system of judicial protection may, in my view, be summarised by the maxim '*Ubi ius ibi remedium*'.

Allow me to illustrate this point by looking at the way in which EU law has guaranteed access to justice, by having a positive impact on national rules of procedure. To that end, I shall look at three types of rules. First, those on standing, second, those on access to information and, last but not least, those on the cost of judicial proceedings. I have decided to examine three cases relating to environmental law, since it is an area where EU law, as interpreted by the Court of Justice, has significantly improved access to justice at the national level.

In the field of environmental law, standing rules are essential in order to guarantee an appropriate access to justice, since 'members of the public and associations are naturally required to play an active role in defending the environment'.[18] In the seminal case *Deutsche Umwelthilfe* (*Approval of motor vehicles*) (2022) ,[19] one of the questions that arose was whether German law could preclude an environmental NGO from challenging an administrative decision authorising Volkswagen to use a software that was allegedly prohibited by an EU regulation,[20] since it reduced, in view of the applicant, the effective-

35 and of 24 June 2019, ***Commission v Poland (Independence of the Supreme Court)***, C-619/18, EU:C:2019:531, para. 49 (holding that 'the principle of the effective judicial protection of individuals' rights under EU law, thus referred to in the second subparagraph of Article 19(1) TEU,... is now reaffirmed by Article 47 of the Charter').

[17] Judgments of 16 December 1976, ***Rewe-Zentralfinanz and Rewe-Zentral***, 33/76, EU:C:1976:188, para. 5; and of 16 December 1976, ***Comet***, 45/76, EU:C:1976:191, paras 13 to 16. More recently, see, e.g., judgment of 8 November 2016, ***Lesoochranárske zoskupenie VLK***, C-243/15, EU:C:2016:838, para. 65.

[18] Judgment of 11 April 2013, ***Edwards and Pallikaropoulos***, C-260/11, EU:C:2013:221, para. 40.

[19] Judgment of 8 November 2022, ***Deutsche Umwelthilfe (Approval of motor vehicles)***, C-873/19, EU:C:2022:857.

[20] Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6)

ness of emission control systems.

In order to answer that question, the Court of Justice had to interpret the Aarhus Convention, an international agreement, adopted under the auspices of the UN, to which the EU and all 27 Member States are parties.[21] The Aarhus Convention seeks to facilitate access to justice in environmental matters. In particular, Article 9(3) of that Convention states that members of the public that meet the criteria, if any, laid down in national law, have access to administrative or judicial procedures to challenge acts by public authorities which contravene provisions of national law relating to the environment.

The crux of the case was, first, determining whether that provision of the Aarhus Convention applied to the case at hand, despite the fact that the EU legislation at issue concerned car manufacturing and that German law precluded administrative decisions implementing that EU legislation from being challenged by environmental NGOs. Second, if German standing rules did not comply with the Aarhus Convention, the question was what the national court could do about it, bearing in mind that Article 9(3) of that Convention does not produce direct effect.[22]

To begin with, the Court of Justice held that the Aarhus Convention applied to the case at hand, since the EU regulation in question, whilst laying down rules on car manufacturing, sought to protect the environment. That was so, regardless of the fact that the legal basis of that regulation pertained to the internal market. Next, since the applicant in the main proceedings was, under German law, an environmental NGO which met the criteria to be considered a 'member of the public', within the meaning of the Aarhus Convention, it enjoyed standing to challenge the administrative decision in question. Moreover, the Court held that the Member States may not deny such standing to the applicant, given that such denial would amount to reducing unilaterally the scope *ratione materiae* of the Aarhus Convention. Lastly, the Court of Justice observed that when adopting the administrative decision at issue, German authorities were implementing

and on access to vehicle repair and maintenance information (OJ 2007 L 171, p. 1).

[21] Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed in Aarhus (Denmark) on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1; 'the Aarhus Convention').

[22] Judgment of 8 November 2022, ***Deutsche Umwelthilfe (Approval of motor vehicles)***, C-873/19, EU:C:2022:857, para. 66 (holding that 'Article 9(3) of the Aarhus Convention does not have direct effect in EU law and cannot, therefore, be relied on, as such, in a dispute falling within the scope of EU law, in order to disapply a provision of national law which is contrary to it').

EU law for the purposes of the Charter. This meant, in essence, that Article 47 applied to the case at hand. The national court could therefore rely on this Charter provision, which may produce direct effect, in order to set aside conflicting national rules on standing.

From the perspective of individual access to constitutional justice, *Deutsche Umwelthilfe* (*Approval of motor vehicles*) is an interesting case showing that international law obligations may facilitate access to justice and may bring about change on national rules of procedure. It also shows how the Charter gives impetus to those international law obligations, which may benefit from the normative force of EU law and notably, from the principle of direct effect. This case also demonstrates how the dialogue between national courts and the Court of Justice serves to clarify that a Member State may not unilaterally modify the scope *ratione materiae* of an international agreement entered into by the EU and the Member States. Last, but not least, it is worth noting that countries such as Albania, Bosnia and Herzegovina, Montenegro and Northern Macedonia are also parties to the Aarhus Convention.[23] Their courts can therefore draw inspiration from the judgments of the Court of Justice in interpreting that Convention, thereby aligning their findings with the EU *acquis*, which, needless to say, contributes to smoothing the path towards accession.

Furthermore, access to justice means that individuals must be sufficiently informed in order to defend their rights effectively. In *Flausch and Others*,[24] for example, the Greek regional authorities launched a public participation procedure concerning the creation of a tourist resort that would transform the small island of Ios completely (≈100 km^2). The problem was that the notice inviting the public to participate was published in the local newspaper of a another island, that of Syros, where the regional administrative authority has its seat. It is worth nothing that the two islands are quite apart. It takes several hours by high-speed vessels, which do not operate on a daily basis.

Subsequently, the Minister for the Environment gave his consent to the project and published the decision on the website of the Ministry. Under Greek law, that publication set running a period of 60 days for bringing proceedings. However, the applicants – who were three individuals who own property on the island of Ios and three associations – only brought proceedings when the works to develop the resort started, that is to say, one and a half years after the Minister gave his consent.

[23] This information is available at the following hyperlink: ***UNTC***.

[24] Judgment of 7 November 2019, ***Flausch and Others***, C-280/18, EU:C:2019:928.

The referring court asked, in essence, the Court of Justice two questions. First, whether the notice of invitation complied with EU law. Second, whether the period of 60 days ensured sufficient judicial protection of EU rights. The Court found that, unless the local newspaper of the island of Syros had a wide circulation on the island of Ios, which did not appear to be the case but was for the referring court to verify, the public concerned was not sufficiently informed. Unless it constituted a disproportionate effort, Greek authorities should have informed the public concerned at the level of the municipal unit within which the site of the project fell, that is to say, that of the island of Ios. As to the time limit of 60 days, the Court found that, since the public had not been sufficiently informed about the launch of the public participation procedure, no one could be deemed informed of the publication of the corresponding final decision.

It follows from *Flausch and Others* that, in the EU legal order, access to information in a timely fashion is vital for ensuring access to justice.

Last, but not least, the cost of judicial proceedings may not constitute a barrier to justice. Notably, it cannot operate as a deterrent which prevents individuals from seeking the judicial protection of their rights. The Aarhus Convention and EU environmental law implementing it state that 'judicial proceedings should not be prohibitively expensive'. The Court of Justice has interpreted the expression 'not prohibitively expensive' as preventing that deterrent effect. It has held – and I quote – that 'the persons [concerned] should not be prevented from seeking, or pursuing a claim for, a review by the courts that falls within the scope of [the Aarhus Convention] by reason of the financial burden that might arise as a result'.[25] However, if the person concerned does bring a claim, that does not automatically mean that the expenses involved in the judicial proceedings are reasonable. As the Court of Justice held in *Edwards and Pallikaropoulos*, 'the fact that a claimant has not been deterred, in practice, from asserting his claim is not of itself sufficient to establish that the proceedings are not prohibitively expensive for him'.[26] Most importantly, the Court has examined the criteria that national courts must take into account when interpreting the expression 'not prohibitively expensive'. Notably, it has pointed out that 'the cost of proceedings must neither exceed the financial resources of the person concerned nor appear, in any event, to be objectively unreasonable'.[27]

[25] Judgment of 11 April 2013, ***Edwards and Pallikaropoulos***, C-260/11, EU:C:2013:221, para. 35.

[26] ***Ibid***., para. 47.

[27] ***Ibid***., para. 40.

B. Judicial Independence

Until recently, providing effective remedies was deemed sufficient in itself to secure the primacy, the unity and the effectiveness of EU law. With effective remedies, European integration was able to move forward, given that individual access to constitutional justice was secured. The case law of the Court of Justice focused on the effectiveness of the remedies to be provided by national courts rather than on protecting the independence of the national courts providing those remedies. The case law of the Court of Justice did not relate to concerns that the judicial independence of a national court was in doubt.[28]

Perhaps, given that the principle of judicial independence stems from the constitutional traditions common to the Member States as one of the founding tenets of any democratic system of governance, it was assumed that national governments would not threaten it. That principle was "uncontested and incontestable".[29] It was taken as read that national governments would encourage citizens to trust the courts as the ultimate arbiters of any legal dispute, including in situations where a court ruling opposed the political majority of the day. The motto "in courts we trust" also applied to matters falling within the scope of EU law. It was thus assumed, perhaps naively, that after taking up EU membership the new Member State will remain committed to defending liberal democracy, fundamental rights and a government of laws, not men.

However, recent developments show that this assumption cannot simply be taken for granted.[30] Those developments show that some Member States have adopted measures that may undermine the independence of national courts. Those measures may relate *inter alia* to the composition of a 'court or tribunal',[31] within the meaning of EU law, and the appointment, length of service and grounds for abstention, recusal and dismissal of

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[28] K Lenaerts, 'New Horizons for the Rule of Law Within the EU' (2020) 21 ***German Law Journal***, 29-34.

[29] T. von Danwitz, 'Values and the Rule of Law: Foundations of the European Union – An Inside Perspective from the ECJ' (2018) 21 ***PER /PELJ*** 1-17.

[30] See D. Adamski, 'The social contract of democratic backsliding in the "new EU" countries' (2019) 56 ***Common Market Law Review*** 623–666.

[31] Both the Court of Justice and the ECtHR have ruled that the right to an independent judge or tribunal "established by the law" -- as provided for by Articles 6 ECHR and 47 of the Charter – "encompasses, by its very nature, the process of appointing judges." "[An] irregularity committed during the appointment of judges within the judicial system concerned entails an infringement of the first sentence of the second paragraph of Article 47 of the Charter." See judgment of 26 March 2020, ***Review Simpson v Council and HG v Commission***, C-542/18 RX-II and C-543/18 RX-II, EU:C:2020:232, paras 73 - 75. As to the ECtHR, see ***Guðmundur Andri Ástráðsson v. Iceland*** [Grand Chamber], app. no. 26374/18, CE:ECHR:2020:1201JUD002637418, para. 98.

its members. In particular, they may relate to disciplinary matters,[32] secondments,[33] and involuntary transfers.[34]

Judicial independence forms part of the essence of the right to a fair trial.[35] Without it, there cannot be effective remedies, let alone effective judicial protection. Individual access to constitutional justice means that individuals have access to an independent and impartial judge previously established by law. In the EU legal order, the independence of national courts is of vital importance for the establishment, functioning and survival of the EU system of judicial protection. National courts are the 'building blocks' of that system.[36] In the absence of national courts, that system would simply collapse. *Without judicial independence*, national courts no longer have access to the preliminary reference mechanism, thereby jeopardising the uniform application of EU law and the equality of individuals before the law. Trust amongst national courts is broken and the free movement of judicial decisions halted. *Without judicial independence*, there is simply no *justice* to which individuals may have access.

Those structural considerations compel EU law to protect judicial independence. By virtue of Article 19(1) TEU, a Treaty provision that produces direct effect,[37] any national measure that undermines judicial independence must be set aside.[38]

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[32] See, *e.g.*, judgment of 15 July 2021, *Commission v Poland (Disciplinary regime for judges)*, C-791/19, EU:C:2021:596, para. 1.

[33] See judgment of 16 November 2021, *Prokuratura Rejonowa w Mińsku Mazowieckim and Others*, C-748/19 to C-754/19, EU:C:2021:931.

[34] See judgment of 6 October 2021, *W.Ż. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment)*, C-487/19, EU:C:2021:798.

[35] Judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, para. 48. See, most recently, judgment of 7 September 2023, *Asociaţia "Forumul Judecătorilor din România"*, C-216/21, EU:C:2023:628, para. 62.

[36] K. Lenaerts, 'On Checks and Balances: the Rule of Law within the EU' (2023) 29(2) *Columbia Journal of European Law* 25.

[37] Judgment of 22 March 2022, *Prokurator Generalny and Others (Disciplinary Chamber of the Supreme Court - Appointment)*, C-508/19, EU:C:2022:201, para. 74.

[38] See, e.g., Judgment of 13 July 2023, *YP and Others (Lifting of a judge's immunity and his or her suspension from duties)*, C-615/20 and C-671/20, EU:C:2023:562, para. 76 (holding that 'the direct effect attaching to the second subparagraph of Article 19(1) TEU means that the national courts must disapply a resolution which leads, in breach of that provision, to the suspension of a judge from his or her duties where that is essential in view of the procedural situation at issue in order to ensure the primacy of EU law').

Very importantly for present purposes, the requirement of courts being independent applies not only to ordinary courts but also to constitutional courts. As the Court of Justice famously held in *Eurobox and Others* and subsequently in *RS*, EU law '[does] not preclude national rules or a national practice under which the decisions of the constitutional court are binding on the ordinary courts, provided that the national law guarantees the independence of that constitutional court in relation, in particular, to the legislature and the executive'. 'However', the Court of Justice stressed that 'if the national law does not guarantee such independence, EU law preclude[s] such national rules or such a national practice since such a constitutional court is not in a position to ensure the effective judicial protection required by the second subparagraph of Article 19(1) TEU'.[39]

III. Concluding remarks

Compliance with the rule of law not only requires access to justice and an independent and impartial tribunal previously established by law, but also requires all public authorities to uphold the principle of finality of judgments.

This means, in essence, that public authorities must not call into question the position taken by a court in a final decision. As the Court of Justice held in *Torubarov*, 'the right to an effective remedy would be illusory if a Member State's legal system were to allow a final, binding judicial decision to remain inoperative to the detriment of one party'.[40] In the same way, 'the fact that the public authorities do not comply with a final, enforceable judicial decision', the Court wrote in the seminal case *Deutsche Umwelthilfe* (2019), 'deprives [Article 47 of the Charter] of all useful effect'.[41] In the EU legal order, the principle of finality of judgments also applies to those issued by the Court of Justice. Accordingly, when it comes to the interpretation of EU law, the Court of Justice has the *final* say,[42] and when it comes to the validity of that law, it has the *only* say.[43] Otherwise,

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[39] See, to that effect, judgments of 21 December 2021, ***Euro Box Promotion and Others***, C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034, para. 230 and of 22 February 2022, ***RS (Effect of the decisions of a constitutional court)***, C-430/21, EU:C:2022:99, para. 44. See also order of 7 November 2022, ***FX and Others (Effect of the decisions of a Constitutional Court III)***, C-859/19, C-926/19 and C-929/19, EU:C:2022:878, para.119.

[40] Judgment of 29 July 2019, ***Torubarov***, C-556/17, EU:C:2019:626, para. 57.

[41] Judgment of 19 December 2019, ***Deutsche Umwelthilfe***, C-752/18, EU:C:2019:1114, para. 37.

[42] See, in this regard, judgments of 2 September 2021, ***Republic of Moldova***, C-741/19, EU:C:2021:655, para. 45, and of 22 February 2022, ***RS (Effect of the decisions of a constitutional court)***, C-430/21, EU:C:2022:99, para. 52.

[43] See judgment of 22 February 2022, ***RS (Effect of the decisions of a constitutional court)***, C-430/21, EU:C:2022:99, para. 71.

if public authorities, in general, and national courts, in particular, were to second-guess the interpretation of EU law put forward by the Court of Justice, the rule of law within the EU would become no more than the rule of lawlessness.

The principle of finality of judgments shows that courts in democratic societies do not have the power of the purse, or that of the sword, but must rely on the political branches of government for the enforcement of their judgments. They are, as Alexander Hamilton famously said in the *Federalist* No. 78, the 'least dangerous branch'. And yet, they are entrusted with the noblest of missions, that of pursuing justice by upholding the rule of law.

That is why, dear colleagues and friends, we have no choice but to continue working together in improving the quality of our decisions so that both public authorities and individuals know, without a shadow of a doubt, that we, judges, are fully committed to delivering justice for all.

Thank you very much.

Marko Bošnjak, Vice-President
European Court of Human Rights

Mr. Bošnjak has a Ph.D. in Law from the University of Ljubljana (2002) where he was also an assistant professor of Criminal Law and Criminology between 2005 - 2015 and a lecturer at the Faculty of Social Sciences between 2006-2012.

Associate Professor of Criminal Law, Head of the Criminal Law Department at the European Law Faculty in Nova Gorica, Slovenia, since 2012.

Judge of the ECtHR since 2016 and Vice-President of the Court since November 2022.


България
of Bulgaria

Speech at the Balkan Constitutional Courts Forum

I. Introduction

Dear host President Panova, dear President Lenaerts, dear Vice-President Jourova, dear Deputy Prime Minister Gabriel, dear Minister Slavov, dear other Presidents and high office holders of the superior courts from this part of Europe,

I would like to thank the organisers, and particularly President Panova, for this invitation to address the Balkan Constitutional Courts Forum. I am honoured to represent the European Court of Human Rights today and participate in this important instance of dialogue between courts.

Taking an active part in events like the one of today is a key priority for our Court. Justice no longer lives in an ivory tower detached from the environment that surrounds it. Long gone are the days when judges communicated with the outside world only through judgments and decisions they deliver. The rule of law, democracy and respect for human rights and fundamental freedoms which have been the pillars of peace and well-being in Europe for decades are our joint endeavour and shared responsibility. This common project can only be achieved by working together, with dialogue being fundamental for any form of fruitful cooperation.

In line with this stance, may I express my support to a new forum which is being created as a platform for collaboration between constitutional and some other apex courts in the region. The ECtHR itself established its Superior Courts Network in 2015 with the aim of reinforcing judicial dialogue. Our experience has shown that manifold interactions within the network are invaluable to foster better cooperation between courts, and regional initiatives like yours will hopefully bring about the same experience.

The topic of this years' forum is "Countries' experience with providing citizens access to constitutional justice"; a topic that is of particular interest also due to expected constitutional amendments in Bulgaria, the country which is hosting us today. In view of the expected introduction of a constitutional complaint procedure for individuals, exchanging and sharing experiences are of paramount importance.

Of course, such a major constitutional amendment raises many questions, such as how to best frame the individual complaint procedure, and what consequences can be expected for the work of the constitutional courts. Effects for the level of protection of human rights and fundamental freedoms are obviously a central consideration too.

But not all of these questions are national in nature: individual access to constitutional justice is also linked to the work of international institutions, such as the ECtHR. In line with the principle of subsidiarity, it is primarily the task of national legal systems of the High Contracting Parties to safeguard the rights and freedoms guaranteed by the European Convention on Human Rights and additional Protocols thereto. Introducing a national legal remedy dedicated specifically to the protection of human rights is regularly expected to strengthen the respect for such rights domestically and reduce the strain on the ECtHR which needs to face tens of thousands of individual applications annually.

When discussing access to the constitutional court and other apex courts I would like to complement the various national contributions which we will hear today with some reflections from the perspective of the ECtHR.

Specifically, I will touch on a couple of cases in which the Strasbourg Court had the opportunity to deal with the right of access to court in the context of appeals to superior courts. These cases, all of which were brought under Article 6 of the Convention, illustrate the boundaries which the protection of human rights has set to rules framing access to justice.

However, before I begin, it strikes me as fitting to first reflect more generally on the relationship between the Strasbourg Court and constitutional courts.

II. Relationship between the ECtHR and constitutional courts

To understand this relationship, it seems appropriate to rewind to its beginnings, and recall the Statute of the Council of Europe.

The Statute requires its members to accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms and to collaborate sincerely and effectively in the realisation of the aim of the Council (Article 3 Council of Europe Statute). Since 1949, and up until today, this Statute and the common values it affirms still form the basis of our joint efforts.

More recently, at the 4thSummit of the Heads of State and Government of the Council of Europe earlier this year, the members restated their "deep and abiding commitment to the European Convention on Human Rights and the European Court of Human Rights as the ultimate guarantors of human rights across our continent, alongside our domestic democratic and judicial systems" (Reykjavik Declaration).

This political declaration also expresses the legal principle of shared responsibility, on which our Convention system is based. It is also the ideal starting point to elaborate on the relationship between the Strasbourg Court and national constitutional courts.

Shared responsibility means that the fundamental rights and freedoms which underpin our democracies are foremost safeguarded by the Convention Parties, and their national (constitutional) courts, but may be subject to external supervision by the ECtHR.

In light of this principle of shared responsibility, I wish to highlight two aspects of the relationship between the ECtHR and constitutional courts.

The first aspect is the principle of subsidiarity, which I have briefly addressed earlier, and the corresponding requirement for applicants to exhaust domestic remedies. This requirement allows the European Court to benefit from the careful examination of the substance of a case by national courts, up to the highest instance. As the Court has repeatedly highlighted, this gives domestic courts "the opportunity to strike the "complex and delicate" balance between the competing interests at stake [as they are] in principle better placed to make such an assessment."

At the same time, where a member state has observed the Convention in its assessment, it is not the role of the ECtHR to substitute its own assessment of the merits for that of the competent national authorities. It only does so where there have been shown strong reasons for doing so.

The second aspect of the relationship between the ECtHR and constitutional courts which I would like to highlight is the doctrine of the margin of appreciation, which is also a safeguard of diversity.

This doctrine reflects the fact that the Convention does not impose uniform standards in relation to a multitude of issues, including the organisation of justice systems, to name but an example.

This does not mean, however, that issues within the margin of appreciation escape su-

pervision by the Strasbourg Court entirely: where it is alleged that a member state has overstepped its margin of appreciation to the detriment of the protection of an individual's human rights and freedoms, the Court can be called upon to scrutinise the action (or inaction) of this state against the standards of the Convention. The strictness of the Court's scrutiny will depend on whether in a given situation the margin of appreciation is wide or narrow, this in turn depending largely on the nature of the right at stake and of the corresponding obligation of the contracting State.

Furthermore, when the Court is called upon to interpret the Convention in the light of present-day circumstances, it regularly considers the existence of a European consensus on the legal issue at stake. It will look for common ground between national laws and practices of the Contracting States, as well as on EU and international level. The jurisprudence of the domestic constitutional courts will usefully inform the ECtHR on the standpoint of national legal systems. Even in absence of a European consensus, considerations of national constitutional courts, like those of our sister Luxembourg Court, serve as most valuable source of inspiration in our adjudication.

With this in mind, I will now return to the topic of today's forum, which at the same time forms the core of my keynote: individual access to constitutional and superior courts in light of the Convention.

III. Right of access to constitutional justice in the context of Article 6 ECHR

Let me start with some general considerations.

As I already hinted at during the introduction of this keynote, the Court deals with the right of access to a court in the context of Article 6 of the Convention. This right of access was first defined in the seminal judgment of Golder v. the United Kingdom, (1975, §§ 28-36). In this case, the Court held that the access to a court constitutes an aspect of the right to a fair hearing guaranteed by Article 6 § 1 of the Convention (idem §§ 28-36). Referring to the rule of law and the avoidance of arbitrary power, the Court found that the right of access to a court constituted an inherent aspect of the safeguards enshrined in Article 6.

However, the Court has itself acknowledged that the right of access to a court is not absolute and may be subject to limitations, as long as these do not touch on the very essence of this right. What is more, a limitation will not be compatible with Article 6 §1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of

proportionality between the means employed and the aim sought to be achieved (see, for example, Baka, § 120).

Now, what does this mean in relation to the access of individuals to constitutional justice?

The Convention does not lay down any general requirements as to how member states should organise their justice systems; it merely provides for a right of appeal in criminal matters (Article 2 of Protocol No. 7). Accordingly, there is no general requirement for member states to set up courts dealing with the constitutional complaints by individuals.

Nevertheless, if such courts are part of the judicial organisation of a member state, this means that they must comply with Article 6 of the Convention. The right of access to constitutional and other superior courts is thus part of a broader right to access to a court under Article 6.

Consequently, the same general principles as regards restrictions apply. When a person complains that his/her access to constitutional justice has been restricted, the ECtHR will first consider whether there is a legitimate aim for doing so, and whether the restriction is proportionate to that aim. As I already mentioned, this restriction must not deny the very essence of the right to access to a court.

Of course, in doing so, the ECtHR acknowledges the 'special role' of superior courts, namely, to only deal with matters of utmost significance. In practice, this often means that like the Strasbourg Court, they are battling a high case load and are working under the constant pressure of their backlogs.

Superior courts have therefore implemented strategies to restrict access, filter out the most important cases, and perform their judicial work in the most efficient way. I will now turn to a few cases which illustrate such strategies, and how the ECtHR has assessed them against the standard of Article 6. Not all of the cases concern constitutional courts specifically, they mostly concern other superior courts. As you will see, however, the legal assessment of the ECtHR as regards access restrictions remains largely the same.

IV. Case examples

a.) Admissibility criteria and excessive formalism

The first example concerns admissibility criteria, which sometimes include ratione valoris requirement. In order to restrict access to superior courts, member states may set a financial or similar threshold. The ECtHR has accepted that such thresholds are, in principle, a legitimate procedural requirement in light of the 'special role' that the highest courts fulfil.

In Zubac v. Croatia (2018), the Grand Chamber had the opportunity to assess a complaint of an alleged excessive formalism unduly restricting access to the supreme court in application of a ratione valoris requirement.

The facts concerned a civil action, the subject matter of which was first evaluated at around 1400 euros, but at a later hearing re-evaluated to be around ten times higher. Although it was no longer possible to amend the value of the civil claim at this point in the proceedings, the trial courts used the new figure to calculate related court fees. When the applicant later wanted to appeal on points of law, the Supreme Court relied on the initial evaluation and declared the action inadmissible ratione valoris.

The applicant alleged that this amounted to excessive formalism which had prevented them from having access to the Supreme Court in breach of Article 6 § 1 of the Convention. This case illustrates well how the Court assesses whether a restriction of access is proportionate to the aim it pursues. The Court considered three criteria: i) whether the restriction was foreseeable; ii) whether the applicant had to bear the consequences of the errors committed and iii) whether the restriction amounted to excessive formalism.

As regards foreseeability, the Court concluded that the procedure was regulated in a coherent and foreseeable manner (§ 113). As regards the second criterion, the Court considered that the applicant had failed to use the necessary due diligence to change the claim before the court of first instance, in accordance with domestic law.

Finally, with regard to the criterion of excessive formalism, the Court considered that "it would be difficult to accept that the Supreme Court, in a situation where the relevant domestic law allowed it to filter cases coming before it, should be bound by the errors of the lower courts when determining whether or not to grant someone access to it." (§ 122).

Ultimately, the Croatian Supreme Court's decision merely ensured legal certainty and proper administration of justice (§ 123) in connection with an erroneous procedural step. The Court considered that, in such circumstances, no issue of excessive formalism should arise (§ 123).

The Court unanimously held that there had been no violation of Article 6 of the Convention.

b.) Strict procedural rules

The second example which may be of interest to discuss is the case of Arribas Anton v. Spain (2015).

The facts of the case concerned an administrative sanction applied for serious misconduct. All appeals by the applicant were dismissed, and the amparo appeal was declared inadmissible by the Constitutional Court, which considered that the appeal was not of "special constitutional importance".

The applicant complained that this ground for rejection amounted to excessive formalism and that its application constituted a breach of Article 6 ECHR, depriving them of access to constitutional justice.

In this case, again, the ECtHR considered the aim of the restrictive measure. The ground for refusal in question had indeed been introduced to prevent the Constitutional Court from being overloaded with cases of lesser importance, and hence to ultimately strengthen the protection of fundamental rights in cases that did meet this threshold. This constituted a legitimate aim and was not, as such, disproportionate or contrary to the right of access to court.

Furthermore, the Strasbourg Court also recalled that it was permissible for the procedure before superior courts to be more formalised. It also noted that the Constitutional Court had applied this ground in a flexible manner (§§ 23 and 50). Moreover, the applicant was heard by a court of first instance and a court of appeal, both of which had delivered reasoned opinions which were free of arbitrariness.

c.) Limited Reasoning

The final type of restriction which I would like to discuss is limited reasoning. Superior courts may refer to general legal provisions when rejecting appeals to filter out requests that do not have any prospect of success or where the issue raised does not meet a specific threshold of importance. The ECtHR has accepted these as not being contrary to the Convention.

Let us consider the case of Talmane v. Latvia (2016) as an example. The facts of the case concerned a criminal conviction for a traffic offence. The applicant complained about the evaluation of evidence and deficiencies in the investigation up to the Latvian Supreme Court. The latter did not admit the appeal, citing a general legal provision defining its competence – particularly, that it was not competent to re-assess the evidence –, and noting that the appeal did not point to a fundamental breach of criminal law.

Although according to the Court's case law, judgments should adequately state the reasons on which they are based, the extent to which this duty applies may vary according to the nature of the decision. In particular, it has held that this duty cannot be understood as requiring a detailed answer to every argument (see García Ruiz v. Spain § 26).

The Court has held that courts of cassation comply with their duty when they base themselves on a specific legal provision without further reasoning in dismissing cassation appeals which do not have any prospects of success (see Sale v. France § 17). It takes the same approach with regard to constitutional court practice (see Wildgruber v. Germany).

In order to determine whether the requirements of fairness in Article 6 were met, the Court has considered matters such as the nature of the filtering procedure and its significance in the context of the proceedings as a whole, the scope of the powers of the superior court, and the manner in which the applicant's interests were actually presented and protected before that court (Hansen v. Norway § 73).

In the case at hand, the Court especially considered the nature of the complaint, which related to the establishment of evidence. The Court highlighted that the evidence had been examined by two courts which had provided proper reasoning, and that the Supreme Court was not able to re-examine the existing evidence or to obtain new evidence, as highlighted in its letter. In these circumstances, the Court was satisfied that the grounds of the applicant's appeal had been duly examined and that the reasoning had been sufficient.

Accordingly, it held that there had been no violation of Article 6 of the Convention.

V. Concluding remarks

However, this is not a regular outcome of proceedings in Strasbourg. In the more recent case of Xavier Lucas v. France (2022), for example, the Court found a violation of Article 6 due to a procedural rule which had been excessively formal.

The French Court of Cassation had rejected an appeal because it had not been submitted electronically due to several practical obstacles which the applicant had faced. The Court held that the applicant should not have to bear the consequences of this mistake, and the rejection of the appeal was thus considered to be excessively formal.

Indeed, case law on restrictions of access to justice abound. Within its broader case law on Article 6, the ECtHR has had the opportunity to deal with many more elements restricting access to justice, such as high court fees, lack of legal aid, formal application of deadlines for submitting appeals, and the exclusion of certain subjects from taking court proceedings.

What transpires from the cases I have presented today?

First of all, these cases illustrate the relationship between the ECtHR and constitutional or other superior courts. It is not the task of the ECtHR to express its view on the policy choices made by member states. Instead, its task consists of determining whether the restriction of access in a particular case – and with due regard for the proceedings as a whole – produces consequences which are in conformity with the Convention.

As the case examples have shown, the ECtHR is mindful of the special role of superior courts. It will always take into account the domestic law and case law, as well as the domestic proceedings seen as whole.

Secondly, filtering mechanisms and other rules limiting access to superior courts are not contrary to the Convention per se, as long as they pursue a legitimate aim and are not disproportionate to this aim. In any case, such access restrictions should never deny the essence of the right of access to court in the relevant domestic proceedings viewed as a whole.

Finally, when rejecting appeals, superior courts should always make sure that the grounds are clear and their application compatible with the Convention.

Hopefully this address sheds some light on how the ECtHR approaches its assessment when dealing with the right of access to superior courts, and thereby contribute to this important dialogue on constitutional justice. In all, I am looking forward to a fruitful exchange, congratulate you on the launching of the Forum and wish it every success in the many years to come.

Thank you for your attention.


EXCHANGE OF PRACTICE
Council of Europe
Conseil de l'Europe
The European Commission for Democracy through Law
-
the Venice Commission of the Council of Europe
SCN
Supreme Courts Network
EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME
COURT OF JUSTICE OF THE EUROPEAN UNION
THE JUDICIAL NETWORK OF THE EUROPEAN UNION
HE CONFERENCE OF THE EUROPEAN CONSTITUTIONAL COURTS
WCCJ


ARKO BOŠNJAK
KOEN LENAERTS


TANYA RAYKOVSKA
ATANAS SEMOV
Justice

Holta Zaçaj, President
Constitutional Court
Republic of Albania

President Zaçaj is graduated from the University of Tirana, in 1998. From 2007 until 2008 she completed her studies and obtained a scientific Master's degree in "Securities and financial regulation", at the Georgetown University in the USA, in the framework of the Fulbright Program. Visiting professor at the School of Magistrates, 2003-2013.

President Zaçaj is the co-author of the Family Code, the Law on Children's Rights and Protection in Albania, the package of laws on the penitentiary treatment of minors in Kosovo.

In 2023 she becomes an appointed member of the Constitutional Court and is elected as the President of the Court.

Guaranteeing the access of citizens to Constitutional Court

Honorable colleagues,

Honorable guests and participants,

I am delighted to participate today in this activity, which I believe represents a very important event for the institutional cooperation between the constitutional courts of our countries.

I am quite convinced that this forum shall enable us to benefit from our experiences, professionalism and achievements, so that the constitutional justice truly becomes a factor that expresses and materializes the safeguard and respect for the constitutional values and human rights

Mission of Constitutional Court in guaranteeing human rights and freedoms

As the guarantor of the Constitution, Constitutional Court is also its final interpreter. Individual constitutional complaint is an important mechanism that makes possible the effective protection of human rights and freedoms, enabling the Court to play its above-mentioned role (as final interpreter) through its authority to rule though final and enforceable decisions.

The individual constitutional complaint has the following functions:

firstly, it provides a judicial remedy against violations of constitutional rights;

secondly, it serves as a special tool for constitutional review of normative acts/laws;

thirdly, it intends to and may result in the restoration of the violated right.

The first function – as judicial remedy against violations of constitutional rights

Individual constitutional complaint in Albania dates back to 1992, when the Constitutional Court was firstly established. The court at that time had very broad competencies in this regard. The Constitution of Albania of 1998, provided for "the final adjudication of individuals' complaints for violations of their constitutional rights to fair court trial ...", limiting the protection of individuals' rights only regarding the fair court trial, including all the elements and components of such right. The limitation of the constitutional text was forther narrowed due to a very conservative and restrictive interpretation given to the individual constitutional complaint by the Constitutional Court itself through its jurisprudence.

The Constitutional and legal amendments made in 2016 in the framework of the Justice System Reform broadened and extended the constitutional jurisdiction in terms of fundamental rights and individuals' access, providing for constitutional review of normative acts and laws together with judicial decision that violates fundamental rights and freedoms. The law of the Constitutional Court has also been amended stipulating the individuals' right to contest the compatibility of law or normative acts with the Constitution., providing also the criteria to be met for submitting an individual constitutional complaint which are:

i. the individual should prove that is the holder of the constitutional right pretended to have been violated, and has a concrete interest in the case, so that the constitutional review of the case could restore the violated constitutional right;

ii. should exhaust all the effective legal remedies capable of restoring the alleged violated right;

iii. the complaint should be submitted within 4 months from the notice of violation;

iv. the claims should be of constitutional nature.

The second function – Particular procedure that deals only with the constitutionality of the normative acts and laws

In relation to this function, the Court has jurisdiction to:

(i) review directly and separately the constitutionality of legal and sub-legal acts and;

(ii) review the constitutionality of laws and sub-legal acts together with the claims for a violation of due process after exhausting after the judicial process at all the three instances of judgement.

In these cases, the Court has considered whether the legislation has provided for legal remedies for the protection of substantial rights and whether these remedies are effective.

In its beginnings, during the period from 1992 to 1998, the competencies of the Court regarding the constitutionality of normative acts and laws were very broad and in fact the court did show at some extent a judicial activism, admitting individual complaints resulting in repeal of a considerable laws that violated substantial rights, for example the law on restitution and compensation of the property to the former owners, a very sensitive issue at that time due to the change of regime in Albania, aiming to follow the German model and practice.

After 2016, the Constitutional Court is again putting great efforts to build its identity in line with the best constitutional practices, as well as with the case-law of ECtHR, trying to ensure a better protection of human rights at national level, aiming to prevent the necessity of individuals to submit complaints to the ECtHR.

With regard to complaints presented directly for the unconstitutionality of law claiming that the laws violated its substantial rights, I would like to mention the case of an individual, who ran as an independent candidate in the general elections in ____. The individual alleged for the violation of the right to be elected and the principle of equality in elections, pretending that the legal criterion of electability threshold foreseen by Election Code was designed taking into account the political parties, thereby discriminating the independent candidates. The Court found a violation of the constitutional right to be elected, in connection with the principle of equality before the law and non-discrimination, considering that provision of the same rules on distribution of mandates, based on the same national threshold, constitutes an indirect discrimination of the candidate proposed by the voters.

In most of the cases the individuals file complaints on constitutional review of laws together with their claims of violations of due process after having exhausted all three levels of ordinary jurisdictions. To illustrates this, the Court admitted a complaint concerning the violation of private property right, claiming that the measure of compensation given by administrative bodies for the property expropriated during the communist regime, violated the right to fair compensation guaranteed by the Constitution and the European Convention on Human Rights, and also claiming that ordinary courts had not acted in accordance with the jurisprudence of the Constitutional Court and the European Court of Human Rights (the case Beshiri and others against Albania, decision dated 17.03.2020). In this decision, the Court underlined that it can examine the claims for violation of substantial fundamental rights autonomously, that is, without necessarily connecting them with the fair court trial, where the determining cause of the violation, is not a direct and closely-related outcome of the ordinary court process.

Consequently, the procedure that is set into motion through the individual constitutional complaint, even in cases where its subject matter are the court decisions, provides to the individual not only the right to submit complaints for protection of their substantial rights, but also to request the repeal of normative acts/laws that violates such right.

The third function – constitutional complaint intends to and may result in the restoration of the violated right.

The Court has adopted the concept of victim as elaborated by the ECtHR, in terms of the appropriateness and effectiveness of the corrective legal remedy provided by domestic legislation.

In cases of individual complaints contesting the constitutionality of normative acts when the violation of substantial right derives from their content and not from the execution manner of such legal provision, the Courts decides to repeal it, as the only way to restore the violated right.

Where the Court is set into motion at the end of the judicial process, in most of cases the claimed violation of a substantial right in connection with the right to fair court trial, the Court has considered that the best way to restore the violated right is to a the overrule the decision of the of the ordinary jurisdiction courts and send the case for re-examination to such court.

The Constitutional Court has reiterated the special role of the ordinary courts and particularly by the Supreme Court, in terms of the principle of subsidiarity, in order to ex-

amine the claims of constitutional nature, before the Constitutional Court decides on them.

However, in consideration of all methods mentioned above, our Constitutional Court is still discussing and debating on the issue whether the review of substantial right should be made through the optic of the right to fair trial, or directly through the substantial right itself, which in in case of a violation found would result in finding a violation per se of the right to a fair trial in the ordinary jurisdiction courts.

In concluding, I think because of these dilemma and other dynamics of unconsolidated matters and constitutional novelties, it is of great importance to have such forums that will provide concrete mechanism to exchange information and facilitate a dialogue between constitution's professionals.

Thank you!

Statistical data

Individual constitutional complaints have been increased in number year after year, what is an indicator of the increase in awareness and confidence of citizens towards the Constitutional Court. Since March 2017 (when the individual constitutional complaint become effective), this Court has delivered a total of 1086 decisions on individual constitutional complaints, out of which 150 have been decided on the merits, while the other remaining 936 are inadmissibility decisions.

Out of this total, 79 applications have requested the repeal of normative acts. For 9 of them the Court has delivered decisions on the merits and the rest has been considered as inadmissible as they did not meet the admissibility criteria.

In terms of individual's access, the Court is currently trying to establish a strategy for communication with the public and the parties, aiming to increase the transparency of its every day activity and decision-making process. The Court official website provides detailed information on how individuals can be addressed to it and notifications about its decision-making activity. Furthermore, it intends to take a number of initiatives for improving communication with the public and increasing the public awareness and information, as well as to organize training sessions with lawyers (although representation by a lawyer is not mandatory for submitting a constitutional appeal), as the time has shown that a considerable number of applications are unsuccessful (inadmissible)

due to their non-compliance with the legal criteria or the way how submissions have been presented before the Constitutional Court

Conclusion

In conclusion, it can be easily understood that the best model of constitutional justice for the effective protection of fundamental constitutional rights is not something that can be built in abstraction/in the air. What is more important is the firm belief that protection of the Constitution is a crucial premise for any democratic system.

Thank you very much for your attention!

Prof. Yanaki Stoilov, Ph.D., Judge
Constitutional Court
Republic of Bulgaria

Yanaki Stoilov obtained his Master's and Doctorate's degree in Law at Sofia University "St. Kliment Ohridski". He was an assistant and subsequently associate professor at Sofia University. In 2018 he was an appointed professor of General Theory of Law at Sofia University and in 2019 - a professor of Theory of Law at Plovdiv University "Paisii Hilendarski".

He served as a member of the 7th Grand National Assembly of the Republic of Bulgaria (1990 – 1991) and a member of the National Assembly for seven terms of mandate between 1991 and 2017.

In May 2021 he was appointed Minister of Justice in the caretaker government.

In October 2021 he was appointed judge of the Constitutional Court.


YANAKI STOILOV
Justice
Constitutional Court of the Republic of Bulgaria

Models of citizens' access to constitutional justice

Within the European continental legal family there are different models of constitutional justice. They can be distinguished according to several criteria:

- depending on the state body exercising control – a specialized jurisdiction or the general courts.

- depending on the type of control – abstract or case-by-case.

- depending on the timing of the scrutiny – preliminary or subsequent.

- depending on the procedural legitimacy – referral only by public authorities or also by other subjects, including citizens.

The protection of fundamental rights makes the constitutional court not only a legal arbiter between the authorities, but also a guardian of individual rights. The first attempts to do so began in the second half of the 19th century in countries of the German legal family. In the second half of the 20th century, because of the development of the idea of the rule of law, this practice expanded into most European countries. Thus, constitutional justice is increasingly being 'opened up' to citizens, using different models of access to it.

Citizens' access to constitutional justice is indirect and direct. In the first model, state bodies, including courts, or public organizations, such as the Bar Association, can bring cases before the constitutional court. In the second model, citizens have the right to a constitutional complaint to the constitutional court.

1. Models of constitutional review with direct citizen access to constitutional justice:

1.1. Actio popularis

This model provides the widest access to constitutional jurisdiction because any citizen can challenge a law and likely other regulations. The act need not affect the applicant personally and directly. In this way, any citizen can claim constitutional protection, i.e., it is not necessary to prove a personal legal interest. However, this is the main disadvantage of this model – it often leads to abuse of the right of direct access to the constitutional court, which overloads it with numerous, and unfounded, complaints. For this reason, actio popularis is not widely used, and some states that have adopted it limit its application. For example, not any person, but only certain organizations acting in the public interest, are entitled to bring actions on behalf of individuals.

1.2. Normative constitutional complaint

This model stands between abstract constitutional review and classical rights protection. A condition for the admissibility of a complaint is that the person has a legal interest in filing it, i.e., that he is directly affected by the individual act on which the rule contrary to the constitution reflects. In these cases, citizens and possibly legal entities can directly challenge an existing rule, although the personal motivation for bringing the complaint before the constitutional court comes from the content of the individual act implementing it. The protection of constitutional order, which includes the protection of fundamental rights, thus comes to the fore. This model seeks not to make the constitutional court the court of last resort in a particular case; it reduces the overload and hence the considerable delay of constitutional proceedings. However, a statutory constitutional complaint is not an effective remedy if it is not a regulation that is unconstitutional, but its application.

1.3. Substantive constitutional complaint

A substantive complaint allows citizens to challenge any act – normative or individual – of the public authority that is alleged to violate constitutionally recognized rights. This model greatly expands the gateway to constitutional justice because it foregrounds unconstitutional impairment of rights, including by misapplication of a constitutionally compliant statute. The expansion of the scope of constitutional review, however, results in an increased number of cases. This circumstance requires the introduction of differ-

ent conditions for the admissibility of a constitutional complaint. In some countries, it relates only to an alleged violation of fundamental rights, or a part thereof, and not to any violation of the constitution. The advantage of this model is that judicial and administrative acts, including those not subject to judicial review, are directly subject to constitutional review. Its weaknesses are that review is ex post facto and this increases the likelihood of conflict between constitutional jurisdiction and the ordinary courts; it requires the creation of more 'filters' and special administration for the admissibility of constitutional complaints.

Based on the models described, the national legal framework gives specificity to access to constitutional justice.

2. Constitutional Framework of Access to Constitutional Justice in the Republic of Bulgaria.

The Constitution adopted in 1991 introduced for the first time in Bulgaria a constitutional review of laws. The constitutional court acts on the initiative on state bodies – 1/5 of the deputies, the president, the government, the Supreme Court of Cassation, the Supreme Administrative Court and the Prosecutor General, and in certain cases also local self-government bodies. Two amendments to the Constitution expanded this circle to include the Ombudsman and the Supreme Bar Council.

The right of the ombudsman and the Supreme Bar Council to appeal to the constitutional Court is limited in two ways compared to other subjects: in scope and in entities. The Ombudsman and the Supreme Bar Council can challenge laws, but not international treaties. Furthermore, the violation must concern the rights and freedoms of citizens, but not the rights of legal entities.

A specific role in the referral to the Constitutional Court is assigned to the two Supreme Courts. Their chambers, when they find the applicable law inconsistent with the constitution, suspend the proceedings and refer the matter to the constitutional court. Thus, in individual cases, abstract constitutional review is combined with concrete review. In this way, the decisions of the Constitutional Court also contribute to the protection of citizens' rights.

The scope of constitutional review in Bulgaria is broad. It covers both normative and individual acts: laws and decisions of the Parliament, international treaties to which the Republic of Bulgaria is a party, presidential decrees, adjudication of jurisdictional disputes, etc.

3. Opportunities for expanding citizens' access to constitutional justice in the Republic of Bulgaria.

The Bulgarian Parliament is currently debating a bill to amend the Constitution. It includes provisions to extend access to the constitutional court.

One suggestion is that any court should be able to ask the constitutional court to find that a provision of a statute applicable in a particular case is unconstitutional. The positive aspects of this proposal are the following: it significantly expands the possibilities of referral to the Constitutional Court on issues that affect the rights of citizens; it ensures a professional assessment of the requests for referral to the Constitutional Court; it resolves the question of the constitutionality of the applicable law before the entry into force of the judicial act in the concrete case.

The other proposal is to introduce a constitutional complaint. However, it is not clear from its wording whether a normative constitutional complaint or an actio popularis is meant, i.e., what is the role of the legal interest for the possibility to refer a matter to the constitutional court and how its decision would affect the final judicial act. There is no provision for the constitutional court to sit in separate chambers, which would create insurmountable problems even when considering the questions of admissibility of the applications.

In my opinion, the discussion on the proposed provisions, which has so far been lacking, should answer two main questions: first, how to really improve the protection of citizens' fundamental rights and second, how to do this by developing the existing model of constitutional justice in our country. This could be achieved by giving any court the right, at the request of a litigant or on its own initiative, to refer a case to the Constitutional Court seeking a resolution that a law applicable in a particular case is unconstitutional. This solution has several positive aspects and few disadvantages: it ends disputes about the unconstitutionality of the law before the ruling on the specific case; it allows the court to continue the proceedings in the part that does not concern the subject of the constitutional proceedings; it tolerably increases the number of cases before the constitutional court without blocking its activity.

Improving the protection of fundamental rights is the most effective means of including the citizens and bringing them closer to the constitution. That is why today's discussion is useful and important not only for participants. I wish success to the Balkan Constitutional Forum! It is a good example of dialogue and cooperation between the institutions of the Balkan states.

Anna Kalogeropoulou, Councilor of State
Hellenic Council of State

Councilor of State Ms. Anna Kalogeropoulou has obtained her Law degree from the Faculty of Law of the National University of Greece in 1983. Lawyer at the Athens Bar Association (January 1985).

She joined the Council of State of Greece as an Assistant Judge (Auditeur) in 1985 (September). She was appointed as Associate Councilor (Maître des Requêtes) in 1993 and as Councilor (Conseiller) in 2009.

As part of her study leave (1997-1998) as an academic visitor in Oxford University she took postgraduate courses in European Community Law and in Comparative Public Law (Constitutional and Administrative).

Since 2019 she presides over the Chamber of the Court which deals with compensation claims against the State and social security claims. She has handled some critical and of great importance legal cases dealing, among others, with the constitutional review of the national pensions and social security system which was enacted in 2016.

Greece's experience with providing citizens access to constitutional justice

I am deeply honored to participate in this conference organized by the President and the members of the Constitutional Court of Bulgaria who I warmly thank for their hospitality. I would also like to congratulate the President of the Constitutional Court of Bulgaria for her initiative to establish the Balkan Constitutional Courts Forum as a means to strengthen the cooperation among the Constitutional and Supreme Administrative Courts in the Balkan region.

I will present you briefly the constitutional review of laws in Greece.

According to article 26 of the Greek Constitution, which establishes the separation of the powers, the legislative function is exercised by the Parliament and the President of the Republic, the executive function is exercised by the President of the Republic and the Government, while the judicial function is exercised by the courts. According to Montesquieu's expression, in continental law countries, such as Greece, the judge is the "mouth of the law", i.e. he reproduces the will of the legislator, respecting the democratic legitimacy of the latter. The Greek constitutional law assigns the review of the constitutionality of laws to the judiciary.

In principle, the Greek Constitution, provides for repressive judicial review of the constitutionality of laws (i.e. it takes place after the enactment and implementation of the law). However, it also provides for two cases of preventive judicial review (which takes place before the enactment and implementation of the law). These are the elaboration of presidential regulatory decrees by the Council of State (Article 95(1d) of the Constitution) and the opinion of the Supreme Financial Court on bills concerning pensions (Articles 98(1d) and 73 of the Constitution). Nowadays, the legal basis of this control is provided by Articles 87(2), 93(4) and 100 of the Constitution.

Greece, as is well known, is one of the few countries that, long before the implantation in Europe of the Kelsen's centralised model of control, had turned to the American tradition of judicial review. For more than a century and a half, in our country the courts have been exercising diffused constitutional review of laws, i.e. every judge, regardless of his or her position in the hierarchy has the power, but also the obligation, not to apply a law that is contrary to the Constitution. The American conception of the Constitution as a

higher law, which must in practice prevail over any other, as expressed in the Supreme Court's landmark decision of 1803 Marbury v. Madison, deeply influenced the thinking of Greek jurists in the 19th century and sealed our understanding of the relationship between the Constitution and the law.

The judicial review of laws in Greece was established by case law in the second half of the 19th century. In 1897 the Supreme Civil and Criminal Court (Arios Pagos) issued the historic decision 23/1897 and for the first time did not apply provisions of a law because they were contrary to the Constitution. In that time the only other European country that exercised constitutional review of laws was Norway. None of the European countries that acted as legal and institutional models for the Greek legal system in the 19th century, such as France, Germany and Belgium, exercised such a review.

Another explanation for the establishment of the judicial review of laws in Greece at such an early stage is the common and - already since the foundation of the new Greek State - widespread perception among citizens and jurists of the supremacy of the Constitution. The prevalence of this perception led to the establishment of the judicial review of the constitutionality of laws: since the legislator must be checked for compliance with constitutional limits, this control is exercised in an effective manner by the courts - the body established as a control mechanism by the Constitution. On the other hand, since all powers are equally submitted to the Constitution and therefore equal to each other, the content of judicial review was shaped accordingly: the courts are not superior to the legislator, they do not substitute the legislator, they cannot legislate, but always remain within the scope of their function as courts, i.e. they resolve a specific dispute and their judgment is valid only between the parties. This means that they do not review the law per se in an abstract manner, but they review the application of the law in a certain dispute.

The Greek judicial review of constitutionality of laws retains these basic characteristics up to this day, i.e. repressive, diffuse, incidental, specific review. In principle, the review is called diffuse because it is not exercised by a single Supreme or Constitutional Court, but by any court, regardless of its position in the hierarchy or jurisdiction (administrative, civil, penal court of first or second instance and the high courts), in accordance with an express constitutional provision (Article 87 par. 2 of the Greek Constitution), when the court is called upon to apply a provision of law and resolve a particular dispute. However, the control of constitutionality of legislation is exercised within certain frames. Since the control is entrusted to the courts, it means that it is, by necessity, a legal and judicial control, a control of legality and not of utility (this can be tested through the reasoning of the judgment). Furthermore, since the entry into force of the

Constitution of 1975, powerful mechanisms of concentration of control have been developed. Article 100 paragraph 1 of the Constitution provides for the jurisdiction of the Supreme Special Court to resolve a dispute over the constitutionality of provisions of law if the three high courts (the Council of State, the Supreme Civil and Criminal Court or the Supreme Financial Court) have issued conflicting decisions. Paragraph 5 of Article 100 of the Constitution provides that if a question of constitutionality arises before the Chambers of the Supreme Courts, it shall be referred to their Plenum. Furthermore, law 3900/2010, a landmark law for Greek administrative procedural law, provided for the 'pilot trial' and the 'preliminary question'. According to these procedures, a case which falls under the jurisdiction of an administrative court of first instance, then the court of appeal and finally the Council of State is referred directly to the Council of State in order to resolve by its decision a legal issue which, according to its nature, is of general interest and is expected to raise numerous trials. The 'pilot trial' was basically established in order to deal with the contemporary phenomenon of mass trials (in tax, social security, education, environmental, etc. matters), which usually raise serious questions of constitutionality, resulting in an overall significant judicial delays and entailing the risk of issuing conflicting decisions by the administrative courts of first and second instance. Moreover, Greek procedural law provides the possibility, during the hearing of these cases in the high courts, for many categories of interested parties, who have pending cases in which the same issues of constitutionality are raised, to be heard by exercising an intervention. In this way, the high court decides after taken into account the allegations of the parties of all these categories. 'Pilot trial' is proved to be very successful during the economic crisis in Greece, when issues of constitutionality concerning pension and lump sum benefit cuts, various tax burdens, issues of service status and salaries of civil servants (university faculty members, doctors of the national health system, etc.) were resolved in a short time.

The judicial review of laws in Greece, apart from being, in principle, diffuse, is also incidental, i.e. the law is not reviewed in its whole and in abstracto. Only the provision which is crucial and necessary to the outcome of the pending case is tested, and if it is found unconstitutional, it is set aside in the pending case. The judge does not have the power to annul the unconstitutional legislative provision nor to declare it void. The provision is set aside in the pending case but it continues to bind and to be enforced until its amendment or repeal by a new law. (This is the normal course of action followed by the Government and the Parliament). Only exceptionally the law is declared void by a court decision. That is the case when the Supreme Special Court is called upon to resolve a dispute over the constitutionality of a legislative provision and finds it unconstitutional. Then the legislative provision is removed from the legal order.

The establishment of the Greek constitutional review of laws system for more than one hundred years was the basis for the formation and development of the rule of law in Greece. The success of this system is due to the way this review has been exercised. This way of delivering constitutional justice has contributed a lot to the familiarity of the country's legislative and executive bodies and the legal community with this system. It has also contributed to the society's awareness of the dominant position of constitutional rules in Greek legal order and thus helped to instill in each citizen the feeling that he enjoys direct judicial protection.

Since the entry into force of the Constitution of 1975, judicial review of constitutionality of laws by the Council of State has often led to changes in important areas of law. Various decisions can be mentioned: decision 2281/2001 in Plenum, in which it was held that the indication of religion on police identity cards violates religious freedom, decision 250/2008 in Plenum, in which it was held that personal detention as a means of collecting public revenue is contrary to the principles of protection of human dignity and personal freedom. The Court's case law is also of crucial importance and rich in the field of equality, judicial protection and environmental protection. For example, the decisions of the Plenary Session of the Court (in Plenum 3018/2014, 1323/2016), in which it was held that the complete exclusion of women from access to the profession of Special Guard of the Greek Police, as well as to all technical specialties of the profession of Professional Soldier of the Land Army constitutes a divergence from the constitutional principle of gender equality.

Finally, it is worth noting that the role of the Council of State as quasi-Constitutional Court became particularly important in the period of the economic crisis (2010 and onwards). The Court, exercising its jurisdiction and reviewing the constitutionality of measures adopted during that period, was once again the refuge of citizens against the state power. For example, it held that successive cuts in salaries of civil servants and pensions in the first two years of the crisis were legitimate and in accordance with the Constitution, but then held that further cuts in the pensions after the first two years, of the same category of citizens, required justification by the legislator with studies justifying the need of those cuts and not the adoption of other measures. Furthermore, during the period of the COVID-19 pandemic, the Council of State held some interesting decisions. For example, it held that the need to deal with a serious risk to public health constitutes a reason, in principle, that justifies the imposition of restrictions on the exercise of the right to assembly (in Plenum 1681/2022), the prohibition of travel for hunting (in Plenum 1284/2022), the compulsory use of non-medical masks, the restriction of movement and the suspension of activities (in Plenum 1147/2022), taking into

account the obligation of the State to protect human life and health, together with the obligation to safeguard the functioning of the health system.

It is obvious that in the current period, in which our society continues to face multiple crises (economic, pandemic, climate change etc.), the judge bears even greater burdens in the interpretation and application of the Constitution. At the same time, the citizens' expectations of him are increasing. Judicial discourse gains a wider audience and the so-called hard cases in theory are of a major concern in the public sphere. The recent case law, which has been called upon to strike a balance in exceptional circumstances, has demonstrated the close link of rights with the public interest and the fact that the relationship between judge and legislator is governed by complex legal-political issues as well as technocratic balances. In particular, when exercising constitutional review of laws, the judge becomes the regulator of relations between state bodies and a guarantor of the fundamental rights guaranteed by the Constitution, especially when these are challenged.

The judicial review is an essential element of the checks and balances that characterizes modern democratic regimes and is of crucial importance for the rule of law. Given that the conditions and consequences of such review concern directly or indirectly the great majority of fundamental issues of constitutional law and in particular the protection of human rights, one of the most serious and critical challenges a modern judge is facing when is called upon to review the constitutionality of a law is to achieve the necessary balance between judicial self-restraint and the exercise of full and effective constitutional review, while being committed to principles such as impartiality and neutrality.

Thank you very much for your attention.

Gresa Caka-Nimani, President
Constitutional Court
Republic of Kosovo

President Caka-Nimani has completed legal studies at the University of Prishtina (2004), she has an L.L.M. in European Integration and Regionalism from the University of Graz, Austria (2007), and is currently working on her doctorate degree.

Gresa Caka-Nimani has served as a Senior Legal Advisor and a Team Leader at the US Agency for International Development prior to her election as judge. She also supported the Constitutional Commission responsible for drafting the Constitution of the Republic of Kosovo.

Elected as a Judge of the Constitutional Court in 2015, and President of the Court since 2021.


NAKI STOILOV
Justice
Court of the Republic of Bulgaria
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Speech of President Gresa Caka - Nimani

Honorable President, Ms. Panova,

Honorable President Zaçaj,

Counsellor of State Kalogeropoulou and Judge Stoilov,

Dear Professor Mihailova,

Honorable Vice-President of the European Court of Human Rights,

Honorable participants,

Ladies and Gentlemen,

I would like to begin this discussion by emphasizing the symbolic importance of this day. Establishing the Balkan Forum of Constitutional Courts – is a tremendous step forward for the countries of the region in terms of their commitment to the fundamental values of democracy, rule of law and human rights and fundamental freedoms.

It reflects the deep commitment of the Constitutional Courts – the guardians of the respective constitutional orders of the participating states – to play an active and substantial role in advancing and protecting our common values, and while working together, to contribute to the establishment of a coherent system for the protection of common values and fundamental rights in the European continent.

While the participating countries do not necessarily have the same status in terms of membership in the European Union and/or the Council of Europe yet – they all unconditionally share the commitment to embrace and apply the values that derive from the case-law of the Court of Justice of the European Union and the European Court of Human Rights. The presence of President Lenaerts and Vice President Bošnjak here to-

day, equally reflects their commitment to supporting this Forum and our Courts, as we strengthen the cooperation and advance the constitutional justice in the Balkan region.

As the youngest Constitutional Court represented in the Forum, our Court tremendously values the opportunity to benefit from the cooperation with its peers and to provide its contribution to the Forum. The Constitutional Court of the Republic of Kosovo just marked the 14th anniversary of its establishment this week through a solemn ceremony and an international conference, in which we had the honor to welcome some of the delegations present here today. Its establishment in 2009, marked a significant milestone for our young nation. The Court was tasked with the responsibility and given the honor to interpret a newly adopted Constitution, which reflects the best international standards in terms of division and balance of power as well as the human rights and fundamental freedoms.

Taking into account the lack of a previous constitutional tradition however, the provisions of a new Constitution were interpreted (i) based on the case-law of the European Court of Human Rights – a constitutional obligation under the Kosovo constitutional order; (ii) based on the case-law of the Court of Justice of the European Union – the aspiration for the membership to which is clearly stipulated in our Constitution; (iii) the relevant opinions of the Venice Commission; and (iv) when applicable, the common denominator deriving from the case-law of the Constitutional Courts across the continent.

Based on these principles and values, the Constitutional Court has contributed to shaping the functioning of democracy in the Republic of Kosovo. It has contributed to shaping its state and international identity. It has managed, within an extremely short period of time, to stand dignified among the Constitutional Courts that are members of the World Conference on Constitutional Justice, the Venice Commission and as of today, the Balkan Forum of Constitutional Courts.

The role of the Constitutional Court of Kosovo has been tremendous particularly in establishing an effective system for the protection of fundamental rights and freedoms. The case-law of the Constitutional Court set the example of an institution and a country at the outset, demonstrating that it is truly and genuinely committed to adhering to the best international standards pertaining to human rights as outlined in the European Convention on Human Rights, the Charter of Fundamental Rights, including the Framework Convention for Protection of National Minorities.

Through the mechanism of individual control, the Constitutional Court, has laid a very

strong foundation for the advancement of human rights, including but not limited to (i) the right to life and the positive obligations of the state in this respect; (ii) gender equality; (iii) active and passive electoral rights; (iv) freedom of expression; (v) property rights; (vi) the right to liberty and security; (vi) privacy; and (vii) non-discrimination. Our Court has already applied Protocol 12 of the European Convention on Human Rights and might be the first in the region to have already applied and found violations of the positive obligations of the state under the Istanbul Convention.

Its most significant case-law, nevertheless, derives from article 6 of the European Convention on Human Rights pertaining to the right to a fair and impartial trial, including access to justice. In respect to the latter, the Court incorporated the principles deriving from the case-law of the European Court of Human Rights, based on which, where there is no effective access to an independent and impartial court, the question of compliance with the rule of law will always arise. Thus, in reviewing the constitutionality of contested acts, the Court continuously applied the proportionality principle between excessive formalism and excessive flexibility in determining the compatibility with the rule of law principles enshrined in the Constitution and the European Convention on Human Rights.

More specifically, there are three primary categories of cases that the Court has dealt with to date in terms of access to justice, namely (i) excessive court fees and/or excessive formalism in interpreting the procedural rules pertaining to court fees; (ii) application and interpretation of time-limits for the initiation of civil disputes and/or lodging appeals; and (iii) ratione valoris admissibility threshold in determining the jurisdiction of a higher court. Whether the Constitutional Court found a violation or not through reviewing the abovementioned categories of cases, it clearly incorporated the principles deriving from the common denominator of the relevant European Court of Human Rights case-law, importantly establishing a standard and sending a clear message to the regular courts and/or the relevant public authorities in this respect.

Having said this, the individual cases that might have had the most impact on the rule of law system in Kosovo in terms of access to justice principles, are related to our Court's decision making which concluded that (i) the sub-legal acts; and (ii) the Presidential decrees – are subject to the legality control by the regular courts, as the alternative would constitute a denial of the respective rights to access to justice.

More precisely, the first case is related to a sub-legal act that was adopted by the Ministry of Justice and which allegedly violated the rights of a number of employees of the Forensics Institute. The latter, in its capacity of a legal person, had contested the legality

of the respective act before the regular courts. However, the courts, in essence maintained that the legality of the government's sub-legal acts cannot be subject to their review. The Constitutional Court, annulled the decision-making of the regular courts, maintaining, among others, that (i) based on the applicable laws, the regular courts had the uncontested competence to review the legality of such acts; and (ii) the refusal to do so, denies individuals their right to "access to the court".

Whereas the second case is related to an Ambassador that was dismissed by the President of the Republic and who initiated contested procedures before the regular courts alleging the illegality of the respective presidential decree. The regular courts had all dismissed his allegations, by maintaining that the Presidential decrees cannot be subject to the review of legality by the regular courts. The Constitutional Court, annulled the decision-making of the regular courts, maintaining that the non-treatment of the applicant's claims regarding the legality of his dismissal from the position of Ambassador violated his constitutional rights and more importantly, established the standard that the legality of Presidential decrees is subject to the legality review by the regular courts. In this respect, the Court also elaborated the principles deriving from Eskelinen and Others v. Finland, establishing the standard based on which public officials must always have access to a legal remedy unless it has been explicitly excluded and even in that case – the exclusion must have followed a legitimate aim and be proportional to the aim sought.

I must also add that these principles have also been applied by the Constitutional Court in terms of preventive and abstract control. Just recently, the Court has reviewed the constitutionality of two laws adopted by the Assembly of the Republic, declaring them unconstitutional, including but not limited on the grounds of denial of an effective legal remedy and access to justice. Both laws, namely the Law on Kosovo Prosecutorial Council and Law on Public Service – entailing significant reforms of the prosecutorial system but also of the entire civil service system, had among others, proposed mechanisms for the dismissal of Prosecutorial Council members and/or civil servants without the respective availability of an effective legal remedy. The Constitutional Court maintained that the respective reforms were not compatible with the Constitution and the European Convention on Human Rights, including on the account of denial of the rights to a legal remedy and access to justice.

Throughout this case-law, the Constitutional Court ensured that the constitutional guarantees for fundamental rights and freedoms are not "theoretical and illusory", but rather "practical and effective", also reflecting the commitment of the Court to precisely abide by the European Court of Human Rights case-law, not only in terms of protect-

ing the fundamental rights and freedoms, but also in establishing a standard which will enhance the performance of other public authorities in the Republic of Kosovo.

Establishing these standards in parallel with the gradual process of establishing and/or developing the constitutional justice, has not gone without challenges. In facing the latter, beyond relying on the case-law of the European Court of Human Rights, the Court has also analyzed and/or referenced the case-law of other Constitutional Courts in the region and beyond. This approach that our Constitutional Court has consistently used, sheds a light on the importance of the cooperation among Constitutional Courts and days like today. Exchange of experiences and/or know-how not only on substantive areas of law, but also management related issues and/or communication with the public, including critically important areas such as judicial reputation – is tremendously valuable not only for the enhanced operations of our Courts, but for the strengthening of rule of law and democracy in the entire region.

The Constitutional Courts – as guardians of Constitutions – occupy a central place in addressing the challenges facing the region, through contributing to the constitutionalization of the rule of law principles deriving from each of our constitutional systems and gradually establishing a unified system of protection of fundamental rights and freedoms in the entire European continent. Such an objective bypasses our common goals and fully aligns with the ones of the European Union and Council of Europe.

This because, in a world order characterized by conditional and inter-dependent sovereignties – the common European heritage can only be protected and cultivated through a commitment to interstate solidarity and deep cooperation. Exchanging experiences and benefiting from the respective constitutional traditions enriches the perspectives of us all and enables us to advance our traditions of constitutional justice.

Finally, despite the fact that discussions this afternoon are thematic, the solemnity of the day – the importance of the establishment of the Balkan Forum of Constitutional Courts – obliges me to note the symbolism of this occasion for our Constitutional Court in particular. While our Court is a member of the World Conference on Constitutional Justice and the Venice Commission, it has continuously struggled to become a member of the European Conference of Constitutional Courts – due to political obstacles – which should under no circumstance prevent the cooperation among the Constitutional Courts in advancing the principles of constitutional justice.

Signing the agreement establishing the Balkan Forum of Constitutional Courts – is a step forward for our Court to expanding its partnerships and contributing in equal

terms with partner Constitutional Courts to the stability and prosperity of the region and beyond. To this end, I must express my deepest gratitude to the Constitutional Courts of Albania, Montenegro, North Macedonia and the Republic of Türkiye. Equal gratitude goes to the Constitutional Courts of Bosnia and Hercegovina, Croatia, Romania and Greece – represented by my panelist Counsellor of State Kalogeropoulou. However, my deepest gratitude and appreciation goes to the Constitutional Court of Bulgaria and its President Panova who has started and brought to a successful closure this important initiative and who has been a continuous partner and friend of our Court.

Together, in solidarity and in partnership, we will foster an environment of mutual learning and growth. We will enhance rule of law through constitutional justice in the Balkans and only together can we counterbalance any force and occurrence that threatens to undermine our common values – freedom, peace and democracy.

Thank you for your attention.


BUDIMIR ŠĆEPANOVIĆ
President
Constitutional Court of Montenegro

Budimir Šćepanović, President
Constitutional Court of Montenegro

President Šćepanović has graduated from the Law Faculty in Podgorica (1982). Worked in the Republic Secretariat for Legislation on normative-legal and analytical work from 1985 to 1989.

From 1993 until 2004, President Šćepanović worked as an advisor at the Constitutional Court of Montenegro. He was first elected Deputy Protector of Human Rights and Freedoms in 2004, and for the second time in 2011.

He was elected a judge of the Constitutional Court of Montenegro in December 2013.

Individual approach to constitutional legal justice with special reference to control of constitutionality and legality

The Constitutional Court in Montenegro has six decades long tradition. Its competences and authorities have changed in time, in accordance with the changes in the system.

Today, the Constitutional Court has nine competences, within which it resolves all forms of, „breaching the Constitution", among which there are constitutional –legal disputes that are not typical „constitutional disputes".

Competences of the Constitutional Court of Montenegro are defined by the provisions of Article 149 paragraph 1 of the Constitution of Montenegro, so that the Constitutional Court rules:

- on compliance of the law with the Constitution and ratified and published international treaties;

- on compliance of other regulations and general acts with the Constitution and the law;

- on constitutional appeal due to the violation of human rights and freedoms guaranteed by the Constitution, after having exhausted all efficient legal remedies;

- if the President of Montenegro has violated the Constitution;

- on conflict of competences between the courts and other state authorities, between the state authorities and authorities of local self-government units and between the authorities of local self-government units;

- on banning the work of a political party or a non-governmental organization;

- on election disputes and disputes in connection with the referendum that are not under the competence of other courts;

- on compliance of measures and actions of state authorities taken during the state of war and state of emergency with the Constitution;

- does other tasks laid down by the Constitution.

I – Control of legality of the law and constitutionality and legality of other regulations and general legal acts

Grading of constitutionality or legality of general legal acts, so called normative control, is the basic competence of the Constitutional Court. It is the subsequent control of the constitutionality of the law, that is, constitutionality and legality of all other regulations and general legal acts. Almost all general legal acts (with the exception of acts having the power of constitution) within the legal order are subject to control of constitutionality and legality, as well as those that have become invalid during the procedure for grading their constitutionality and legality before the Constitutional Court, if the Constitutional Court establishes that consequences of their application have not been remedied.

The procedure for grading the constitutionality or legality of a general act shall be initiated by a proposal of authorized proposer. The authorized proposers are the court (ordinary), other state authority, local self-government authority and five deputies. Also, the procedure for grading the constitutionality or legality may be initiated by the Constitutional Court independently. Any legal entity and natural person (actio popularis) shall have the right to file the motion for initiating the procedure

The proposal for grading compliance of the law with the Constitution and ratified and published international treaties, that is, other regulations and general acts with the Constitution and the law may be filed by:

1) ordinary court, especially if within the procedure being conducted the issue is raised of compliance of the law, i.e. other regulation or general act to be applied in the procedure before the court, with the Constitution and ratified and published international treaties, that is, with the Constitution and the law;

2) other state authority if it is the matter of the law, or other regulation or general act applied by that authority in its work;

3) local self-government authority if it is the matter of the law, i.e. other regulation or general act governing the issues pertaining to the local self-government;

4) five deputies.

In case when the proposal is filed by an ordinary court, the judge or the president of the panel of judges will stop the procedure and initiate the procedure for grading constitutionality, that is, constitutionality and legality of the respective regulation before the

Constitutional Court and notify the President of the court thereof, who shall notify the President of the Supreme Court of Montenegro.

In the procedure before the Constitutional Court initiated by the ordinary court, the Constitutional Court shall rule within 45 days following the filing of a proposal, at the latest.

The Constitutional Court may on its own initiate the procedure for grading the compliance of the law with the Constitution and ratified and published international treaties, i.e. of other regulation and general act with the Constitution and the law, especially when:

- during the procedure upon the constitutional appeal the question is raised on compliance of the law with the Constitution and ratified and published international treaties or on compliance of other regulation and general act with the Constitution and the law, on the basis of which the individual act which is the subject of constitutional appeal has been adopted, or when

- during the procedure for grading the compliance of the law with the Constitution and ratified and published international treaties or of other regulation and general act with the Constitution and the law the question of constitutionality is raised, that is, question of legality of other provisions or other regulations in connection with the provisions which are the subject of grading.

The request for initiating the procedure for grading compliance of the law with the Constitution and ratified and published international treaties or of other regulation and general act with the Constitution and the law may be filed by any natural person and legal entity, as well as any organization, settlement, a group of people and other forms of organization without the capacity of legal entity, which do not have to have direct legal interest in filing the request.

The proposal, that is, the request for grading the compliance of the law with the Constitution and ratified and published international treaties or of other regulation and general act with the Constitution and the law should contain: name of the law, or other regulation or general act, designation of the contested provision, name and number of the "Official Gazette of Montenegro" in which it is published, reasons the proposal or the initiative are based on, as well as other data of significance for grading the constitutionality and legality.

If the regulation whose constitutionality, i.e. legality is contested has not been published in the "Official Gazette of Montenegro" a copy of that regulation shall be attached to the proposal, i.e. initiative, as a rule.

The proposal, that is, initiative, may be filed until the law, that is, other proposal or general act are in force.

It is a general constitutional principle that the Constitutional Court exercises control of constitutionality (and legality) only concerning the normative acts which are within the legal order, that is, which came to force and are valid at the moment of initiating the procedure for grading their constitutionality, that is, legality. However, the Court may grade the compliance of the law with the Constitution, that is, of other regulation and general act with the Constitution and the law after the termination of their validity, if they ceased to be effective during the procedure for grading the constitutionality and legality, and consequences of their application have not been remedied (decision of the Constitutional Court on compliance of the law, other regulation or general act during the period of their validity).

In the procedure for grading the compliance of the law with the Constitution and ratified and published international treaties, that is, of other regulation and general act with the Constitution and the law, the Constitutional Court is not limited by a proposal, that is, initiative. It means that the Constitutional Court, even when the authorized proposer, that is, initiator withdraws the proposal, that is, initiative, may continue the procedure for grading the constitutionality or legality, if it finds that continuation of the procedure is founded.

During the procedure and at the request of the legislator of the contested general act, the Constitutional Court may, before making the decision on constitutionality or legality, stop the procedure and give opportunity to the legislator of the general act to remedy the observed unconstitutionalities or illegalities within the given period. If unconstitutionality or illegality is not remedied within the specified period, the Constitutional Court will continue the procedure.

The Constitutional Court may order during the procedure to suspend the execution of an individual act or action until the adoption of final decision, at the request of the one filing a proposal or initiative, if the one filing a proposal or an initiative makes occurrence of irremediable harmful consequences certain. This measure will last until the closure of the procedure at latest, and may be even shorter, if during the procedure the Constitutional Court decides that reasons of its application (suspension) due to the changed circumstances have stopped: in that case, the Constitutional Court will abolish the measure of suspension of execution of individual act, that is, action. The request for suspending the execution of an individual act, that is, action, the Constitutional Court will dismiss when adopting the final decision.

If due to the termination of validity of the law which the Constitutional Court has estab-

lished being incompliant with the Constitution and ratified and published international treaties, that is, due to the termination of validity of other regulation and general act which the Constitutional Court established being incompliant with the Constitution and the law, on the day of publishing the decision of the Constitutional Court a legal gap would happen, the Constitutional Court in its decision will determine the date of publishing the Decision in the Official Gazette of Montenegro that cannot be longer than three months following that of making the decision and notifies the competent state authorities and public thereof on website, and delivers the Decision to the parties to the procedure.

If until the date determined in the decision, the law conforms to the Constitution and ratified and published international treaties, that is, other regulation and general act with the Constitution and the law, the Constitutional Court reviews if consequences of enforcement of that law, other regulation or general act have been remedied.

If the Constitutional Court establishes that consequences of enforcement of the law, other regulation and general act have been remedied, it will not publish the decision and the procedure will be suspended

If the Constitutional Court establishes that consequences of enforcement of the law, other regulation and general act have not been remedied, it will publish the decision in the Official Gazette of Montenegro.

Decision of the Constitutional Court will be published in the Official Gazette of Montenegro, as well as in the manner in which the act of whose constitutionality or legality it has been ruling was published. Legal consequences of the decision are connected to the moment of publishing the decision of the Constitutional Court in the Official Gazette of Montenegro. Namely, the Constitution stipulates that on the day of publishing the decision of the Constitutional Court in the Official Gazette of Montenegro the law which has been established as incompliant with the Constitution and ratified and published international treaties, i.e. other regulation or general act which has been established as incompliant with the Constitution and the law shall cease to have effect. It is also established that the law or other regulation, i.e. individual provisions which by the decision of the Constitutional Court were incompliant with the Constitution and the law, cannot apply to the relations set up before publishing the decision of the Constitutional Court if they have not been validly resolved by that date.

Decisions of the Constitutional Court are mandatory and enforceable. State authorities, state administration authorities, local self-government authorities, local administration, legal entities and other entities exercising public authorities shall, within their jurisdiction, execute the decisions of the Constitutional Court, and their execution, when

needed, shall be provided by the Government of Montenegro.

The Decision of the Constitutional Court in the field of abstract control of constitutionality and legality of general legal acts has the character of res judicata and generates legal consequences to all (erga omnes). It will end the constitutional dispute and remove the unconstitutional regulation from the legal system. From the point of view of time element – the repealing decision of the Constitutional Court has the effect of ex nunc, exceptionally of ex tunc.

The execution of final individual acts adopted on the basis of the law, other regulation or general act, that is, of their individual provisions, which by the decision of the Constitutional Court have been established as inconsistent with the Constitution and ratified and published international treaties, that is, with the Constitution and the law cannot be allowed or implemented, and if the execution has started, will be suspended.

Moreover, anyone whose right has been violated by final or valid individual act, adopted on the basis of the law or other regulation and general act for which by the decision of the Constitutional Court it has been established that it has not been and is not in compliance with the Constitution, ratified and published international treaties or the law, shall be entitled to ask the competent authority to amend that individual act, if that amendment does not affect the rights of conscientious third parties. Proposal for amending the final or valid individual act may be filed within six months following that of publishing the decision in ''Official Gazette of Montenegro''. When determining the above deadline the law maker has obviously took a stand that ''in case of a conflict'' two basic principles of the rule of law – principle of legal certainty and principle of constitutionality and legality – has to a certain extent take care of the principle of legal certainty and should not go back in the past when remedying consequences of unconstitutionality, that is, illegality.

The Constitutional Court may, by the decision establishing that the law or other regulation and general act is not compliant with the Constitution, ratified and published international treaty or the law, determine the method of indemnity for all persons whose right has been violated by final or valid individual act adopted on the basis of that law or that regulation, irrespective of whether they have filed the initiative for grading the compliance of the law or other regulation and general act with the Constitution, ratified and published international treaties or the law.

II – Control of constitutionality of ratified and published international treaties

The Constitution of Montenegro of 2007 for the first time explicitly establishes that "ratified and published international treaties and generally accepted rules of the international law are an integral part of the interior legal order; that they have precedence over local legislation and are directly enforced when they regulate relationships different from the interior legislation".

Also, in a part of the Constitution dedicated to constitutionality and legality it is established that the law must be compliant with the Constitution and ratified international treaties and that other regulation must be compliant with the Constitution and the law. The competence of the Constitutional Court, in the field of abstract control, is therefore extended to ruling on the compliance of the law with the Constitution and ratified and published international treaties.

This competence includes the obligation of the Constitutional Court, in the procedure of ruling on the constitutionality of the law, to also review its compliance with the international treaties and also to implement appropriate international standards in its decisions.

From language and legal meaning of these provisions it arises that the international treaty by its legal effect is above the law, that is, that ratified and published international treaties and generally accepted rules of international law have stronger legal effect than the law and are immediately after the Constitution by their legal effect.

Legal consequences of the law which is incompliant with the international treaty are the same as consequences of incompliance of the law and other regulation with the Constitution of Montenegro. That law ceases to be valid on the date of publishing the decision of the Constitutional Court.

When speaking about the grading of constitutionality of ratified and published international treaties, it is undisputed that the law ratifying international treaty may be subjected to control. However, the question is raised if the Constitutional Court grades only formal or, again, also the substantive constitutionality of the law ratifying international treaty. If grading its substantive constitutionality, the Constitutional Court would also have to grade the provisions of international treaty which in norm technical regard make an integral part of the law on ratification. Thereat, on one side, legal nature and character of international treaty as legal act would have to be taken into account, then method of drawing conclusions, method of executing obligations assumed by that treaty, as and how they change, and on the other side, the character (general commitment,

enforceability and finality) and effect (erga omnes) of the decisions of the Constitutional Court which are establishing the incompliance of a lower legal act – in this case of ratified international treaty with the higher legal act –in this case the Constitution.

Starting from the above, and especially from the provisions of the Constitution of Montenegro, the Constitutional Court in the former practice, in its multiple decisions or orders, expressed its view that the Constitutional Court, in the procedure of grading compliance of the law with the Constitution may only grade the formal constitutionality of the law ratifying international treaty, that is, the procedure of its adoption, and not the contents of the contract. Provisions of the ratified and published international treaties (agreements) are beyond the constitutional judicial control since the Constitution does not have the legal basis for grading the substantive legal contents of an international treaty, as an integral part of the law, with the Constitution.

Dobrila Kacarska, President
Constitutional Court
Republic of North Macedonia

Dobrila Kacarska graduated from the Faculty of Law at the University "St. Cyril and Methodius" in Skopje.

She was a judge from 1986 to 2005 in the Basic Court Skopje 1 Skopje in the Department for civil disputes. She was a President of the Basic Court Skopje 1 Skopje from 2005 to 2009.

In 2009 President Kacarska was assigned to the Criminal Department for adults of the same court until 2018 when she was assigned to the Department for Organised Crime and Corruption. She was a member of the working groups for drafting several laws.

Elected as a Judge of the Constitutional Court in 2020, and President of the Court since 2021.


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Access to Constitutional justice of the Citizens: The Experience of the Constitutional Court of the Republic of North Macedonia

Dear attendees of the Conference,
President of the Constitutional Court of the Republic of Bulgaria,
Ms Pavlina Panova,
Vice-President of the European Commission, Ms Věra Jourova,
President of the Court of Justice of the European Union,
Mr Koen Lenaerts,
Judge and Vice-President of the European Court of Human Rights,
Mr Marko Bošnjak,
Deputy Prime Minister and Minister of Foreign Affairs of the Republic of Bulgaria,
Ms Mariya Gabriel,
Minister of Justice of the Republic of Bulgaria, Mr Atanas Slavov,

Presidents, judges and representatives from the Constitutional Courts,
Ladies and gentlemen,

It is a tremendous privilege to be present at the formation of the Balkan Forum of Constitutional Courts. This was only a notion about a year and a half ago, when at a meeting my dear Pavlina and I addressed the role and significance it will have in the Balkans, given the momentum. Because of this, I am even more delighted that the Forum is taking place today with the support of all of you, and I am truly convinced that all of our citizens will ultimately benefit the most from it.

Dear all,

The opportunity of a citizen to address the Constitutional Court and initiate a proceeding in which a Decision will be made regarding a matter of constitutionality and legality or their particular right would signify acceptance of their status as members of society with their viewpoint and attitude towards issues of social significance, thereby making it possible to be indicated wrongdoing and demanded accountability when there is a violation of rights in specific circumstances.

In truth, it is a means of implementing the rule of law, protecting freedoms and rights, and directing to institutions that are answerable, accountable, and transparent, specifically established to promote the welfare and prosperity of the individual and society.

For these motives, the framework of legislation that governs access to constitutional justice should be clear and precise and provide for the broadest access feasible without needless limits or formalities, having specific time limits for taking action, an opportunity for citizens to participate directly in the proceedings, as well as the existence of effective mechanisms for implementing the decisions of the constitutional courts.

Unfortunately, there is only one provision in our Constitution from 1991 that mentions access to constitutional justice and does not cover all aspects of issues of citizens with the Court and based on its content, it can be comprehended as referring to only individual constitutional-judicial protection.[1]

This constitutional norm states that every citizen has the right to request protection for the freedoms and rights guaranteed by the Constitution with the courts and the Constitutional Court of the Republic of North Macedonia, in accordance with a proceeding founded on the concepts of priority and urgency.

The systematisation in the section on protection of fundamental freedoms and rights reveals the intention of the author of the Constitution that in addition to their proclamation in the constitutional text, there is also the need for legal protection mechanisms in proceedings where priority and urgency are defined at the level of the constitutional concept.

It is not, however, specified the form to request protection from the Constitutional

[1] Article 50 Paragraph 1 of the Constitution.

Court. Furthermore, it is not defined to which and from which acts the protection may be requested, the time frame of the request, and the procedural presumptions that must be met to initiate such a proceeding (exhaustion of all regular legal options).

The Rules of Procedure of the Court from 1992, adopted based on the constitutional authorization stated in Article 113 of the Constitution, which are still in effect with a few minor amendments and additions, have eliminated this constitutional vagueness.

It is a unique constitutional mechanism for self-regulation, allowing the Constitutional Court to control matters relevant to the conduct of its operations, as well as the procedure within it.

Despite the fact that this arrangement has received a lot of criticism, I believe the past 31 years that it has been in operation have demonstrated that solutions are effective because the Constitutional Court is the most qualified to implement the proceeding and should arrange it by itself. In addition, its autonomy and independence are also preserved in this way, by preventing other state governmental authorities from imposing their will.

The aforementioned Rules of Procedure regulate several matters related to the possibility and method of addressing the Court to initiate a proceeding. It is important to promptly note that owing to the nature and the predetermined constitutional procedure, citizens cannot engage in some proceedings that will not be covered by this presentation.

It is specifically about the proceedings for determining the responsibility of the President of the Republic, revoking their immunity, determining the occurrence of the circumstances necessitating the termination of their office, as well as in the proceedings for revoking immunity and determining the permanent loss of the ability to perform the position of a judge of the Constitutional Court.

As opposed, a more thorough explanation will be provided regarding the proceedings to review the constitutionality and legality, resolving a conflict of competences, and protecting freedoms and rights according to Article 110, Indent 3 of the Constitution.

One of the methods for initiating the proceeding to review the constitutionality and legality is by filing an Initiative to the Court.[2]

[2] The second method involves the Court taking action on its own initiative. In accordance with Article 14

The most inclusive formulation was selected to identify the group of authorised petitioners for this petition. Specifically, in accordance with Article 12 of the Rules of Procedure, everyone may submit an Initiative to initiate a proceeding for reviewing the constitutionality of a law, the constitutionality and legality of a regulation or another general act.

The term "everyone" refers to a broader range than the nomotechnical method often utilised, which is restricted to a mere two categories of legal entities: both a natural person and legal entity, allowing for the possibility of addressing from entities without legal status (such as a striking board).

Based on past observations, it appears that citizens submit the majority of Initiatives. The following data shows the annual percentages of their Initiatives from the overall number of cases: 2023 (60%)[3]; 2022 (78%); 2021 (71%); 2020 (48%); 2019 (80,93%); 2018 (81%); 2017 (67,26%); 2016 (82,32%) etc.

Regarding the Initiative as a type of petition, the Rules of Procedure do not precisely state the requisite format for Initiatives but specify that the Initiative must be submitted in writing in two copies[4] and that it must contain all of the required components[5]. On the other hand, it must be stated that the Court has prepared a sample Initiative for reviewing constitutionality and legality available on its website, and its sole goal is to assist individuals in the petitioning process, and while it is not required, it is frequently utilised.

If the Initiative does not include all of the required components, it does not necessarily indicate that it is not going to be reviewed, instead, the Secretary of the Court sets a further date for addressing any inadequacies, and if they are not fixed, it will be assumed

Paragraph 1 of the Rules of Procedure, the Constitutional Court may initiate a proceeding for reviewing the constitutionality of a law, that is, the constitutionality and legality of a regulation or other general act, on its own.

[3] By the month of October.

[4] Article 15 Paragraph 1 of the Rules of Procedure.

[5] In accordance with Paragraph 2 of Article 15 of the Rules of Procedure, the Initiative for initiating a proceeding to review the legality and constitutionality of a law or the legality and constitutionality of a regulation or other general act contains the following: designation of the law, the regulation or general act, that is, the parts of the provisions that are contested, the grounds for contesting, the provisions of the Constitution, that is, the law violated by that act, and the name, that is, the title and the location of the petitioner of the Initiative.

that the Initiative was not submitted.

The Court intervenes to review the constitutionality and legality upon the stated in the Initiative, and as it is not only constrained by the allegations in the Initiative and the provisions that are identified as violating constitutionality and legality; rather, if it decides to review a provision, it may also decide to review other provisions or the act as a whole.

The petitioner also has the status of a participant in the proceedings, which grants them additional procedural rights, including the right to view the case files, the right to participate or take part in the preparatory sessions and public hearings, the right to have the Decision sent by the court, etc.

In the subject of resolving a conflict of competences, citizens also have the option of addressing the Constitutional Court to settle a conflict of competences if they are unable to exercise their rights due to the acceptance or rejection of the competence of particular authorities.[6]

The Proposal for resolving a conflict of competences is the format in which this proceeding is initiated, the components of which are likewise determined by the Rules of Procedure.[7] The Proposal therefore includes the subject of contention for the reason of which the conflict originated, the authorities involved in the conflict and the designation of the final, i.e. legally binding acts by which the authorities accepted or rejected their competence to decide on a particular subject. With a Decision resolving the conflict of competences, the Constitutional Court determines the competent authority to decide on the subject.[8]

The citizen is the sole subject authorised to initiate the third proceeding covered in this presentation. It concerns the proceeding for the protection of freedoms and rights within Article 110, Indent 3 of the Constitution, under which only certain constitutional freedoms and rights are protected, but not all, as in the context of a traditional constitutional complaint, or an appeal.

In contrast to the Initiatives, the number of such petitions submitted is substantially

[6] Article 62 of the Rules of Procedure.

[7] Article 64.

[8] Article 65 of the Rules of Procedure.

fewer, as is their percentage of all cases to the Court. As a case in point, the situation by year is as follows: 2023 (4%), 2022 (5.1%), 2021 (8.1%), 2020 (5.5%), 2019 (11.37%), 2018 (8%), 2017 (3%) and 2016 (4.42%).

It is apparent that there are more Initiatives submitted in comparison to the petitions for the protection of freedoms and rights from Article 110 Indent 3 of the Constitution.

It has to be subject to reform by establishing a constitutional appeal that would protect all fundamental freedoms and rights, something that I continually promote and urge. However, given that it takes a 2/3 majority of Members of the Parliament to amend the Constitution, it is unlikely that this will happen in the foreseeable future.

On the other hand, if the specific situation continues to remain unchanged, it would still be essential to interfere in the part of the current Rules of Procedure that refers to the proceedings for petitions for the protection of freedoms and rights.

Firstly, it is essential to widen the range of authorised petitioners for the protection of legal entities, integrating citizens' associations as one of the forms of structures through which they exercise their rights.

The next step is to establish a single criterion as a procedural presumption for submitting a petition, and when all conventional legal options have been exhausted, it will be possible to petition for constitutional-judicial protection within an explicitly specified time frame. With the current situation, protection may be requested based on two grounds: violation by effective or final act and the second on violation by action (of a holder of public authority).

Different treatment is an effect of this arrangement. In the first case, citizens are required to exhaust all available regular legal options, whilst in the second this is not the case, so the Constitutional Court is given the role as a first-instance authority that should determine the factual situation. Additionally, given the second basis, it is now conceivable to hold simultaneous legal proceedings with the Constitutional Court and regular courts.

One of the most significant matters, in my opinion, is the legal framework governing the connection between the Decision of the Court determining the violation and the act that violated a fundamental right or freedom. Particularly in the context of effective judgements by the courts, which should not and cannot be appealed or annulled; instead, only a violation should be determined.

Thank you for your attention.

Hasan Tahsin Gökcan, Vice-President
Constitutional Court
Republic of Türkiye

Mr. Gökcan graduated in Law from the Faculty of Law, Ankara University, in 1987. He has a Master's Degree in Public Law from the Gazi University.

Reporting Judge at the Court of Cassation, 1998.
In 2011 he became Judge at the Court of Cassation.

In 2014, Mr. Gökcan became a Justice at the Constitutional Court. Since 2019 he has been Vice-President of the Constitutional Court (elected twice by the Plenary of the Court) and Head of it's First Section.


HASAN TAHSIN GÖKCAN
Vice President
Constitutional Court of the Republic of Türki

Ensuring Citizens' Access to Constitutional Justice: The Case of Türkiye

Honourable colleagues, I extend my warm greetings to all of you with utmost respect.

First and foremost, I would like to express my delight at being here for the Balkan Constitutional Courts Forum and having the privilege to join such esteemed participants.

I would also like to convey my gratitude to Ms. Pavlina PANOVA, President of the Bulgarian Constitutional Court, for graciously hosting this event.

Distinguished Participants,

The primary role of constitutional courts is to safeguard and pave the way for the advancement of pluralistic democratic political and legal institutions, including fundamental rights, free electoral systems, and party regimes, through constitutional review. In this capacity, constitutional courts not only act as guardians of fundamental rights, but also make a significant contribution to upholding the rule of law and political pluralism, which are the cornerstones of a pluralistic democracy.

Article 2 of our Constitution defines the Republic of Türkiye as a *"democratic state governed by the rule of law"*. Likewise, the preamble of the Constitution describes the political system as a *"liberal democracy"*. In the decisions and judgments of the Turkish Constitutional Court, the democratic state principle enshrined in the Constitution is interpreted as a *pluralistic democracy*.[1]

[1] See the Court's decision no. E.2017/162, K.2018/100, 17 October 2018, § 34, 116. In addition, the Constitutional Court has emphasised in numerous judgments concerning fundamental rights that the democratic system envisaged by the Constitution is a pluralistic democracy. (See, for example, ***Çağrı Yılmaz***, no. 2017/34463, 13 February 2020, § 31. For considerations in the same vein, see ***Bekir Coşkun*** [Plenary], no. 2014/12151, 4 June 2015, §§ 33-35; ***Mehmet Ali Aydın*** [Plenary], no. 2013/9343, 4 June 2015, §§ 42, 43; ***Tansel Çölaşan***, no. 2014/6128, 7 July

The Turkish Constitutional Court, established in 1962, is the fourth constitutional court founded in Europe after the World War II.

Within its jurisdiction of constitutional review, the Constitutional Court is responsible for reviewing laws, the internal regulations of the legislative body, and presidential decrees in terms of their form and substance. Constitutional amendments are subject only to formal review. The authority to apply for constitutional review is granted to the two political party groups within the legislative body with the highest number of members, members constituting at least one-fifth of the total membership, and the President of the Republic. This method is referred to as "action for annulment" (or abstract review).

Furthermore, courts at all levels of the judiciary may *ex officio* request constitutional review in disputes relating to laws or presidential decrees if they consider that the provisions are in violation of the Constitution. This procedure is referred to as the "contention of unconstitutionality" or "concrete review". Additionally, courts may request constitutional review at the request of one of the parties involved in a particular case before them.

Citizens themselves do not have the direct right to request a constitutionality review of norms. However, during court proceedings, one of the parties may argue that the applicable law or presidential decree is unconstitutional. If the court considers such an argument to be substantial, it will request the Constitutional Court to annul the provision. In practice, a significant number of cases related to constitutional review are referred to the Constitutional Court in this manner.2 Consequently, individuals have an indirect opportunity to participate in constitutionality review within this framework.

In Türkiye, individuals gained the opportunity to engage in constitutional review directly through individual applications in 2012 following an amendment to the Code on Establishment and Rules of Procedures of the Constitutional Court.

Individual applications may be submitted after all available legal remedies have been exhausted with respect to the act or action of the public authority that has caused or

2015, §§ 35-38).

[2] For instance, as of 16 October 2023, out of the 158 cases opened for constitutionality review in 2023, 32 were initiated by authorities with the power to bring annulment actions, and 126 were referred to the Constitutional Court by lower courts. A significant proportion of the cases initiated by lower courts are based on the claims of the parties involved.

failed to remedy the grievance. In principle, human rights violations caused by third parties do not fall within the scope of individual applications. Nevertheless, where a third party causes grievances under the positive obligations of the State, there must be a remedy to seek justice. Where such a remedy exists, the individual must be able to present their claims, evidence and arguments, and there must also be an authority in place that may make decisions to address the individual's grievances. If the grievance caused by a third party remains unaddressed through legal remedies or litigation, an individual application can be submitted concerning the relevant decision.

The avenue of individual application is open to all, including legal entities, irrespective of their citizenship status. However, public entities are not entitled to submit individual applications. Furthermore, individual applications cannot be made for all fundamental rights enshrined in the Constitution. The right to lodge individual application is limited to those fundamental rights guaranteed by the Constitution and safeguarded by the European Convention on Human Rights. Although this situation has been criticised in legal doctrine, it is important to emphasise that even in its current form, the scope of individual applications is quite extensive. In fact, the number of individual applications to the Constitutional Court in Türkiye has exceeded one hundred thousand per year in the past two years.

Individual applications do not include the possibility of a "public action" (*actio popularis*). Individuals cannot make applications alleging that the rights of others or of society as a whole have been violated or are likely to be violated. The right of individual application is granted to those whose current rights have been violated.

For instance, in Türkiye, real estate records, such as land title records, are maintained by the Land Registry and Cadastre Administration. If someone claims to have lost their property rights due to an incorrect procedure recorded in the land title records of their land, they have the right to file a lawsuit to challenge this. If they have not been able to recover their property through the legal process, or if the court has not awarded them adequate compensation for their property, they can file an individual application after exhausting legal remedies and after the judgment has become final.

According to our Constitution, the State has both positive and negative obligations with regard to fundamental rights. Under the negative obligation, those exercising state authority are obliged not to interfere unjustifiably with the fundamental rights of individuals. The positive obligation of the State includes creating the necessary conditions for the effective exercise of fundamental rights.

In other words, the State must refrain from arbitrary interference with the exercise of rights and freedoms. In addition, the State should take necessary the measures, including protective measures, to ensure the effective exercise of these rights and freedoms, in particular to protect individuals against interference by others.3 These measures include the establishment of the administrative and legal framework necessary for the exercise of fundamental rights, the recognition of access to legal remedies and the provision of safeguards for fair trials in relevant cases. Furthermore, these measures require the adoption of measures such as protective measures against unforeseeable, real-life risks to protect the right to life.

Individuals may suffer harm due to the State's failure to fulfil either its negative or positive obligations. For instance, an allegation that a law enforcement officer caused the death of an individual by using a firearm without the conditions for the use of force being met falls within the scope of negative obligations and pertains to the right to life in the context of an individual application.

To provide another example, if an employee claims that his trade union rights have not been respected and his grievance remains unaddressed even after pursuing the matter through the labour court, he can file an individual application after the court's decision to dismiss the case has become final. In such an application, he can directly allege a violation of his trade union rights. He can also argue that his right to a fair trial has been violated because, among other procedural irregularities, he was not given the opportunity to substantiate his claims during the judicial process or to discuss claims that could affect the outcome.

In individual applications, the Constitutional Court's examination is not primarily focused on questioning the underlying reason for the dispute or the verdict in the main case, or on determining the final outcome. Instead, the Constitutional Court's examination focuses on whether constitutional rights have been violated in connection with the dispute. For instance, if a criminal case or a compensation case relating to a death caused by intent or negligence did not undergo a thorough or diligent investigation necessary to protect the right to life, the Constitutional Court would conclude that the right to life had been violated. In such cases, a retrial order is issued to redress the violation. Decisions of the Constitutional Court are binding on all administrative authorities, judicial bodies, and courts. Following a judgment finding a violation, the relevant court conducts a retrial to address the issues that led to the violation and issues a new verdict.

[3] See the Court's decision no. E.2017/21, K.2020/77, 24 December 2020, § 45.

It is clear that individual applications serve to protect fundamental rights safeguarded by the Constitution. Therefore, this form of review, which requires the interpretation of constitutional provisions, constitutes a form of constitutional review. Furthermore, this form of constitutional review helps eliminate interpretations and applications that are contrary to the Constitution. In this respect, constitutional review serves the principle of the rule of law. Even though it is limited to matters concerning themselves, individuals contribute to the realisation of the rule of law through individual applications.

On the other hand, individual applications also examine matters concerning freedom of expression, the right of assembly and demonstration, freedom of religion and belief, and the prohibition of discrimination. These rights and freedoms are closely linked to the nature of a competitive multi-party political system and a pluralistic democratic regime.4 According to the Constitutional Court, for an interference with fundamental rights and freedoms to be considered *acceptable* in accordance with the requirements of a democratic society, it must fulfil a compelling social need and be proportionate.5 It is well known that constitutional review plays a crucial role in the establishment and maintenance of a pluralistic democratic system. In this sense, it should also be noted that citizens, through individual applications, contribute to pluralistic democracy by bringing their rights related to the democratic regime under constitutional review.

In Türkiye, from 23 September 2012 to 16 October 2023, a total of 557,042 applications were submitted. Out of these, 427,259 cases have been concluded, while approximately 129,783 cases remain pending.6

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[4] In some of the cases where the Constitutional Court examined the right of assembly and demonstration, it emphasised that this right ensures the emergence, safeguarding, and dissemination of diverse ideas, which are crucial for the advancement of pluralistic democracies; see ***Ferhat Üstündağ***, no. 2014/15428, 17 July 2018, § 40; ***Dilan Ögüz Canan*** [Plenary], no. 2014/20411, 30 November 2017, § 36.

[5] See ***Tayfun Cengiz***, no. 2013/8463, 18 September 2014, § 56; ***Tansel Çölaşan***, no. 2014/6128, 7 July 2015, § 51; ***Dilan Ögüz Canan*** § 33, 56; ***Ferhat Üstündağ,*** § 48.

[6] As of 16 October 2023, the number of applications received in 2023 is 86,104.

The Distribution of Judgments Finding Violations According to Specific Rights and Freedoms:

- Right to a fair trial – 3,604 - 23.9%
- Freedom of expression – 3,520 - 23.3%
- Right to property – 3.508 - 23.3%
- Right to hold meetings and demonstration marches – 1,391 - 9.2%
- Right to respect for private and family life – 1,166 - 7.7%

During the specific period, there have been a total of 15,085 judgments finding violations, resulting in a violation rate of approximately 3.5%.7

The significant number of individual applications in Türkiye over the past 11 years demonstrates a high level of citizen engagement in constitutional review. Citizens also hold indirect influence in constitutionality review. Hence, it can be stated that citizens play a significant role in upholding the principles of the rule of law and the democratic state by actively participating in constitutional review.

Distinguished participants, in this concise presentation, I have aimed to provide an overview of the Turkish experience related to our topic.

I wish to express my satisfaction at having the opportunity to address you and extend my warm regards.

- Right to personal liberty and security – 293 - 1.9%
- Right to life – 223 – 1.5%

7 It is worth highlighting that the calculation of violation rate does not include decisions related to the right to a trial within a reasonable time and the judgments finding violations (56,443) related to this specific right.


VALERIJA
Presid
Constitutional Court of
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Valerija Galić, President
Constitutional Court
Bosnia and Herzegovina

President Galić has graduated from the Faculty of Law at the University of Sarajevo. Having passed the Bar exam, she worked as a law clerk, then advisor and assistant secretary for legislation within the Executive Council of the R/FBiH Government until 1996. In 1996, she was appointed the Secretary to the Office for Legislation of the FBiH Government. She was a member of several working commissions tasked with drafting systemic laws in various fields and participated in several international program sheld in the USA and France (Strasbourg).

Valerija Galić is a member of the committees of Bar Examiners at the level of BiH and is an examiner in Administrative and Labour Law. She took the office of the President of the Constitutional Court for the second term in August 2022.

The experience of countries as to allowing citizens to access constitutional justice

Honourable President of the Constitutional Court of the Republic of Bulgaria,

Honourable Judges of the Constitutional Court of the Republic of Bulgaria,

Honourable Presidents and Judges,

I am pleased to extend my warmest greetings to everyone attending the Forum.

I would like first to thank the President of the Constitutional Court of the Republic of Bulgaria for inviting the Constitutional Court of Bosnia and Herzegovina to take part in this very important Forum.

In accordance with the topic of the Forum, I would like briefly to inform you about the competences of the Constitutional Court of BiH under the Constitution of Bosnia and Herzegovina.

According to the Constitution of BiH (Article VI(3)(a) and VI(3)(b)), the Constitutional Court has, inter alia, abstract and appellate jurisdiction.

In accordance with the Constitution of Bosnia and Herzegovina, citizens are not entitled to file requests for review of constitutionality under Article VI(3)(a), since the Constitution prescribes exhaustively the applicants authorized for filing a request for review of constitutionality of laws. Citizens of BiH are not among them. These are the so-called „U“ cases, or the cases falling under the abstract jurisdiction of the Constitutional Court of BiH.

It is important to point out that the Constitutional Court also has jurisdiction under Article VI(3)(c) of the Constitution of BiH. According to this Article, the Constitutional Court has jurisdiction over issues referred by any court in BiH concerning whether a law, on whose validity its decision depends, is compatible with the Constitution, the European Convention and other international instruments.

On the other hand, the Constitutional Court of BiH has appellate jurisdiction in terms of Article VI(3)(b) of the Constitution of BiH. Appellate jurisdiction is one of the most important and most frequently exercised jurisdictions of the Constitutional Court. It covers the protection of the constitutional rights and freedoms of individuals, including the rights and freedoms set forth in the European Convention and the Protocols thereto.

Filing an appeal with the Constitutional Court is, in fact, the last opportunity to redress human rights violations within the legal system of BiH, at the national level. This is, in fact, the ultimate purpose of all mechanisms for the protection of human rights. Exercising the mentioned jurisdiction, the Constitutional Court becomes the strongest national mechanism for the protection of human rights and fundamental freedoms. It should be noted that the Constitutional Court receives about 5,000 appeals a year, while the number of U cases is significantly lower, about 20 cases. The aforementioned shows the level of trust and confidence the citizens of BiH have in the Constitutional Court of BiH and its work.

Strengthened protection of citizens' human rights is additionally ensured by Article 18.2 of the Rules of the Constitutional Court of BiH. This Article provides for examination of the appeal, exceptionally, if it refers to grave violations of the rights and fundamental freedoms safeguarded by the Constitution or by the international documents applied in BiH. In such cases, the Constitutional Court does not require the appellants to exhaust legal remedies beforehand. The above means that the level of human rights protection in Bosnia and Herzegovina has been raised to a higher level.

In addition, I would like to point out that the Constitutional Court has developed abundant case law, as well as that it applies the case law of the European Court of Human Rights in its daily work. In this connection, we emphasize that the European Court of Human Rights has determined in its case law that an appeal filed with the Constitutional Court is an effective legal remedy that has to be exhausted before filing an application with the European Court.

Furthermore, I would like to point out that the Constitution of BiH stipulates that the rights and freedoms set forth in the European Convention and its Protocols shall apply directly in Bosnia and Herzegovina and shall have priority over all other laws. This means that all competent authorities in BiH are obligated to apply the European Convention and its standards.

In addition, I would like briefly to introduce you to the composition of the Constitutional Court of BiH. It has nine (9) members, six (6) of which are national and three (3) international members/judges. In addition, six (6) national members are selected by the competent legislative bodies of the Entities (FBiH and RS), and international members are selected by the President of the European Court of Human Rights.

Currently, the situation in the Constitutional Court is such that it has only seven judges for almost a year. Although the Constitutional Court, in accordance with its Rules and in a timely fashion, requested the competent legislative bodies of the Entities to select new judges, this has not yet happened. In January 2024, the Constitutional Court will be without another judge, which will further complicate the operation of the Court. Namely, the largest number of cases falling under the appellate jurisdiction of the Constitutional Court has been decided by the Grand Chamber (six (6) national judges). However, the work of the Grand Chamber is presently prevented, so the Constitutional Court has been deciding all cases at plenary sessions for a long time. It is attended by all judges, including our international colleagues. This requires extensive technical preparations in terms of translating draft decisions and documents related to cases. The Constitutional Court cannot therefore examine and decide such a large number of cases at plenary sessions, as it could at the sessions of the Grand Chamber, attended only by national judges.

In view of the situation in which the Constitutional Court is not in full composition, we have not been able to make a final statement regarding our active participation in the Forum of Balkan Constitutional Courts. For this reason, we are grateful that you have accepted the Constitutional Court of BiH to attend the Forum as an observer. Namely, we have to wait for all judges of the Constitutional Court to decide on the active future participation of the Constitutional Court of BiH, which is currently not the case. This means that we will have to wait for the final position on the participation of the Constitutional Court of BiH at this Forum until the Constitutional Court of BiH is in full composition. Therefore, I thank you once again for granting the observer status to the Constitutional Court of BiH until our final decision, which we will certainly inform you about.

In addition to the aforementioned, I would like to point out that the Constitutional Court of BiH shares the Forum's values and objectives in every respect, as you specified in your Memorandum, especially in the part of establishing and protecting the rule of law in the Balkans region. It is important to emphasise that a high level of rule of law also implies a high level of democracy and human rights protection. This is the objective of all of us, especially of Bosnia and Herzegovina, striving towards the European Union.

Once again, I would like to thank all of you and wish you every success in the Forum.

Dr. Snježana Bagić, Deputy President
Constitutional Court
Republic of Croatia

Snježana Bagić has graduated from the Faculty of Law of the University of Zagreb, where she also gained her LL.D. in European Law.

In 1997 she became Deputy Minister of Justice and Head of the Office for Cooperation with the International Criminal Tribunal for the former Yugoslavia and the International Court of Justice.

From 2000 to 2003 she was head of the Office for Legislation of the Croatian Government. She was elected judge of the Zagreb County Court in 2003, and in 2004 she became State Secretary of the Ministry of Justice, which she remained until her election as a judge of the Constitutional Court of the Republic of Croatia in 2007, to which she was re-elected in 2016.


ACCESS
SNJEŽANA BAGIĆ
Vice President

Citizens' Access to Constitutional Justice in Croatia

Madam President,

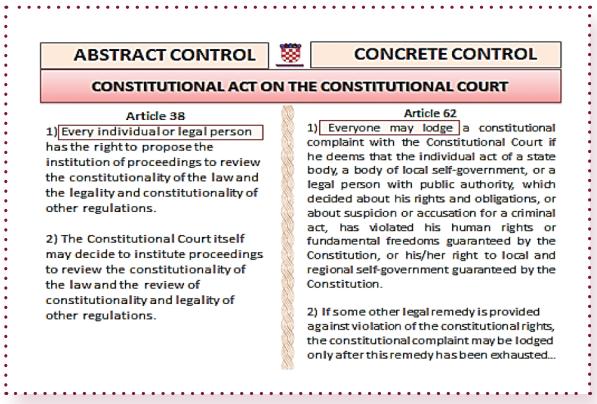
Dear colleagues, ladies and gentlemen,

On behalf of the Croatian Constitutional Court, my colleague, Judge Ingrid Antičević Marinović, and on my own behalf, let me thank our hosts for organising this event and inviting us to contribute with our presentation to what I believe, is a very important conference. It is a special occasion for me to be here and to participate for the second time in the conference organised by the Bulgarian Constitutional Court. The first one I attended was dedicated to the 25th anniversary of the Bulgarian Constitutional Court.

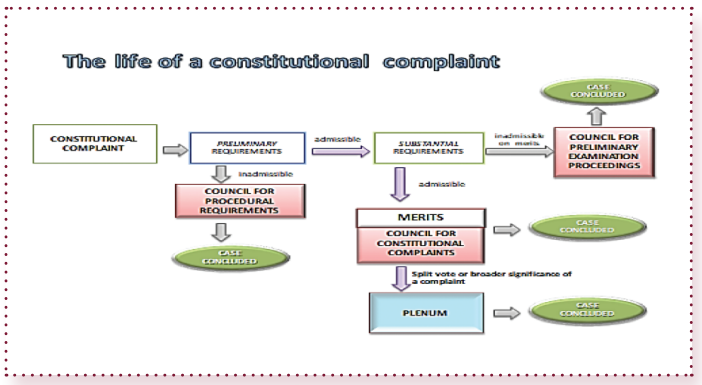
But back to the topic. As you may know, the Croatian Constitutional Court has been authorised to decide on constitutional complaints from the very beginning, that is, since 1990.

The access to our Court is really extremely broad. So, I would not necessarily recommend anyone to follow our example. The proceedings can be initiated free of charge, no legal representation is required and the applicant does not have to prove any legal interest.

This broad approach is based on the Constitutional Act on the Constitutional Court. When it comes to the abstract control, Article 38 of the said Act stipulates that every individual or legal person has the right to propose institution of proceedings to review the constitutionality of law and the constitutionality and legality of other regulations. Speaking of a concrete control through constitutional complaints, Article 62 stipulates that everyone may lodge a constitutional complaint with the Constitutional Court if they consider that their constitutional rights have been violated by the individual act of a state body, a body of local self-government, or a legal person with public authority, which decided about their rights and obligations, or about suspicion or accusation for a criminal act.

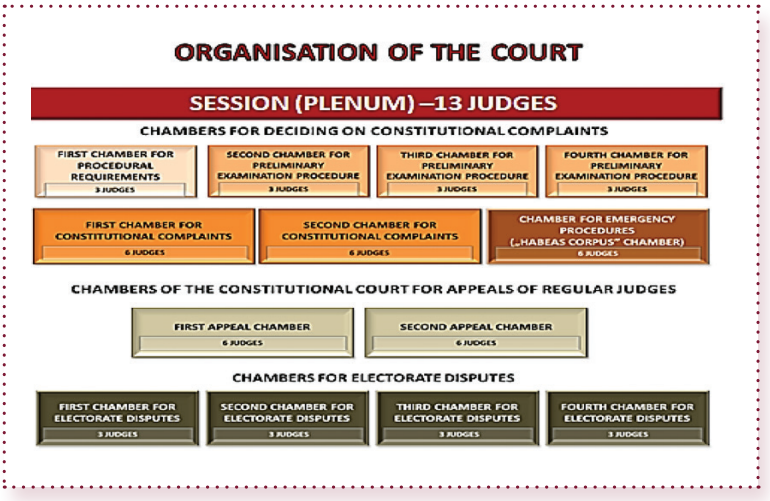


Of course, this does not mean that everyone does not have to fulfil some procedural and substantial requirements. Accordingly, if they fail to meet those procedural requirements, their constitutional complaint will be found inadmissible by a council of three judges.



The same could happen if the procedural, but not the substantive requirements are fulfilled because the constitutional complaint does not contain valid constitutional grounds or reasons. Such constitutional complaints will be found inadmissible also by the council of three judges.

However, if the constitutional complaint provides valid grounds for finding that the applicant's constitutional rights might have been violated, those constitutional complaints will be examined on the merits and decided by a council of six judges.

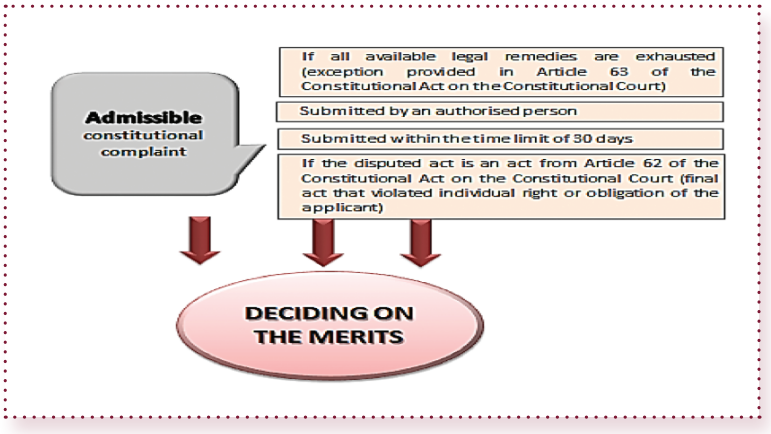


The organisation of the Court is rather complex, as we sit in several different chambers. Though, I would like to draw your attention only to the first row of these chambers which can be seen on this slide.

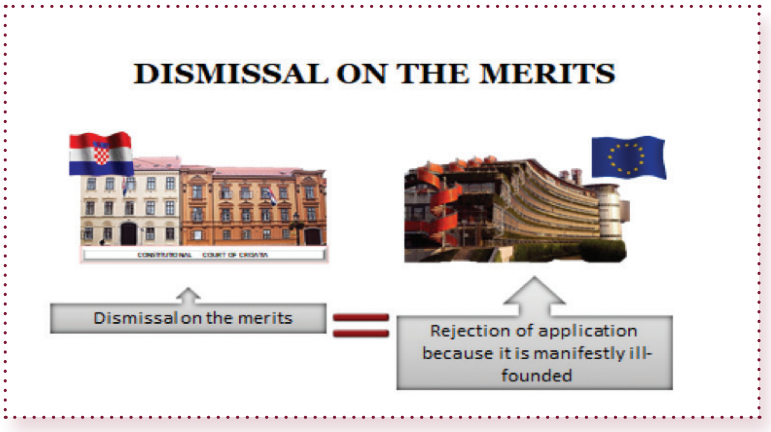
Why? Because we had almost 10,000 pending cases in 2009. We were overburdened, to say the least, and knew that something had to be done. So what we did do? We restructured our internal organisation, our work, and in addition to this chamber with three judges who decide on the procedural requirements, we set up the three new chambers that are responsible for deciding on the merits of constitutional complaints which have no real constitutional significance, so to speak, and which we call chambers for preliminary examination procedure.

So, if a constitutional complaint fulfils these procedural requirements, that is, if it is submitted by an authorised person within the 30-day time limit, if the applicant has previously exhausted all available legal remedies, ordinary or extraordinary, which, as I have heard today, is the case in the legal systems of all our countries that have the institute of constitutional complaint, then it is decided on the merits.

If the nature of the impugned enactment also fulfils these requirements, namely if it is a final act in which individual rights and freedoms have been decided, then this enactment will be decided on the merits.



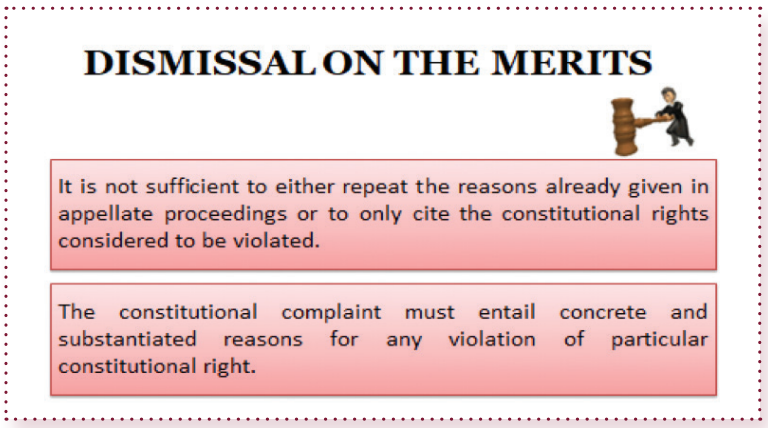
But, as I have already mentioned, it could still be dismissed on the merits. And why? Quite simply, because the constitutional complaint is manifestly ill founded, to use the words of the European Court of Human Rights, whose decision-making process we have followed to a certain extent in restructuring our work.



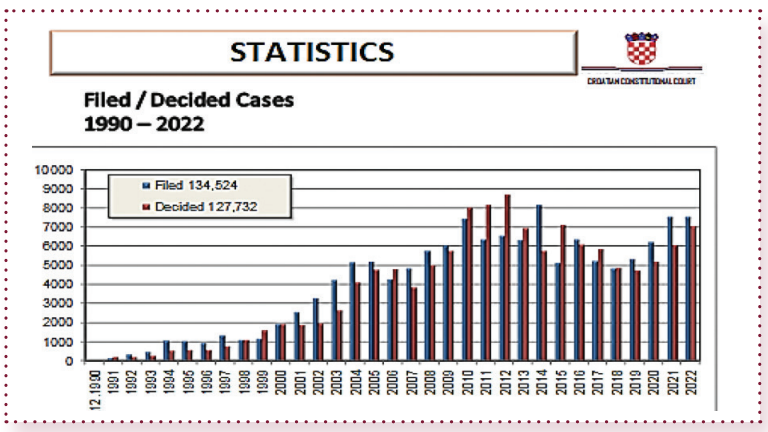
I wish to emphasise that the main reason for restructuring our work was not the number of pending cases we were confronted with, but also because we were firmly convinced that a proper selection of cases would also contribute to the quality of our work. So, these filters enabled us to devote our time and concentration to the constitutional complaints that really needed to be examined and decided by the Constitutional Court. This meant that we were able to fully fulfil our task and our competence.

When it comes to the dismissal on merits, these constitutional complaints mostly do not raise prima facie substantial issues, and the applicants do not show on the first glance that the trial court arbitrarily decided their cases, i.e. that it had failed to respect the constitutional provisions on human rights and fundamental freedoms in its actions or in the judgment.

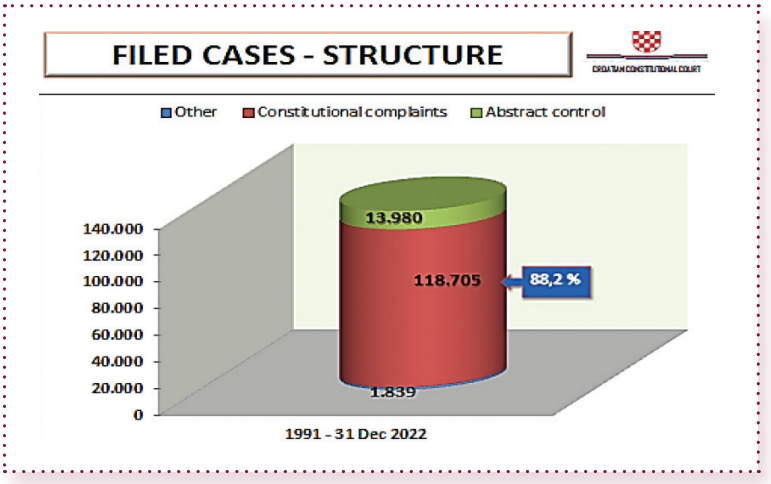
In fact, and I believe this is the case with most of constitutional courts, the applicants in such constitutional complaints merely repeat the reasons already raised in the appellate proceedings. As I have already pointed out, such constitutional complaints are dismissed on the merits.



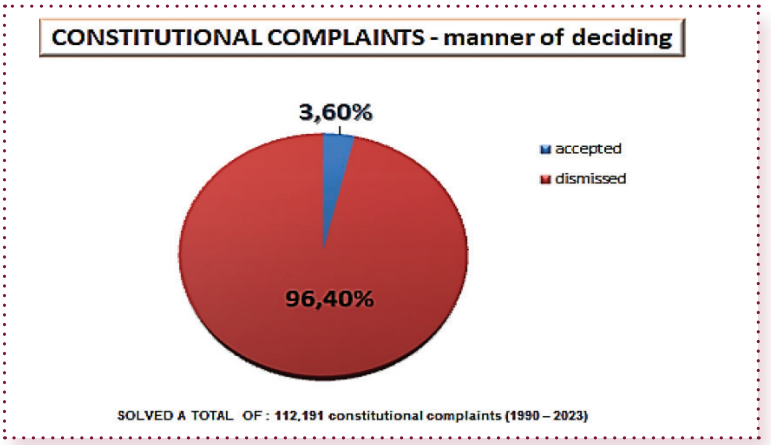
Let me say a few words about our statistics in general. From 1990 to 2020, we filed more than 130,000 cases, and decided about 128,000 cases.



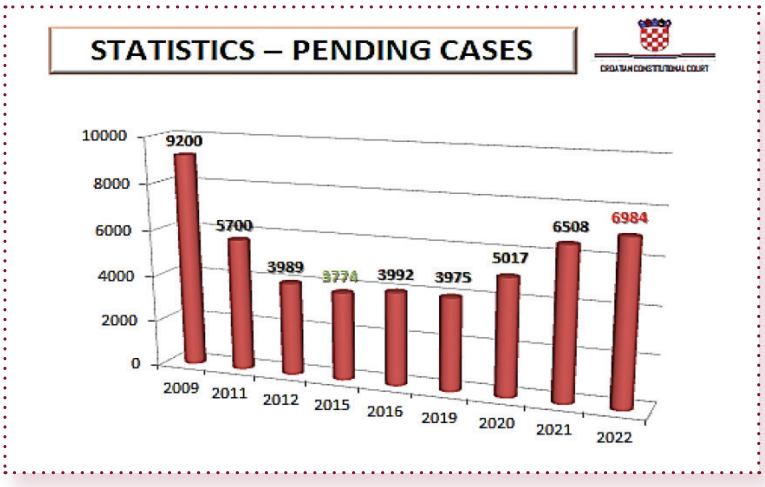
As for the structure of the cases - the vast majority are constitutional complaints, around 88%. Of course, this varies from year to year, but it is always around 90%.



As for the manner of deciding, we accept roughly between 3 and 4%. I think this is a European percentage.



But, as I have mentioned before, we have done this extensive internal reorganisation in 2009, and we managed for a while to reduce the backlog and cope with the ever-increasing influx of new cases. But by 2022 we had reached almost 7,000 pending cases and were once again faced with the question of what we could do to solve the problem.



Of course, we could, and perhaps we should, once again try to restructure our internal organisation and the like. But above all, we would more than welcome the revision of our relevant law, the Constitutional Act on the Constitutional Court. The difficult thing is that this act has to be passed by a two-thirds majority vote of MPs, which is also a major challenge. And needless to say, it often also raises some political issues and the like.

Dear colleagues, we are all judges who belong to the same European community of the highest constitutional courts, and events such as this conference that has brought us together in Sofia, open up our perspectives and inspire us to find a way to overcome obstacles to our efficient performance in providing the citizens with effective protection of human rights and freedoms.

Allow me to end my presentation with a question we are often asked "OK, tell me how to write a constitutional complaint in order to succeed?". Of course, we all know that there is no real recipe for this. Because, the most important question is not how to write a good constitutional complaint, but the question of all questions is in which case you should write it. Because, if you do not have a case, you will not succeed.

Dear colleagues,

Thank you very much for your attention.

Elena-Simina Tănăsescu, Judge
Constitutional Court of Romania

Elena-Simina Tănăsescu was appointed as a judge at the Constitutional Court by the President of Romania in 2019 for a nine-year term of office.

She began her legal education with a Bachelor's degree in legal sciences from the Faculty of Law, University of Bucharest, Romania in 1991. Later acquired a PhD degree in public law from the Faculty of Law and Political Sciences, University of Aix-Marseille III, France in 1997. Afterwards, she achieved habilitation to conduct PhDs, University of Paris I Pantheon-Sorbonne, France in 2015.

Elena-Simina Tănăsescu began her professional career as a judge in 1991 at the Sector 1 Court in Bucharest and in 1993 as a lecturer and PhD supervisor since 2006 at the Faculty of Law, University of Bucharest, Romania. She is author or co-author of numerous books in the field of public law, as well as author of 50 studies, articles and reviews published in collective volumes or specialized journals in the country and abroad.


ORUM
SESCU
of Romania

Message of the President of the Constitutional Court of Romania,
Mr. Marian ENACHE,
addressed at the launching conference of the
Forum of Constitutional Courts of the Balkan Region,
27 October 2023, Bulgaria, Sofia,
by Judge Elena-Simina TĂNĂSESCU, as observer

Experience of the Constitutional Court of Romania in ensuring citizens' access to constitutional justice

Historic perspective

Judicial review in Romania started as early as 1911 – through the ruling of the Tribunal of the commune of Bucharest in the now famous case of the "tramways of Bucharest"[1] – and it has been performed as a diffuse, incidental and repressive control of constitutionality of laws, but with the advantage that it allowed for the direct access of citizens to the constitutional justice. Indeed, back then the ordinary judge was also the constitutional judge, the access of the citizens to the constitutional justice was not filtered, although the court rulings had legal effects only *inter partes litigantes*. However, since those times, judicial review evolved a lot, both worldwide and in Romania, and nowadays the constitutionality of laws is verified within a different setting.

Contemporary control of constitutionality of laws

Established in 1991 and based on the European model of judicial review, the Constitutional Court of Romania gathered a lot of experience in the more than three decades of

[1] Gaston Jèze, « Pouvoir et devoir des tribunaux en général et des tribunaux roumains en particulier de vérifier la constitutionnalité des lois à l'occasion des procès portés devant eux », ***Revue de Droit Public et de science politique en France et à l'étranger***, tome XIX (1912), p. 140

existence. In 2003, a revision of the Romanian Fundamental Law strengthened the role of the Constitutional Court as guarantor of the supremacy of the Constitution, giving it new powers.

Thus, the Constitutional Court:
– decides on the constitutionality of laws, prior to their promulgation, and, *ex officio*, on initiatives to revise the Constitution;
– decides on the constitutionality of international treaties or other agreements;
– decides on the constitutionality of Parliament's standing orders;
– decides on preliminary questions of constitutionality regarding laws and delegated legislation, raised before courts of law or commercial arbitration or directly by the Ombudsman;
– resolves legal conflicts of constitutional nature between public authorities;
– ensures compliance with the procedure for the election of the President of Romania and confirm the results of the suffrage;
– takes note of the existence of circumstances justifying the interim in the office of President of Romania and communicates them to Parliament and Government;
– gives an advisory opinion on the proposal to suspend the President of Romania;
– ensures compliance with the procedure for the organization and conduct of the referendum and confirm its results;
– verifies that the conditions for citizens' exercise of legislative initiative are met;
– decides on appeals concerning the constitutionality of a political party;

In numerous decisions, the Court has rightly specified its role as a 'negative legislator', pointing out that it cannot replace Parliament for regulatory omissions or in order to amend a legal provision challenged before it[2].

In relation to the revision of the Constitution, the Constitutional Court shall decide ex officio both on the initiatives to revise the Constitution and on the revision law after its adoption by the Parliament, but not after the referendum validating the revision.

The Romanian constitution regulates two types of constitutionality review, a priori and a posteriori, a beneficial option if we take into account the fact that "in the case of a priori control, the judge uses the spectacles of smoke, but in the case of a posteriori he

[2] Decision No 997/2008, published in the Official Gazette of Romania, Part I, No 774 of 18 November 2008; Decision No 448/2013, published in the Official Gazette of Romania, Part I, No 5 of 7 January 2014.

uses the microscope" [3] – that is to say that prior review is general and abstract, whereas the posterior review is concrete and more thorough.

A posteriori control of the constitutionality of laws

However, of all the powers of the Constitutional Court the most relevant one for the topic of the today discussion – namely the access of citizens to the constitutional justice – remains the resolution of preliminary questions of constitutionality. As it is well-known, the specificity of the a *posteriori* control consists of the advantage that it allows the review of a law from the point of view of its potential unconstitutionality after its adoption, that is after its enforcement, when constitutionality issues appear more evidently. This means that citizens who may observe potential infringements to their fundamental rights address such issues to the Constitutional Court. Nevertheless, the access of citizens to the constitutional justice is not direct, as it may be filtered by courts of law or of commercial arbitration, or indeed, by the Ombudsman, the only public authorities which may refer preliminary questions of constitutionality to the Constitutional Court. But this indirect access allows plaintiffs to present their claims directly in front of constitutional judges and may end-up with an invalidation of the concerned law that bears *erga omnes* legal effects.

While exercising this specific power, the Court shall dismiss as inadmissible any objection of unconstitutionality aimed solely at the interpretation or application of a law or ordinance, since, according to the Constitution, this task falls exclusively within the jurisdiction of ordinary courts. Admittedly, this does not mean that, in the exercise of its own jurisdiction, the Court does not interpret the legal norms on which it is ruling, given that, in order to determine whether or not a legal provision is constitutional, the exact meaning of that legal provision must be determined and compared with the provisions of the Fundamental Law. Moreover, some of the decisions of the Constitutional Court – the interpretative ones – find legal provisions to be unconstitutional only to the extent that they may present a certain meaning, which is found contrary to the Constitution, while other meanings may be constitutional, and this necessarily implies a process of interpretation of the examined rules[4].

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[3] I. Muraru, M. Constantinescu, ***Constitutional Court of Romania***, Albatros Publishing House, Bucharest, 1997, p. 92.

[4] Decision No 660/2007, published in the Official Gazette of Romania, Part I, No 525 of 2 August 2007; Decision No 818/2008, published in the Official Gazette of Romania, Part I, No 537 of 16 July 2008.

By exercising the incidental and concrete control which is the preliminary question of constitutionality, the Constitutional Court performs a function of protector of fundamental rights and freedoms of citizens in addition to its role of guarantor of the supremacy of the Constitution. Therefore, the preliminary question of constitutionality is a constitutional guarantee of the citizen for the protection of his rights and freedoms in a legal dispute.

Statistics

Statistics[5] are always useful to illustrate this feature. Thus, since its creation and up until October 2023, the Constitutional Court has dealt with a total of 58.559 referrals, which resulted in a total of 23.132 decisions and rulings, 922 of which were admission decisions and 3 were (negative) advisory opinions for the proposal to suspend the President of Romania.

Referring only to the main task of the Court, out of the total number of decisions and rulings:
– 665 referrals were made in the framework of the constitutional review of laws before promulgation (a priori review),
– 11 examinations related to initiatives to revise the Constitution and other 7 referrals related to the control of the fulfilment of the conditions for the exercise of the legislative initiative by the citizens,
– 58 referrals related to the constitutional review of Parliament's regulations,
– 57.141 preliminary questions of constitutionality (a posteriori review) were raised before ordinary courts or directly by the Ombudsman,
– 55 requests aimed at resolving the legal conflict of a constitutional nature between public authorities, and
– 29 referrals aimed at following the procedure for organizing and conducting the referendum.

Out of the total number of complaints of unconstitutionality of laws before promulgation (665), about **52.76 % were admitted**, and of the total complaints regarding the unconstitutionality of parliamentary regulations (58), **44.23 % were admitted** in whole or in part. Out of the total preliminary questions of constitutionality, only **2.81 % of the cases** ended-up with **admission** solutions. In absolute numbers this translates into **617**

[5] Source: https://www.ccr.ro.

decisions through which the Court declared laws or ordinances, or only provisions contained therein, to be unconstitutional out of a total of 21.963 decisions rendered via *a posteriori* review[6].

Outcome of the control of constitutionality performed by the Constitutional Court

Finally, we cannot finalize this statement without saying a few words about the **effects of the decisions of the Constitutional Court**, enshrined in Article 147(4) of the Constitution: *"Decisions of the Constitutional Court shall be published in the Official Gazette of Romania. From the date of publication, decisions are generally binding and have power only for the future*. According to the Constitutional Court, "the decision finding an unconstitutionality is part of the normative legal order, by its effect the unconstitutional provision ceases to apply for the future"7. I would point out here that, in case it is admitted, in a decision ruling on a plea of unconstitutionality presented by a citizen, "the Court shall also rule on the constitutionality of other provisions of the contested act, from which, necessarily and obviously, the provisions referred to in the referral cannot be dissociated"8, which is an illustration of the possibility the Constitutional Court has to exceed the strict limits of the referral received.

Also relevant for the topic debated here is the provision of Article 147(1) of the Constitution[9]. This establishes, as regards laws and ordinances in force but found to be unconstitutional, that they "shall cease their legal effects 45 days after the publication of the decision of the Constitutional Court if, within this period, the Parliament or the Government, as the case may be, do not agree the unconstitutional provisions with the provisions of the Constitution. During that period, the provisions found to be unconstitutional shall be automatically suspended."

Of course, all these elements raise the issue of the implementation of the Constitutional Court's decisions by Parliament and Government. In the case of a posteriori review, failure to comply with the obligation to agree on texts declared unconstitutional gives to the decision of the Constitutional Court the effect of repealing the text in question,

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[6] Source: https://www.ccr.ro.

[7] Decision No 847/2008, published in the Official Gazette of Romania, Part I, No 605 of 14 August 2008.

[8] Article 31(2) of Law No 47/1992.

[9] The provision is repeated in Article 31(3) of Law No 47/1992, republished.

which shall be void of legal effects for the future.

As stated by the Romanian legal doctrine, the legislator's readiness to comply with the Constitutional Court's decision "was and is closely related to the loyal constitutional behavior of public authorities"[10]. The Constitutional Court cannot compel public authorities to legislate or replace legal rules found unconstitutional, in the sense of amending or supplementing the legal norm subject to constitutional review, since, in all cases in which it decides on the normative acts that are subject to referrals, those provisions are reviewed by the Court exclusively by reference to the provisions or principles of the Constitution. A part from not being able to amend or supplement the legal texts criticized, the Constitutional Court cannot interpret and apply such legal texts to the concrete cases in front of ordinary courts, thus replacing them in solving the concrete claims of plaintiffs or defendants. Also, it shall not take the place of the High Court of Cassation and Justice, which "ensures the uniform interpretation and application of the law by the other courts, according to its jurisdiction". Finally, the Constitutional Court cannot proceed to the comparison of the legal norms among them and to report the conclusion that would result from this comparison to constitutional texts and principles. The Constitutional Court has only the power to review the compliance of laws with the Constitution and draw attention to public authorities in case it identifies infringements to constitutional provisions or principles.

Conclusion

In conclusion, we would like to point out that the Constitutional Court is merely an arbitrator of disputes concerning the interpretation of our Constitution, and must remain independent of any public authority, subject only to the Constitution and its law of organization and functioning.

[10] I. Muraru, Tănăsescu (coord.), op. *cit*., p. 1.420.

Prof. Boris Velchev, Ph.D., Rector of The Higher School of Insurance and Finance

Moderator

Professor Velchev obtained his Master's Degree in Law at Sofia University "St. Kliment Ohridski", summa cum laude. Part-time lecturer (1988), then full-time Assistant Professor (1990) of Criminal Law at Sofia University. He has passed through all academic levels. Professor of Criminal Law since 2012. Lecturer in Criminal Law and International Criminal Law at Sofia University and St. Cyril and St. Methodius University of Veliko Tarnovo, where he was head of the Criminal Law Studies Department until 2012. Member of the Legislation Drafting Council at the National Assembly, member and Chairman of the Legal Advisory Board to the President of the Republic of Bulgaria. Elected as Prosecutor General of the Republic of Bulgaria (2006). Member of the Supreme Judicial Council and the Managing Board of the National Institute of Justice. Appointed Constitutional Court Justice by the President of the Republic (2012). President of the Court (2015-2021). Rector of The Higher School of Insurance and Finance.

Prof. Daniel Valchev, Ph.D., Dean of the Faculty of Law, Sofia University "St. Kliment Ohridski"

Moderator

Professor Valchev obtained his Master's and Doctorate's degree in Law at Sofia University "St. Kliment Ohridski". Between 1992 and 2013 he was an assistant and subsequently associate professor at Sofia University. In 2013 he was appointed professor of General Theory of Law at Sofia University. In 2019 he was elected Dean of the Faculty of Law at Sofia University. He is an honorary doctor at Soka University in Tokyo, Japan and an honorary professor at Shanghai University, China. Between 2001 and 2005 he served as a member of the National Assembly of the Republic of Bulgaria and was appointed representative of the National Assembly of the Republic of Bulgaria in the Convention on the Future of Europe. Between 2005 and 2009 he was appointed Deputy Prime Minister and Minister of Education and Science.


BALKAN


BALKAN

Memorandum

2023

MEMORANDUM OF UNDERSTANDING FOR ESTABLISHMENT OF THE BALKAN CONSTITUTIONAL COURTS FORUM

The Constitutional Court of the Republic of Albania,

The Constitutional Court of the Republic of Bulgaria,

The Constitutional Court of the Republic of Kosovo,

The Constitutional Court of Montenegro,

The Constitutional Court of the Republic of North Macedonia,

The Constitutional Court of the Republic of Türkiye,

hereinafter referred to as "the Parties",

recognizing the mutual commitment to upholding constitutional values, the rule of law, and human rights protection,

desiring to strengthen legal cooperation and judicial dialogue among the Constitutional Courts of the Balkan region,

expressing their intention to establish the Balkan Constitutional Courts Forum (hereinafter referred to as "the Forum") to facilitate regular interaction and joint initiatives among them,

acknowledging that the organizational structure, funding, membership, and other matters related to the establishment of the Forum shall be determined through a separate agreement,

have reached the following understandings:

Article 1

ESTABLISHMENT OF THE BALKAN CONSTITUTIONAL COURTS FORUM

The Parties agree to collaborate to establish the Balkan Constitutional Courts Forum (hereinafter referred to as "the Forum") as a permanently functioning body for fostering judicial dialogue and enhancing cooperation and exchange of experience in the area of constitutional justice in the Balkan region.

Article 2

OBJECTIVES

The primary objectives of the Forum shall include but not be limited to:

a. Facilitating regular and structured dialogue among the participating Constitutional Courts.

b. Enhancing the exchange of legal expertise, best practices, and jurisprudence among the Constitutional Courts.

c. Supporting capacity building and professional development of judges and court staff in the field of constitutional law.

d. Supporting capacity building in the field of communication with the public.

e. Strengthening stakeholders networking.

f. Enabling dissemination of analytical results through scientific periodicals.

g. Establishing and safeguarding of the rule of law in the Balkan region.

Article 3

ACTIVITIES

The Forum members shall convene in annual meetings.

The Forum shall organize periodic conferences, seminars, trainings, and workshops to facilitate discussions on constitutional law, constitutional adjudication, and new challenges in constitutional jurisprudence.

The Forum may establish thematic working groups or expert committees to focus on specific areas of constitutional law and share research, analysis, and opinions.

The Forum may issue reports, studies, and recommendations on matters of constitutional significance within the Balkan region.

The Forum may conduct moot courts for students and candidate magistrates on various topics related to constitutional justice.

Article 4

ORGANIZATIONAL STRUCTURE

The Parties shall collectively determine the organizational structure of the Forum. The composition, structure, decision-making procedures and mechanisms for hosting meetings and conferences shall be further defined through a subsequent agreement or statute.

The seat of the Secretariat of the Forum shall be in Sofia, Bulgaria, at the Constitutional Court of the Republic of Bulgaria.

Article 5

FUNDING

The Parties shall explore various funding sources, including voluntary contributions from the participating Constitutional Courts, international organizations, and other relevant stakeholders, in the form of membership fees, grants, donations, and any other form of monetary contributions, to ensure the financial sustainability of the Forum.

Article 6

MEMBERSHIP AND OBSERVERS

The Parties to the Memorandum shall be considered Member jurisdictions of the Forum and shall have all rights and obligations stipulated in any statutes or by-laws that shall be further agreed upon and adopted by the Parties.

Observer status shall be granted at the Members' discretion to constitutional jurisdictions which share the values and objectives of the Forum but have not committed to membership. The scope of the rights that observer status shall entail shall be further stipulated in the legal framework adopted by the Members.

Article 7

COMMUNICATION

Communication between Parties under this Memorandum of Understanding is assigned to their respective Secretariats and will be conducted in English as the official working language.

Article 8

EFFECT OF MEMORANDUM

This Memorandum of Understanding serves as a record of the Parties' intentions and does not create legally binding rights or obligations.

Article 9

ENTRY INTO FORCE, AMENDMENTS AND TERMINATION

This Memorandum will enter into force on the date of its signature by the representatives of the Parties.

Amendments to this Memorandum will be made based on mutual written consent between the Parties.

This Memorandum may be terminated by mutual agreement of the participating Constitutional Courts or by a written notification from any participating Constitutional Court at least two months prior the intended date of termination. The termination will not affect any ongoing commitments or undertakings that might have been formalized prior to termination of this Memorandum, unless otherwise decided.

Article 10

FINAL PROVISIONS

This Memorandum is originally signed in six identical copies – one for each Party, in Sofia, Bulgaria on October 27th, 2023, in English language.

For the Constitutional Court of the Republic of Albania

Holta Zaçaj

……

President Holta Zaçaj

For the Constitutional Court of the Republic of Bulgaria

……

President Pavlina Panova

For the Constitutional Court of the Republic of Kosovo

Gresa Caka Nimani

……

President Gresa Caka-Nimani

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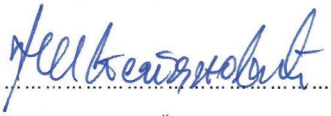
For the Constitutional Court of Montenegro



President Budimir Šćepanović

For the Constitutional Court of the Republic of North Macedonia

President Dobrila Kacarska

For the Constitutional Court of the Republic of Türkiye

Vice President Hasan Tahsin Gökcan

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Balkan Constitutional Courts Forum
List of Participants
Sofia, Bulgaria

Constitutional Court of the Republic of Albania

Holta Zaçaj Ms, *President, Constitutional Court*
Sandër Beci, *Judge, Constitutional Court*
Ilir Toska, *Judge, Constitutional Court*
Alma Çomo, *Head of Public and International Relations Department, Constitutional Court*

Constitutional Court of Bosnia and Herzegovina

Valerija Galić, *President, Constitutional Court*
Mirsad Ćeman, *Vice President, Constitutional Court*
Zlatko Knežević, *Vice President, Constitutional Court*
Erda Začiragić, *Head of the Cabinet, Constitutional Court*

Constitutional Court of the Republic of Bulgaria

Pavlina Panova, *President, Constitutional Court*
Mariana Karagyozova-Finkova, *Judge, Constitutional Court*
Konstantin Penchev, *Judge, Constitutional Court*
Philip Dimitrov, *Judge, Constitutional Court*
Tanya Raykovska, *Judge, Constitutional Court*
Nadezhda Dzhelepova, *Judge, Constitutional Court*

Atanas Semov, *Judge, Constitutional Court*
Krasimir Vlahov, *Judge, Constitutional Court*
Yanaki Stoilov, *Judge, Constitutional Court*
Sonya Yankulova, *Judge, Constitutional Court*
Valentin Georgiev, *Secretary General, Constitutional Court*
Polina Tsacheva-Pesheva, *Chief Expert, Constitutional Court*

Constitutional Court of the Republic of Croatia

Snježana Bagić, *Deputy President, Constitutional Court*
Ingrid Antičević Marinović, *Judge, Constitutional Court*

Council of State of the Hellenic Republic

Vassiliki Stamataki, *Assistant Judge (Auditrice), Hellenic Council of State*
Anna Kalogeropoulou, *Counsellor of State, Hellenic Council of State*

Constitutional Court of the Republic of Kosovo

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Veton Dula, *Secretary General, Constitutional Court*
Lyra Çela, *Chief of the Cabinet of the President and Senior Legal Advisor, Constitutional Court*

Constitutional Court of Montenegro

Budimir Scepanovic, *President, Constitutional Court*
Snezana Armenko, *Judge, Constitutional Court*
Dragana Đuranović, *Judge, Constitutional Court*
Milorad Gogic, *Judge, Constitutional Court*
Desanka Lopicic, *Judge, Constitutional Court*
Momirka Tešić, *Judge, Constitutional Court*
Emina Boskovic, *Technical Secretary, Constitutional Court*

Constitutional Court of the Republic of North Macedonia

Dobrila Kacarska, *President, Constitutional Court*
Elizabeta Dukovska, *Judge, Constitutional Court*
Aleksandar Lazov, *Secretary General, Constitutional Court*
Hristina Belovska, *Public Relations Advisor, Constitutional Court*

Constitutional Court of Romania

Elena Simina Tănăsescu, *Judge, Constitutional Court*

Constitutional Court of the Republic of Türkiye

Hasan Tahsin Gökcan, *Vice President, Constitutional Court*
Muammer Topal, *Justice, Constitutional Court*

Ali Erdem Şahin, *Rapporteur Judge, Constitutional Court*
Gizem Tezyürek, *Interpreter, Constitutional Court*

European Commission

Věra Jourová, *Vice-President*

Court of Justice of the European Union

Koen Lenaerts, *President*

European Court of Human Rights

Marko Bošnjak, *Judge and Vice-President*

Government of the Republic of Bulgaria

Mariya Gabriel, *Deputy Prime Minister and Minister of Foreign Affairs of Bulgaria*
Atanas Slavov, *Minister of Justice of Bulgaria*

Closing remarks by Ms Pavlina Panova, President of the Constitutional Court of the Republic of Bulgaria

Dear colleagues,

Dear friends,

I take the liberty to call all of you friends because today we have established not only fruitful professional contacts, but a relationship based on purely human values and have created new friendships that will be the driving force for the future meetings of the Balkan Constitutional Courts Forum.

Both the presentations delivered today, for which I would like to thank our colleagues, as well as the discussion that has just ended show that there is indeed a need for regular and fruitful contact between the constitutional judges in the region. It has become clear that regardless of each country's attempt to provide mechanisms for citizens' access to constitutional justice, eventually we are all tempted professionally by having to uphold human rights and the rule of law on a daily basis in our work. These rights and the rule of law are not given and guaranteed once and for all. They are the result of our daily work – by upholding and protecting the rights of the citizens, the constitutional jurisdictions that we represent are not only guardians of the constitutions of our countries. They are the last guardian in ensuring citizens' trust in constitutional justice and the last effective means of protecting citizens' rights on a national scale.

By signing today's Memorandum of Understanding, we have demonstrated our will and energy to unite the efforts of the Constitutional Courts in the region, to improve cooperative relations, to create new fruitful contacts and achieve effective professional cooperation. We have shown that there are many topics that unite us, which we have every reason to discuss in our future meetings. We have demonstrated an energy that cannot be wasted, it must be captured and developed into new major initiatives. Our regular meetings, which I do hope we will all participate in, will prove our will to establish close cooperation and ensure interaction between our constitutional jurisdictions.

That is why, I think that tomorrow we need to set up a working committee of representatives of all countries participating in today's Forum in order to start preparations for the next event, whatever it may be - a conference, a debate or any other form of cooperation between us. The administration that facilitated the organization of today's Forum with high precision and professional skills has made contacts with the representatives of the administrations of the other constitutional jurisdictions participating in the Forum. And I believe they should not waste strength and time but should harness their energy to organize and establish contacts between them, also between the judges of our constitutional jurisdictions. The Balkan Constitutional Courts Forum could exist on two levels: on the level of judges representing the constitutional jurisdictions, and on the level of the administrations of the constitutional jurisdictions, which are both to interact and assist each other.

Now, at the end of this fruitful day, I cannot conclude without expressing my gratitude to all of you who trusted the Constitutional Court of Bulgaria and who came here to establish together the Balkan Constitutional Courts Forum. I thank all of you who have abandoned your daily tasks, at least for a little while, and have come here to show your willingness for cooperation on the Balkan Peninsula.

I would also like to thank the moderators Professor Velchev and Professor Valchev who led us through our workshops and debates with high professionalism, expertise and wisdom. I thank the administration of the Constitutional Court of Bulgaria who once again demonstrated their professionalism and without the help of which this Forum would not be the same. Finally, let me thank the interpreters whose experience, skills and professionalism helped us get through this professional debate that united and moved forward the Balkan Constitutional Courts Forum.

I hereby close the first meeting of the Balkan Constitutional Courts Forum and have the honour and pleasure to invite all of you to an official dinner at 19.30 hrs.

Thank you!


CONSTITUTIONAL
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MARKO BOŠNJAK
Vice President
European Court of Human Rights


BALKAN
CONSTITUTIONAL
COURTS FORUM
27 October 2023, Sofia
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Constitutional Crossroads: A Comparative Look at the Access to Constitutional Justice

Constitutional Court of the Republic of Albania

1. **Existence of an individual constitutional complaint (or indirect referral through state authorities):**
   Since March 2017 there has been an individual constitutional complaint.

2. **Which rights are protected by the constitutional complaint?**
   Fundamental constitutional rights and freedoms.

3. **Who is entitled to lodge a complaint?**
   The individuals (every individual, natural or legal person, being the subject of private and public law, when being a party in a legal process or the holder of fundamental rights and freedoms provided for in the Constitution).

4. **The subject-matter of the complaint - acts to which it may be directed:**
   - normative acts and laws;
   - judicial decisions;
   - any act that violates his rights and freedoms provided for in the Constitution.

5. **Procedural prerequisites for admissibility:**
   The request shall be submitted in a written form in Albanian language, in clear and understandable language, in as many copies as the number of participants in trial and it shall include:
   - name of the applicant and of interested subjects;
   - the subject-matter of the applicant and the legal basis;
   - submission of causes and alleged violations of a constitutional nature;
   - documents, evidence, or other exhibits associating the application;
   - certified copies of all the decisions which are the subject matter of the application, as well as complaints and recourses submitted to other judicial instances. Relating to the first function of the complaint - to provide a judicial remedy against violations of constitutional rights;
   - the individual should prove that is the holder of the constitutional right pretended to have been violated, and has a concrete interest in the case, so that the constitutional review of the case could restore the violated constitutional right;
   - should exhaust all the effective legal remedies capable of restoring the alleged violated right or when the domestic legal framework does not provide for effective legal remedies available;

- the complaint should be submitted within 4 months from the notice of violation;
- the claims should be of constitutional nature;
- the negative consequences are direct and real to the applicant;
- the examination of the case by the Constitutional Court could restore the infringed rights of the individual. If it is determined that his rights and freedoms provided for in the Constitution have been violated by the undue prolongation of the process;
- anyone, who is a party to a process that takes place before the Constitutional Court, or
- a party to a judicial process suspended as a consequence of an incidental check or of the verification of the constitutionality of the law initiated by other entities provided for in Article 134 of the Constitution;
- who claims that the trial has been conducted beyond a reasonable time,

has the right to demand due compensation from the Constitutional Court. The applicant cannot apply without passing at least one year from commencement of the case review.

Regarding the check on the conformity of the laws and other normative acts with the Constitution or international agreements:

- the complaint should be made separately or together with the claims for a violation of due process;
- after exhausting the judicial process at all the three instances of judgement;
- the rights and freedoms provided for in the Constitution must have been violated directly and substantially and the act they are opposing is directly applicable and does not provide for the issuance of bylaws for its implementation;
- the individuals have an obligation to prove that the issue is directly related to the rights and freedoms provided for by the Constitution or to the purposes of their activity.

6. Rules of procedure:

- preliminary examination by a Chamber of judges (composed of three judges, including the rapporteur) or by a Meeting of judges (when one of the judges of the chamber is not of the same opinion with the others) - the Chamber or the Meeting of Judges shall not examine the merits of the case at this stage;
- examination in the plenary session (open to the public or based on documents).

The applicant, at any stage of the process until the decision of the Constitutional Court, may request in writing the limitation and extension of the subject of the

application or the waiving from the claim.
If the Constitutional Court, during the review of a case, decides to seek an advisory opinion from the European Court of Human Rights regarding the implementation of rights and freedoms provided by the European Convention of Human Rights and additional protocols thereof, or require amicus curia from other organizations, it shall decide to suspend the examination of the case.
Where the case is admitted for adjudication and the subject-matter of the application is a law or a normative act, the applicant shall be represented in trial by a defence counsel or specialised legal representative.
The proceedings to review the constitutionality:

- the Constitutional Court may also rule on other provisions that are not the subject of the application, if it deems that they are connected to the issue under review;
- when a law or normative act, or parts thereof, that are subject to review before the Constitutional Court are repealed or amended before the Constitutional Court makes the decision, the case is dismissed, except for cases when it considers that the proceedings should continue due to public or state interest.

7. Decision:

- decisions of the Constitutional Court shall be published in the Official Gazette as well as in other means of public information (no later than 15 days after their submission);
- the decision shall enter into force on the day of its announcement together with the reasoning unless the Court decides otherwise;
- the Constitutional Court decision that has repealed a law or a normative act as incompatible with the Constitution or international agreements, as a rule, shall have legal effects from the date of its entry into force, unless otherwise provided by this law. The Constitutional Court may decide that the decision to repeal an act may produce effects on a date different from the date of its entry into force. In this case, the Assembly or any other institution must make necessary changes within the deadline set by the Constitutional Court decision and in accordance with its reasoning;
- where during the review of a case the Constitutional Court finds out that there is a legal vacuum that has brought negative consequences to fundamental rights and freedoms of the individual, the Constitutional Court, inter alia, shall determine the legislator's obligation to complete the legal framework within a certain deadline;
- decisions of courts of all instances, which have been repealed by the Constitutional Court, shall not have legal force from the moment they were made. The case

shall be sent for examination to the court, whose decision has been repealed;

- the execution of Constitutional Court decisions is secured by the Council of Ministers through the respective organs of the state administration;
- in cases of individual complaints contesting the constitutionality of normative acts when the violation of substantial right derives from their content and not from the execution manner of such legal provision, the Court decides to repeal it, as the only way to restore the violated right;
- where the Court is set into motion at the end of the judicial process, in most of cases the claimed violation of a substantial right in connection with the right to fair court trial, the Court has considered that the best way to restore the violated right is to overrule the decision of the ordinary jurisdiction courts and send the case for re-examination to such court;
- when the Constitutional Court reviews the constitutionality of an act and concludes that it is based on an unconstitutional law or normative act, the Court shall simultaneously decide to also repeal the law or the normative act;
- if an international court finds out that the Republic of Albania has violated the obligation arising from an international agreement and, therefore, the fundamental rights and freedoms of a natural or legal person have been violated through a law or normative act, the Constitutional Court, upon request, may repeal the law or the normative act, if it finds that there is no other effective legal remedy to restore the rights violated;
- if the Constitutional Court has previously ruled on a matter, which has been tried by an international court and the latter has concluded that fundamental rights and freedoms of the individual have been violated because of the decision of the Constitutional Court, the subject infringed upon, in whose favour the international court has ruled, shall be entitled to address the Constitutional Court with a request to reopen the judicial process.

Constitutional Court of the Republic of Bulgaria

1. **Existence of an individual constitutional complaint (or indirect referral through state authorities):**
   Only indirect referral:
   - the Ombudsman and the Supreme Bar Council can challenge laws when it violates the rights and freedoms of citizens, but not the rights of legal entities;
   - a specific role in the referral to the Constitutional Court is assigned to the two Supreme Courts;
   - when their chambers find the applicable law inconsistent with the Constitution, they suspend the proceedings and refer the matter to the Constitutional Court. In this way, the decisions of the Constitutional Court also contribute to the protection of citizens' rights.

2. **Which rights are protected by the constitutional complaint?**
   Not applicable.

3. **Who is entitled to lodge a complaint?**
   Not applicable.

4. **The subject-matter of the complaint - acts to which it may be directed:**
   Not applicable.

5. **Procedural prerequisites for admissibility:**
   Not applicable.

6. **Rules of procedure:**
   Not applicable.

7. **Decision:**
   - Constitutional Court decisions shall be promulgated in the State Gazette within 15 days after the date of adoption thereof. A decision shall enter into force three days after the promulgation thereof. Any act which has been declared unconsti tional shall cease to apply as from the effective date of the decision.

Constitutional Court of the Republic of Kosovo

1. **Existence of an individual constitutional complaint (or indirect referral through state authorities):**
   - individual referral (constitutional complaint);
   - the courts have the right to refer questions of constitutional compatibility of a law to the Constitutional Court when it is raised in a judicial proceeding and the referring court is uncertain as to the compatibility of the contested law with the Constitution and provided that the referring court's decision on that case depends on the compatibility of the law at issue;
   - the Ombudsperson is authorized to refer the following matters to the Constitutional Court:

   - the questions of the compatibility with the Constitution of laws, of decrees of the President or Prime Minister, and of regulations of the Government;
   - the compatibility with the Constitution of municipal statutes.

2. **Which rights are protected by the constitutional complaint?**
   - fundamental rights and freedoms;
   - individual rights and freedoms guaranteed by the Constitution when they are violated by a public authority.

3. **Who is entitled to lodge a complaint?**
   Every individual is entitled to lodge a complaint.

4. **The subject-matter of the complaint - acts to which it may be directed:**
   - a court decision;
   - other public decision or act;
   - a law.

5. **Procedural prerequisites for admissibility:**
   - all legal remedies provided by law must be exhausted;
   - in the referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge;
   - the referral should be made within four months, having regard to the specific rules for calculating the time periods;
   - the referral shall be filed in writing in either the official language of the Repub-

lic of Kosovo or in one of the languages in official use in the Republic of Kosovo;

- referral forms shall be available on the Court web page;
- the referral shall also include:

- the name and address of the party filing the referral;
- a statement of the relief sought;
- a concise description of the facts;
- the reasoning for the admissibility and merits of the referral, and
- supporting information and documentation.

- the Court may consider a referral inadmissible if any of the following conditions are met:

- the Court does not have a subject matter jurisdiction;
- the referral is incompatible ratione materiae with the Constitution;
- the referral is incompatible ratione personae with the Constitution;
- the referral is incompatible ratione temporis with the Constitution, or
- the referral is incompatible ratione loci with the Constitution.

6. **Rules of procedure:**

- at any time, before the Judge Rapporteur submits the report, the parties may present corrections of technical or numerical errors to the documents submitted to the Secretariat. The Secretariat shall notify the other parties of any corrections made thereof;
- regardless of the withdrawal of the referral, the Court may continue with the review and render a decision on the referral when so required by the public interest and/or the respect of the fundamental human rights and freedoms guaranteed by the Constitution;
- the Court may order a hearing if it believes one is necessary to clarify issues of facts or the law;
- the Court may order the examination of witnesses or obtain expertise and testimony from experts or institutions, on its own initiative or at the request of a party, if this helps in clarifying the facts for deciding the case;
- at any time, as long as the Court has not rendered a decision on a referral, any party (or the Court ex-officio) may request the imposition of interim measures regarding the issue that is a subject of the procedure before it;
- after deliberation the Court shall decide as a court panel;
- individuals shall be exempted from the obligation to cover procedural costs, if the Constitutional Court decides that such a referral is admissible and grounded.

7. **Decision:**

- if the Court finds that the challenged decision was rendered in violation of the Constitution, it shall declare such decision void and null and may remand the decision to the issuing authority for reconsideration in conformity with the decision of the Court;
- decisions of the Constitutional Court are published in the Official Gazette and enter into force on the day of its publication in the Official Gazette, unless it is specified otherwise in the decision;
- the Court may specify in its decision the manner and time limit for the enforcement of the decision of the Court.

Constitutional Court of Montenegro

1. **Existence of an individual constitutional complaint (or indirect referral through state authorities):**
   - actio popularis;
   - a constitutional appeal.

2. **Which rights are protected by the constitutional complaint?**
   - human rights and liberties granted by the Constitution.

3. **Who is entitled to lodge a complaint?**
   - any natural person and legal entity;
   - any organization, settlement, a group of people and other forms of organization without the capacity of legal entity.

4. **The subject-matter of the complaint - acts to which it may be directed:**
   - proceedings for the assessment of conformity with the Constitution and ratified and published international agreements: the law or other regulations and general acts;
   - proceedings under a Constitutional Complaint: an individual act, action or inaction of a state authority, public administration body, local self-government or local government body, legal person or other entity that exercises public powers.

5. **Procedural prerequisites for admissibility:**
   Proceedings under a constitutional complaint:
   - after having exhausted all efficient legal remedies;
   - a constitutional complaint may also be filed before the exhaustion of all effective legal remedies, if the applicant proves that the legal remedy to which he is entitled in the specific case was not or would not be effective;
   - a constitutional complaint shall be filed within 60 days:

   - from the date of submission of the individual act against which a constitutional complaint may be filed in accordance with the present law;
   - from the date of termination of the current action which violated human rights or freedoms guaranteed by the Constitution, if there is no effective legal remedy against that action;
   - the last day on which the inaction that violated human rights or freedoms guaranteed by the Constitution could have been avoided, if there is no effective legal

remedy against such inaction.

- if the case is about an inaction of the court within a reasonable time, the constitutional complaint may be filed only if the legal remedies for the protection of the right to trial within a reasonable time have previously been exhausted, in accordance with the law governing the protection of the right to trial within a reasonable time, or if the applicant proves that these remedies were not or would not be effective;
- the constitutional complaint shall contain:

- name, permanent or temporary residence and address;
- the reasons for the constitutional complaint with reasoned allegations of violation of human rights or freedoms guaranteed by the Constitution, the application on which the Constitutional Court should decide. The constitutional complaint that is filed against an individual act shall also contain the number and the date of the individual act, as well as the name of the enacting authority, and if it is filed for inaction or action, the complaint shall also contain the name of the authority that did not act or took an action that is the subject of the constitutional complaint;
- a certified copy of the challenged individual act shall be filed, as well as evidence that effective legal remedies have been exhausted, the facts on which the claim of the violation of rights and freedoms is based, and other evidence relevant to decision making.

Proceedings for the assessment of conformity of laws with the Constitution and ratified and published international agreements and the proceedings for the assessment of conformity of other regulations and general acts with the Constitution and the law:

- the proposal/the request should contain: name of the law, or other regulation or general act;
- designation of the contested provision (until the law/other proposal or general act are in force);
- name and number of the "Official Gazette of Montenegro" in which it is published;
- reasons the proposal or the initiative are based on;
- other data of significance for grading the constitutionality and legality.

6. Rules of procedure:

Rules common to all proceedings:

- when a proceeding of the Constitutional Court requires a direct deliberation on a complex constitutional legal issue, the Constitutional Court summons a public deliberation (apart from the parties to the proceedings, persons who can give their expert opinion and explanation relevant for adopting decision are invited to a pub-

lic deliberation if necessary);

- immediately after the public deliberation, the Court shall, by rule, hold a deliberation and voting session.

Proceedings on a constitutional complaint:

- if a filing is incomprehensible, incomplete, unsigned and does not contain data necessary for conducting the proceedings or contains flaws that hinder further disposal of the case, judge rapporteur gives proposal to request the applicant thereof to rectify the flaws within the deadline that cannot be shorter than eight days and to warn him/her of the consequences of omission;
- a judge rapporteur after prior consideration of the filing sends the act or motion to initiate procedure to the authority that adopted the challenged act to give its reply or opinion and s/he determines the deadline for giving reply or opinion and submission of necessary documentation which cannot be shorter than 15 days;
- the constitutional complaint shall also be submitted to other persons whose rights or obligations would be directly affected by a decision of the Constitutional Court upholding a constitutional complaint, and these persons shall have the right to declare on the constitutional complaint within the period of time determined by the Constitutional Court;
- the Constitutional Court shall decide on the violation of human rights or freedoms guaranteed by the Constitution to which the allegations in the constitutional complaint point;
- panel sessions decide about constitutional complaints. The session of Constitutional Court decides about constitutional cases and complaints if the panel has not adopted its decision unanimously. Panel session may conclude that a decision proposed by a rapporteur judge should be decided by the session of the Constitutional Court for the reason of its particular importance for protection of citizens' rights and freedoms.

Proceedings on the assessment of conformity of laws with the Constitution and ratified and published international agreements and the proceedings for the assessment of conformity of other regulations and general acts with the Constitution and the law:

- the Constitutional Court is not limited by a proposal/initiative - the Court, even when the authorized proposer/initiator withdraws the proposal/initiative, may continue the procedure for grading the constitutionality or legality, if it finds that continuation of the procedure is founded;
- during the procedure and at the request of the legislator of the contested general act, the Constitutional Court may, before making the decision on constitutionality or legality, stop the procedure and give opportunity to the legislator of the general act to remedy the observed unconstitutionalities or illegalities within the

given period.

- the Constitutional Court may order during the procedure to suspend the execution of an individual act or action until the adoption of final decision, at the request of the one filing a proposal/an initiative, if the one filing a proposal/an initiative makes occurrence of irremediable harmful consequences certain;
- the Constitutional Court, in the procedure of grading compliance of the law ratifying international treaty with the Constitution may only grade the formal constitutionality of this law, that is, the procedure of its adoption, and not the contents of the contract.

7. Decision:

- proceedings under a constitutional complaint:

- when it determines that a human right or freedom guaranteed by the Constitution has been violated by the challenged individual act, the Constitutional Court shall uphold the constitutional complaint and repeal that act, in whole or partially, remanding the case for retrial to the body that has adopted the repealed act;
- in the case that during the procedure of decision-making the legal effect of the individual act that is the subject of the constitutional complaint has ceased, and that the Constitutional Court determines that this act violated a human right of freedom guaranteed by the Constitution, it shall pass a decision upholding the constitutional complaint and determine the manner of just satisfaction of the applicant on the grounds of suffered violation of a human right or freedom guaranteed by the Constitution;
- in the case when the violation was committed by an action or inaction, the Constitutional Court shall, through the decision upholding the constitutional complaint, prohibit the further commission of the action, i.e. it shall order the adoption of an act or taking other appropriate measure or action removing the already incurred or eliminate future adverse effects of the determined violation of human rights or freedoms guaranteed by the Constitution;
- the decision of the Constitutional Court upholding a constitutional complaint shall have legal effect from the date of delivery to the participants in the proceedings, in accordance with the Rules of Procedure;

- the decision of the Constitutional Court will be published in the Official Gazette of Montenegro;
- legal consequences of the law which is incompliant with the international treaty are the same as consequences of incompliance of the law and other regulation with the Constitution of Montenegro - that law ceases to be valid on the date of publishing the decision of the Constitutional Court;
- the law or other regulation, i.e. their individual provisions that were found in-

consistent with the Constitution or the law by the decision of the Constitutional Court, shall not be applied to the relations that have occurred prior to the publication of the Constitutional Court decision, if they have not been solved by an absolute ruling by that date;

- the execution of the decisions, when needed, shall be provided by the Government of Montenegro;
- anyone whose right has been violated by final or valid individual act, adopted on the basis of the law or other regulation and general act for which by the decision of the Constitutional Court it has been established that it has not been and is not in compliance with the Constitution, ratified and published international treaties or the law, shall be entitled to ask the competent authority to amend that individual act, if that amendment does not affect the rights of conscientious third parties (proposal may be filed within six months following that of publishing the decision in ''Official Gazette of Montenegro'');
- the Constitutional Court may, by the decision establishing that the law or other regulation and general act is not compliant with the Constitution, ratified and published international treaty or the law, determine the method of indemnity for all persons whose right has been violated by final or valid individual act adopted on the basis of that law or that regulation, irrespective of whether they have filed the initiative for grading the compliance of the law or other regulation and general act with the Constitution, ratified and published international treaties or the law.

Constitutional Court of the Republic of North Macedonia

1. **Existence of an individual constitutional complaint (or indirect referral through state authorities):**
   - there is not an individual constitutional complaint in its classical version;
   - available for the protection of certain rights only (Article 110, Indent 3 of the Constitution).

2. **Which rights are protected by the constitutional complaint?**
   Which proceedings citizens can initiate:
   - the proceedings to review the constitutionality and legality;
   - resolving a conflict of competences;
   - for the protection of freedoms and rights according to Article 110, Indent 3 of the Constitution.

3. **Who is entitled to lodge a complaint?**
   Every citizen has the right to request protection for the freedoms and rights guaranteed by the Constitution.

4. **The subject-matter of the complaint - acts to which it may be directed:**
   - the proceedings to review the constitutionality and legality: law, regulation or another general act;
   - the procedure for protection of freedom and rights: individual acts and activities of the organs of the public authority which the citizens consider to violate some of the declared constitutional rights (not only an administrative act, but also a court decision at any instance).

5. **Procedural prerequisites for admissibility:**
   The proceedings to review the constitutionality and legality:
   - the initiative must be submitted in writing in two copies and it must contain all of the required components - designation of the law, the regulation or general act, that is, the parts of the provisions that are contested, the grounds for contesting, the provisions of the Constitution, that is, the law violated by that act, and the name, that is, the title and the location of the petitioner of the Initiative (a sample Initiative is available on the website of the Court).

Resolving a conflict of competences:

- citizens have the option of addressing the Constitutional Court to settle a conflict of competences if they are unable to exercise their rights due to the acceptance or rejection of the competence of particular authorities (among the legislators of the legislative, executive and court authority and among the Republic organs and self-government units);
- in form of Proposal for resolving a conflict of competences;
- the Proposal includes the subject of contention for the reason of which the conflict originated, the authorities involved in the conflict and the designation of the final, i.e. legally binding acts by which the authorities accepted or rejected their competence to decide on a particular subject.

P*rocedure for protection of freedom and rights:*

- the request must be submitted within 2 months from the day of delivery of the final or legally enforced individual act, namely from the date on which he/she became aware of the activity undertaken creating such an infringement, but not later than 5 years from the day of the undertaking;
- the request shall contain the reasons due which a protection is being asked, the acts or the actions with which they are infringed, facts and evidences on which the request is based, as well as other data necessary for the decision of the Constitutional Court;
- submitting a request does not impose prior exhaustion of all legal remedies against a final or effective act.

6. Rules of procedure:

Rules common to all procedures:

- if there are any inadequacies and they are not fixed within the given time, it will be assumed that the Initiative was not submitted;
- meeting, on which the reports will be discussed;
- the Constitutional Court may decide a preparatory meeting to be held (for clarifying the factual and legal status of certain cases), on which professional entities and organizations and scientific and professional workers are being invited;
- a public hearing may also be held, about which the mass media are also informed (the public hearing may be held if at least five judges of the Constitutional Court are present; new evidences may be presented) .

The proceedings to review the constitutionality and legality:

- the Court is not only constrained by the allegations in the Initiative and the provisions that are identified as violating constitutionality and legality - if it decides to review a provision, it may also decide to review other provisions or the act as a whole;

- the petitioner also has the status of a participant in the proceedings, which grants them additional procedural rights, including the right to view the case files, the right to participate or take part in the preparatory sessions and public hearings, the right to have the decision sent by the court;
- the Constitutional Court will refuse the initiative if it has already dealt with the same matter, and there are no basis for different decision;
- the Constitutional Court will end the procedure:

- if during the procedure, the law, other regulation or common act ceased to be effective, and there are no basis for the assessment of their constitutionality, i.e. constitutionality and legality during the effectiveness;
- if during the procedure the initiative for constitutionality, i.e. constitutionality and legality assessment is being withdrawn, and the Constitutional Court does not find basis to carry out the procedure by its own initiative;
- if it is determined that the initiating of the procedure was based on an improper factual condition;
- if after determining the factual and legal status of the public hearing, there are no basis for doubting in the constitutionality and legality, and
- if during the procedure the process assumptions for its further continuing have ceased.

Procedure for protection of freedom and rights:

- the request is being delivered for an answer to the submitter of the individual act, namely the entity which has undertaken an action of their infringement, within 3 days;
- a public hearing is held (the participants in the procedure, the public attorney, entities or organizations);
- the Constitutional Court may pass a resolution for ending the execution of the individual act or action until adopting final decision;
- this procedure is based on the principles of priority and urgency.

7. Decision:

- with a decision resolving the conflict of competences, the Constitutional Court determines the competent authority to decide on the subject;
- with the decision for protection of freedoms and rights, the Constitutional Court will define whether there is an infringement and depending on that, it will annul the individual act, prohibit the action causing the infringement or refuse the request;
- when deciding whether to revoke or repeal the law, provision or a common act, the Constitutional Court, will take into account all the circumstances which are of importance for the protection of constitutionality and legality, and particularly the

height of the violation and its nature and importance for achieving the freedoms and rights of the citizens or for the relations which are being established on the basis of those acts, legal security and other circumstances important for making the decision;

- the decision of the Constitutional Court of the Republic of Macedonia with which a law, regulation or other common act is being repealed or revoked, enter into force from the day of publishing in the Official Gazette of the Republic of North Macedonia;
- the execution of legality enforced individual acts passed on the basis of a law, regulation or other common act, which by a decision of the Court is revoked, cannot be allowed, nor implemented, and if the execution is being started, it will be cancelled;
- anyone whose right has been infringed by a final or legally enforced act, adopted on the basis of a law, regulation or other common act which by a decision of the Constitutional Court is being revoked, has right to ask from the competent organ to revoke that individual act, within 6 months from the day of publishing the decision of the Court in the Official Gazette of the Republic of North Macedonia;
- the execution of the legally enforced individual acts adopted on the basis of a law, regulation or other common act, which by a decision of the Constitutional Court is being annulled, cannot be allowed, nor implemented, and if the execution has been started it will be cancelled;
- by a decision with which the Constitutional Court decides for protection of freedoms and rights from art. 110 paragraph 3 of the Constitution, the Constitutional Court will determine the way of eliminating the consequences from applying the individual act or action, with which those rights and freedoms have been violated.

Constitutional Court of the Republic of Türkiye

1. **Existence of an individual constitutional complaint (or indirect referral through state authorities):**
   - an individual constitutional complaint (since 2012);
   - courts may request constitutional review at the request of one of the parties involved in a particular case before them.

2. **Which rights are protected by the constitutional complaint?**
   - those fundamental rights guaranteed by the Constitution and safeguarded by the European Convention on Human Rights.

3. **Who is entitled to lodge a complaint?**
   - all, including legal entities, irrespective of their citizenship status (public entities are not entitled) - those whose current rights have been violated by public force;
   - legal persons of private law can make individual application only with the justification that only the rights of the legal person have been violated;
   - foreigners cannot make individual applications regarding rights that have been vested only to Turkish citizens.

4. **The subject-matter of the complaint - acts to which it may be directed:**
   - applicable law or presidential decree (during court proceedings).

5. **Procedural prerequisites for admissibility:**
   - after all available legal remedies have been exhausted with respect to the act or action of the public authority that has caused or failed to remedy the grievance; the right and freedom that is alleged to have been violated because of a transaction, act or of negligence and the provisions of the Constitution relied upon;
   - evidence relied upon and the originals or samples of the transaction or the decisions that are claimed to have led to the violation and the document regarding the payment of the fee must be attached to the application;
   - the individual application should be made within thirty days starting from the exhaustion of legal remedies; from the date when the violation is known if no remedies are envisaged;
   - in circumstances where the application has not been made in its due period, it is not in compliance with the formal conditions and the determined deficiencies

have not been completed within the provided final periods, it shall be decided by the Commissions Rapporteur in Chief to reject the application and this shall be notified to the applicant (An objection against this decision can be filed to the Commission within seven days of the date of notification. The decisions made by the Commissions in this matter shall be final.).

6. **Rules of procedure:**
   - the individual application rapporteurs shall be divided into two as Commissions rapporteurs and Sections rapporteurs and shall carry out the duties regarding individual application prescribed in the Code and in the Internal Regulation;
   - examination of admissibility shall be performed by commissions. Files regarding which unanimity could not be achieved shall be forwarded to sections;
   - the individual application rapporteurs shall prepare the draft decisions regarding the admissibility or the inadmissibility of individual applications and shall participate in meetings;
   - in the event that a decision of admissibility is made pertaining to the individual application, a copy of the application shall be sent to the Ministry of Justice for information purposes;
   - the merits examination of individual applications admissibility of which has been decided shall be carried out by the sections;
   - commissions and sections can carry out all sorts of research and examination regarding whether or not a basic right has been violated;
   - the Court can also decide to hold a hearing if it deems it necessary;
   - the sections can decide, ex officio or upon the request of the applicant, on measures that they deem to be essential for the protection of the basic rights of the applicant (serious danger towards the life or material or moral integrity of the applicant);
   - examination of the sections of individual applications regarding a court decision shall be limited to whether or not a basic right has been violated and the determination of how such violation can be remedied.

7. **Decision:**
   - in cases where a decision of violation has been made what is required for the resolution of the violation and the consequences thereof shall be ruled. (legitimacy review cannot be done, decisions having the quality of administrative acts and transactions cannot be made);
   - following a judgment finding a violation, the relevant court conducts a retrial to address the issues that led to the violation and issues a new verdict;
   - the decisions made by the Sections and Commissions shall be final;

- the decisions which are determined by the President of Section, which bear the quality of being pilot decisions made by the Section or bear principal significance in terms of displaying case law shall be published in the Official Gazette;
- against the applicants who have been found to have expressly misused the right of application a disciplinary penalty so as not to be in excess of two thousand Turkish Lira can be ruled apart from the expenses for action.

Constitutional Court of the Republic of Bosnia and Herzegovina

1. **Existence of an individual constitutional complaint (or indirect referral through state authorities):**
   - appellants, who believe that the judgment or other decision of any court is in violation of their rights, have the right to lodge an appeal.

2. **Which rights are protected by the constitutional complaint?**
   - constitutional rights and freedoms of individuals, including the rights and freedoms set forth in the European Convention and the Protocols thereto.

3. **Who is entitled to lodge a complaint?**
   - the appellant may be private individual or legal entity;
   - the appellant does not necessarily have to be a national of Bosnia and Herzegovina.

4. **The subject-matter of the complaint - acts to which it may be directed:**
   - judgment or other decision of any other court.

5. **Procedural prerequisites for admissibility:**
   - an appeal shall contain:

   - the challenged decision of a court in Bosnia and Herzegovina;
   - the provisions of the Constitution and/or of the international documents on human rights applicable in Bosnia and Herzegovina the appellant deems to have been violated;
   - statements, facts and evidence on which the appeal is based;
   - in the absence of challenged decision, the reasons for lodging the appeal.

   - all effective remedies available under the law against a judgment or a decision challenged by the appeal must have been exhausted;
   - the appeal must have been lodged within a time limit of 60 days as from the date on which the appellant received the decision on the last effective remedy he/she used;
   - an appeal shall be sent by mail or delivered directly to the Constitutional Court; it shall be made on the special form available in the Constitutional Court or on the website of the CC;
   - if the appeal refers to grave violations of the rights and fundamental freedoms safeguarded by the Constitution or by the international documents applied in BiH,

the Constitutional Court does not require the appellants to exhaust legal remedies beforehand;

- an appeal shall be inadmissible in any of the following cases:

- the Constitutional Court has already decided about the issue concerned and the statements or evidence presented in the appeal do not provide sufficient grounds for a new decision;
- the appellant abused the right to lodge an appeal;
- the legal circumstances have changed;
- the appeal is premature;
- the appellant failed to exhaust legal remedies available under the law.

6. **Rules of procedure:**

- the Constitutional Court shall send the request/appeal to the author of the challenged act for the purpose of giving the latter an opportunity to reply or submit documents. Failure to submit a reply to the request/appeal shall not affect the course of the proceedings before the Constitutional Court;
- as a rule, during the decision-making procedure, the Constitutional Court shall examine the existence of only those violations that are stated in the appeal;
- when necessary to directly deliberate on an issue relevant for taking a decision during the proceedings before the Constitutional Court, the plenary Court shall hold a public hearing.

7. **Decision:**

- 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 took that decision, for renewed proceedings, unless the consequences of violation of the constitutional rights may be removed in some other manner;
- the court or the body whose decision has been quashed is obligated to take another decision and, in doing so, it shall be bound by the legal opinion of the Constitutional Court concerning the violation of the appellant's the rights and freedoms guaranteed under the Constitution;
- exceptionally, if the authority, the decision of which was quashed, takes a new decision without complying with the legal views of the Constitutional Court, the Constitutional Court itself may decide on the merits of the case, if there is a decision of a body that is not in violation of the constitutional rights, so that such decision shall remain in effect;
- a decision on appeal shall take legal effect as of the service of the decision on the person having the competence to enforce it;
- exceptionally, if the European Court of Human Rights finds that human rights

relating to the access to a court have been violated in the proceedings before the Constitutional Court and if the decision of the Constitutional Court is based on such a violation, the Constitutional Court shall renew proceedings not later than three months from the finality of the judgment of the European Court of Human Rights;

- when making decisions the Constitutional Court decides on the publication thereof in the Official Gazette of Bosnia and Herzegovina;
- in a decision granting an appeal, the Constitutional Court may award compensation for non-pecuniary damages;
- if the Constitutional Court considers that compensation for pecuniary damage is necessary, it shall award it on equitable basis, taking into account the standards set forth in the case-law of the Constitutional Court.

Constitutional Court of the Republic of Croatia

1. **Existence of an individual constitutional complaint (or indirect referral through state authorities):**
   - an individual constitutional complaint (since 1990);
   - everyone may lodge a complaint to the Ombudsman if he/she deems that his/her constitutional or legal rights have been threatened or violated as a result of any illegal or irregular act by state bodies, local and regional self-government bodies and bodies vested with public authority.

2. **Which rights are protected by the constitutional complaint?**
   - human rights or fundamental freedoms guaranteed by the Constitution;
   - the right to local and regional self-government guaranteed by the Constitution.

3. **Who is entitled to lodge a complaint?**
   - proceedings to review the constitutionality of law and the constitutionality and legality of other regulations (abstract control) - every individual or legal person;
   - protection of human rights and fundamental freedoms (concrete control) - everyone (through constitutional complaints).

4. **The subject-matter of the complaint - acts to which it may be directed:**
   - constitutional complaints: individual act of a state body, a body of local self-government, or a legal person with public authority, which decided about their rights and obligations, or about suspicion or accusation for a criminal act;
   - proceedings to review the constitutionality and legality: - law or other regulations (even though they are no longer in legal force, if no more than a year elapsed between the date they went out of force and the date when the request or proposal to initiate proceedings was lodged).

5. **Procedural prerequisites for admissibility:**
   Proceedings to review the constitutionality of law and the constitutionality and legality of other regulations:
   The request/proposal shall contain:
   - the naming of the provisions the constitutionality, respective the legality, of which is being disputed;
   - the naming of the provisions of the Constitution or the law for which the request asserts to be violated;
   - the reasons to assert that the disputed regulation was not in accordance with

the Constitution, respective the law.
Protection of human rights and fundamental freedoms:

- it is submitted by an authorised person;
- during the term of 30 days from the day the decision was received;
- if the applicant has previously exhausted all available legal remedies, ordinary or extraordinary;
- even before all legal remedies have been exhausted - in cases when the court of justice did not decide within a reasonable time about the rights and obligations of the party, or about the suspicion or accusation for a criminal offence, or
- in cases when the disputed individual act grossly violates constitutional rights and it is completely clear that grave and irreparable consequences may arise for the applicant if Constitutional Court proceedings are not initiated;
- the proceedings can be initiated free of charge, no legal representation is required and the applicant does not have to prove any legal interest;
- the constitutional complaint will be found inadmissible by a council of three judges if the appellants fail to meet the procedural requirements, as well as where the constitutional complaint does not contain valid constitutional grounds or reasons.

6. **Rules of procedure:**
Proceedings to review the constitutionality of law and the constitutionality and legality of other regulations:

- the Constitutional Court shall institute proceedings within a term of one year after the proposal has been lodged. The Constitutional Court may send the request/the proposal to the body which had brought the disputed regulation for a response;
- the Constitutional Court may, until the final decision, temporarily suspend the execution of the individual decisions or actions undertaken on the grounds of the law or the other regulation, the constitutionality respective the legality of which is being reviewed, if their execution might cause grave and irreparable consequences. The Constitutional Court holds a consultative session if it considers that a discussion with participants in the proceedings, governmental bodies, bodies of local and regional self-government, associations, scientists and other experts, is needed before deciding on the substance of the matter;
- the Constitutional Court may review the constitutionality of the law, respective the constitutionality and legality of other regulations even in the case when the same law or regulation has already been reviewed by the Constitutional Court;
- in case when the proceedings to review the constitutionality of the law, respective of the constitutionality and legality of the other regulation have been institut-

ed before the Constitutional Court, and the competent body repeals or amends this law, respective the other regulation prior to the proceedings before the Constitutional Court have been concluded, the Constitutional Court shall complete the instituted proceedings.

Protection of human rights and fundamental freedoms:

- the constitutional complaints will be examined on the merits and decided by a council of six judges;
- if the Chamber does not reach a unanimous decision, or if the Chamber holds that the matter of the constitutional complaint is of broader significance, the Session of the Constitutional Court shall decide on the constitutional complain;
- the Chamber, respective the Session of the Constitutional Court shall examine only the violations of constitutional rights which are stated in the constitutional complaint;
- a constitutional complaint shall not be considered in cases when it does not deal with the violation of a constitutional right.

7. **Decision:**

- the constitutional complaint could still be dismissed on the merits because it is manifestly ill founded:

- no significant question of constitutional law is raised as grounds for challenge;
- the alleged existence of violations of the stated constitutional rights is not particularly elaborated;
- the applicant did not show that the court had failed to respect the provisions of the Constitution on human rights and fundamental freedoms in its actions or in the judgment, i.e., that it interpreted the relevant provisions of law or other legislation arbitrarily. The constitutional complaint must entail concrete and substantiated reasons for any violation of particular constitutional right.

- if ascertained that the constitutional right of the applicant has been violated not only by the disputed, but also by some other act brought in this matter, the Constitutional Court shall repeal by the decision, as a whole or in part, and this act as well;
- by its decision to accept a constitutional complaint, the Constitutional Court shall repeal the disputed act by which a constitutional right has been violated.
- if the competent judicial or administrative body, body of a unit of local and regional self-government, or legal person with public authority, are obliged to pass a new act to replace the act that was repealed by the decision in paragraph 1 of this Article, the Constitutional Court shall return the matter to the body that passed the repealed act for renewed proceedings;
- if the disputed act that violated the constitutional right of the applicant no lon-

ger produces legal effect, the Constitutional Court shall pass a decision declaring its unconstitutionality, and state in the dictum which constitutional right of the applicant had been violated by that act.

Proceedings to review the constitutionality and legality:

- *the repealed law or other regulation, or their repealed* separate provisions, shall lose legal force on the day of publication of the Constitutional Court decision in the Official Gazette Narodne novine, unless the Constitutional Court sets another term;
- the Constitutional Court may annul a regulation, or its separate provisions, taking into account all the circumstances important for the protection of constitutionality and legality, and especially bearing in mind how seriously it violates the Constitution or the law, and the interest of legal certainty:

- if it violates the human rights and fundamental freedoms guaranteed by the Constitution;
- if, without grounds, it places some individuals, groups or associations in a more or a less privileged position.

- every individual or legal person whose right has been violated by a final individual act grounded upon the repealed provision of another regulation has the right to submit a request to the competent body to change that individual act by the appropriate application of the provisions on renewing proceedings (within a term of six months from the day when the Constitutional Court decision was published in the Official Gazette);
- when the court of justice by the final judgment has refused to apply the regulation because of its unconstitutionality or illegality, but the Constitutional Court finds that such unconstitutionality, respective illegality does not exist, everyone whose right has been violated may request a change of the final judgment of the court during the term of one year from the publication of the Constitutional Court decision;
- In the decision the Constitutional Court shall determine appropriate compensation for the applicant for the violation of his/her constitutional right committed by the court of justice by not deciding within a reasonable time about his/her rights and obligations, or about the suspicions or accusations of a criminal offence.

Council of State of the Hellenic Republic

1. **Existence of an individual constitutional complaint (or indirect referral through state authorities):**
   - the Greek judicial review of constitutionality of laws is repressive, diffuse, incidental and specific. It is not exercised by a single Supreme or Constitutional Court, but by any court, regardless of its position in the hierarchy or jurisdiction in accordance with an express constitutional provision (Article 87, par. 2 of the Greek Constitution), when the court is called upon to apply a provision of law and resolve a particular dispute.

2. **Which rights are protected by the constitutional complaint?**
   Fundamental rights and freedoms.

3. **Who is entitled to lodge a complaint?**
   Every individual, natural or legal person.

4. **The subject-matter of the complaint - acts to which it may be directed:**
   Laws.

5. **Procedural prerequisites for admissibility:**
   Not applicable.

6. **Rules of procedure:**
   - The control of constitutionality of legislation is exercised within certain frames. Since the control is entrusted to the courts, it means that it is, by necessity, a legal and judicial control, a control of legality and not of utility (this can be tested through the reasoning of the judgment). In the discharge of their duties, judges shall be subject only to the Constitution and the laws; in no case whatsoever shall they be obliged to comply with provisions enacted in violation of the Constitution.

7. **Decision:**
   - the effect of the decision is in casu et inter partes.

Constitutional Court of Romania

1. **Existence of an individual constitutional complaint (or indirect referral through state authorities):**
Only indirect referral. The Romanian Constitution regulates two types of constitutionality review, a priori and a posteriori.
A priori control of the constitutionality of laws:
- Prior review is general and abstract, whereas the posterior review is concrete and more thorough;
- by exercising the incidental and concrete control, which is the preliminary question of constitutionality, the Constitutional Court performs a function of protector of fundamental rights and freedoms of citizens in addition to its role of guarantor of the supremacy of the Constitution. Therefore, the preliminary question of constitutionality is a constitutional guarantee of the citizen for the protection of his rights and freedoms in a legal dispute;
- pursuant to art. 146, (a), the Constitutional Court adjudicates on the constitutionality of laws, before promulgation, upon referral by the President of Romania, the President of either of the Chambers, the Government, the High Court of Cassation and Justice, the Advocate of the People, at least 50 Deputies or at least 25 Senators, as well as ex officio, on initiatives to revise the Constitution.

A posteriori control of the constitutionality of laws:
- as it is well-known, the specificity of the a posteriori control consists of the advantage that it allows the review of a law from the point of view of its potential unconstitutionality after its adoption, that is after its enforcement, when constitutionality issues appear more evidently. This means that citizens who may observe potential infringements to their fundamental rights address such issues to the Constitutional Court. Nevertheless, the access of citizens to the constitutional justice is not direct, as it may be filtered by courts of law or of commercial arbitration, or indeed, by the Ombudsman, the only public authorities which may refer preliminary questions of constitutionality to the Constitutional Court. But this indirect access allows plaintiffs to present their claims directly in front of constitutional judges and may end-up with an invalidation of the concerned law that bears erga omnes legal effects;
- pursuant to Art. 146 (d), the Constitutional Court decides on objections as to the unconstitutionality of laws and ordinances, brought up before courts of law or commercial arbitration; the objection as to the unconstitutionality may also be brought up directly by the Advocate of the People.

2. **Which rights are protected by the constitutional complaint?**
   Not applicable.

3. **Who is entitled to lodge a complaint?**
   Not applicable.

4. **The subject-matter of the complaint - acts to which it may be directed:**
   Not applicable.

5. **Procedural prerequisites for admissibility:**
   Not applicable.

6. **Rules of procedure:**
   Not applicable.

7. **Decision:**
   - erga omnes legal effect;
   - decisions of the Constitutional Court shall be published in the Official Gazette of Romania;
   - as from their publication, decisions shall be generally binding and effective only for the future.


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Our Team


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CONSTITUTIONAL

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