

Sofia, October 27, 2023

## **President Galić's presentation at the Forum of Balkan Constitutional Courts**

### **Topic of the Forum: 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.