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**BOSNIE-HERZÉGOVINE / BOSNIA AND HERZEGOVINA /
BOSNIEN UND HERZEGOWINA / БОСНИЯ И ГЕРЦЕГОВИНА**

**The Constitutional Court of Bosnia and Herzegovina
Ustavni Sud Bosne i Hercegovine**

Anglais / English / Englisch / английский

Cooperation of Constitutional Courts in Europe – Current Situation and Perspectives

Questionnaire for the national reports

I. Constitutional Courts between constitutional law and European law

1. Is the Constitutional Court obliged by law to consider European law in the performance of its tasks?

Bosnia and Herzegovina does not have status of the member of the European Union and, therefore, in the legal system of Bosnia and Herzegovina the law which obliges the Constitutional Court of Bosnia and Herzegovina to take European law into account in the performance of its tasks does not exist.

2. Are there any examples of references to the international sources of law, such as:

- a) the European Convention on Human Rights,
- b) the Charter of Fundamental Rights of the European Union,
- c) other instruments of international law at the European level,
- d) other instruments of international law at the international level?

Article II(2) of the Constitution of Bosnia and Herzegovina provides for the direct application of rights and freedoms guaranteed by the European Convention and the Protocols thereto and the priority of these documents over all other law.

Accordingly, the provisions of the European Convention have the power of the constitutional provisions in Bosnia and Herzegovina. By incorporating the European Convention into its constitutional order Bosnia and Herzegovina has also undertaken the positive obligation to harmonize its legislation and legal jurisprudence with the minimum guarantees of the European Convention even before it becomes the member of the Council of

Europe. Furthermore, the Constitution of Bosnia and Herzegovina prescribes for the enjoyment of rights and freedoms contained in the international treaties listed in Annex I to the Constitution of Bosnia and Herzegovina without discrimination on any of the grounds specified in Article II(4) of the Constitution of Bosnia and Herzegovina. Annex I of the Constitution of Bosnia and Herzegovina, under the title “Additional Human Rights Agreements to be Applied in Bosnia and Herzegovina”, lists the following international agreements: 1948 Convention on the Prevention and Punishment of the Crime of Genocide; 1949 Geneva Conventions on the Protection of the Victims of War, and the 1977 Geneva Protocols thereto; 1951 Convention relating to the Status of Refugees and the 1966 Protocol thereto; 1957 Convention on the Nationality of Married Women; 1961 Convention on the Reduction of Statelessness; 1965 International Convention on the Elimination of All Forms of Racial Discrimination; 1966 International Covenant on Civil and Political Rights and the 1966 and 1989 Optional Protocols thereto; 1966 Covenant on Economic, Social and Cultural Rights; 1979 Convention on the Elimination of All Forms of Discrimination against Women; 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; 1987 European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; 1989 Convention on the Rights of the Child; 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; 1992 European Charter for Regional or Minority Languages and 1994 Framework Convention for the Protection of National Minorities.

Further, under Article II(6) of the Constitution of Bosnia and Herzegovina, the obligation of applying and conforming to the human rights and fundamental freedoms under Article II of the Constitution is determined for Bosnia and Herzegovina, and all courts, agencies, governmental organs, and instrumentalities operated by or within the Entities. In essence, this means that all of the above bodies are obliged to directly apply the European Convention and to secure the minimum of rights and freedoms safeguarded thereby.

In accordance with the above, a number of examples in which the Constitutional Court of Bosnia and Herzegovina referred to the international sources of law exist.

3. Are there any specific provisions of the constitutional law imposing a legal obligation of the Constitutional Court to consider decisions by the European courts of justice?

Bosnia and Herzegovina is not a member of the European Union. Consequently, there are no provisions in the Constitution or law which would impose the obligation to consider decisions of the European courts of justice.

4. Is the jurisprudence of the Constitutional Court influenced in practice by the jurisprudence of the European courts of justice?

The influence of the jurisprudence of the European Court of Human Rights is of importance for the work of the Constitutional Court of Bosnia and Herzegovina. However, in the process of deciding on the cases from its jurisdiction, the Constitutional Court of Bosnia and Herzegovina often explores other sources of case-law and, in accordance with the requirements of cases on which the Constitutional Court decides, it explores the jurisprudence of the European courts of justice as well.

5. Does the Constitutional Court in its decisions regularly refer to the jurisprudence of the Court of Justice of the European Union and/or the European Court of Human Rights? Which are the most significant examples?

The Constitutional Court of Bosnia and Herzegovina regularly refers to the case law of the European Court of Human Rights. Examples abound and every one of them is important within the context of different issues raised before the Constitutional Court of Bosnia and Herzegovina. When it comes to respect for private and family life, interference with the right to home under Article 8 of the European Convention, there is a great number of decisions in which the Constitutional Court of Bosnia and Herzegovina used the positions taken by the European Court in case of **Niemietz v. Germany** (of 16 December 1992). In the context of the right to liberty and security under Article 5 of the European Convention, one of the judgments that can be singled out is the judgment in case of **Winterwerp v. Holland** (of 24 October 1979). The Judgment in case of **Unterperinger v. Austria** (of 24 November 1986) was of great help in the context of the guarantees under Article 6(3)(d). In cases relating to the issues of enforcement of final and binding judgments (in the context of the right to a fair trial under Article 6 of the European Convention) the Constitutional Court of Bosnia and Herzegovina uses very often the positions taken by the European Court in its judgment **Hornsby v. Greece** (of 19 March 1997). In the context of the rights as guaranteed under Article 3 of Protocol No. 1 in cases that raise issues relating to elections, significant are the

positions taken in the judgment **Mathieu-Mohin and Clerfayt v. Belgium** (of 2 March 1987).

The case law of the European Court of Justice is not often invoked in the case law of the Constitutional Court of Bosnia and Herzegovina. There are, however, a couple of decisions in which the European Court of Justice's decision **Schul** featured very prominently. In one of the decisions of the Constitutional Court of Bosnia and Herzegovina (no. U 68/02) it is stated: *The Constitutional Court notes that the substantive contents of a single market were clearly defined by the European Court of Justice, which provided guidelines to the European countries on the constitutional development of this important aspect. Accordingly, reference to the case-law of the European Court of Justice is of exceptional importance. In line with the aforesaid case-law, the notion of a "single market" implies that the internal market of Bosnia and Herzegovina should be created by repealing all technical, administrative and other measures (see Decision of the European Court of Justice, Schul, Case No. 15/81, Vol. 1982, p. 1431, para. 33).*

6. Are there any examples of divergences in decisions taken by the constitutional court and the European courts of justice?

7. Do other national courts also consider the jurisprudence of European courts of justice as a result of the constitutional court taking it into consideration in its decisions?

8. Are there any examples of decisions by European courts of justice influenced by the jurisprudence of national constitutional courts?

Responses to questions 6 through 8

Bosnia and Herzegovina is not a member of the European Union. In view of this fact, it is hard to speak about compatibility of the case law of the Constitutional Court of Bosnia and Herzegovina with the case law of European courts of justice or about the impact of the European courts of justice's case law on the national courts' case law and *vice versa*.

II Interactions between constitutional courts

1. Does the constitutional court in its decisions refer to the jurisprudence of other European or non-European constitutional courts?

2. If so, does the constitutional court tend to refer primarily to jurisprudence from the same language area?

3. In which fields of law (civil law, criminal law, public law) does the constitutional court refer to the jurisprudence of other European or non-European constitutional courts?

Responses to questions 1 through 3

There are no examples in the Constitutional Court of Bosnia and Herzegovina's case law so far in which the case law of other constitutional courts was invoked.

4. Have decisions of the constitutional court noticeably influenced the jurisprudence of foreign constitutional courts?

There are no indicators of any influence of the decisions by the Constitutional Court of Bosnia and Herzegovina on the jurisprudence of foreign constitutional courts. According to the data contained in the Venice Commission's Bulletin on Constitutional Case-Law the decision by the Constitutional Court of Bosnia and Herzegovina no. AP 1005/04 was used by the Electoral Court of the Federal Judiciary in case SUP-JDC-144/2007.

5. Are there any forms of cooperation going beyond the mutual acknowledgment of court decisions?

Cooperation and exchange of experiences with other constitutional courts are extremely important for the Constitutional Court of Bosnia and Herzegovina. They are realized through bilateral cooperation with constitutional courts, in particular those in the region. The Constitutional Court of Bosnia and Herzegovina actively participates in round table discussion and multilateral occurrences where issues related to the constitutional jurisprudence are discussed.

III Interactions between European courts in the jurisprudence of constitutional courts

1. Do references to European Union law or to decisions by the Court of Justice of the European Union in the jurisprudence of the European Court of Human Rights have an impact on the jurisprudence of the constitutional court?

2. How does the jurisprudence of constitutional courts influence the relationship between the European Court of Human Rights and the Court of Justice of the European Union?
3. Do differences between the jurisprudence of the European Court of Human Rights, on the one hand, and the Court of Justice of the European Union, on the other hand, have an impact on the jurisprudence of the constitutional court?

Bosnia and Herzegovina is not a member of the European Union and it is not possible even in this case to provide responses to the questions asked.