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CONSTITUTIONAL JUSTICE: FUNCTIONS AND RELATIONSHIP WITH THE OTHER PUBLIC AUTHORITIES

*National report prepared for the XVth Congress
of the Conference of European Constitutional Courts by
The Constitutional Court of Bosnia and Herzegovina*

I. THE CONSTITUTIONAL COURT'S RELATIONSHIP TO PARLIAMENT AND GOVERNMENT

1. The role of Parliament (as the case may be, of the Government) in the procedure for appointing judges to the Constitutional Court. Once appointed, can judges of the Constitutional Court be revoked by that same authority? What could be the grounds/ reasons for such revocation?

The Constitutional Court is composed of 9 judges. According to Article VI(1)(a) of the Constitution of Bosnia and Herzegovina, four members shall be selected by the House of Representatives of the Federation and two members by the Assembly of the Republika Srpska. The remaining three members shall be selected by the President of the European Court of Human Rights after consultation with the Presidency.

The election procedure begins with a vacancy announcement. Ad hoc Commissions of the House of Representatives of the Federation of Bosnia and Herzegovina and National Assembly of the Republika Srpska, which are composed of representatives and a number of experts in the field of law, decide on the candidates' applications. The aforementioned Commissions propose candidates and the representatives of the Parliament of the Federation of BiH and National Assembly of the Republika Srpska vote on their appointment in the Parliament.

According to Article VI (1)(c) of the Constitution of Bosnia and Herzegovina, the term of judges shall be until age of 70 unless they resign or are removed for cause by consensus of the other judges. The issue of mandate of judges of the Constitutional Court of BiH is specified by Article 101 of the Rules of the Constitutional Court, which reads as follows:

1. *A judge may be dismissed from office before the end of his/her term in the following cases:*
 - *if he/she requests it;*
 - *if he/she is sentenced to an unsuspended prison sentence for committing a criminal offence that makes him or her unsuitable for the office;*
 - *if he/she permanently loses the ability to perform his or her functions;*
 - *if the circumstances indicated in Article 97 of these Rules occur;*
 - *if he/she fails to perform the function of a judge in accordance with Article 94 of these Rules.*
2. *The Constitutional Court shall establish the existence of reasons referred to in paragraph 1 of this Article and it shall dismiss the judge from office on the basis of a consensus of other judges and inform the body which elected that judge.*

Article 104 paragraphs 1 through 3 of the Rules of the Constitutional Court provides as follows:

- 1. The President of the Constitutional Court shall institute proceedings for the election of a judge in accordance with Article VI.1 (a) of the Constitution not later than six months prior to the expiration of the term of office of a judge due to his/her age.*
- 2. In the event of resignation or dismissal of a judge from office, the President of the Constitutional Court shall institute proceedings for the election of a judge as from the date of taking of the decision of the plenary Court.*
- 3. In the event referred to in paragraph 1 and 2 of this Article, the President of the Constitutional Court shall inform the Chair of the House of Representatives of the Parliament of the Federation of Bosnia and Herzegovina or the Chair of the National Assembly of the Republika Srpska, the Presidency of Bosnia and Herzegovina and the President of the European Court for Human Rights.*

2. To what extent is the Constitutional Court financially autonomous – in the setting up and administration of its own expenditure budget?

The Rules of the Constitutional Court of Bosnia and Herzegovina provide that the Court is financially autonomous. However, this presents a problem which the Constitutional Court is continuously faced with in its practice. In recent years, the operation of the Constitutional Court has involved different activities aiming at finding funds necessary for its unimpeded, independent, efficient and timely functioning and work and exercising its financial independence and full responsibility and authorization in terms of the budgetary funds necessary for its work. Minimum standards in respecting its financial independence require that the budget proposal and the manner of its use be submitted by the Constitutional Court itself to the Parliamentary Assembly which is to adopt it. However, the Constitutional Court has not yet reached this degree of independence.

3. Is it customary or possible that Parliament amends the Law on the Organization and Functioning of the Constitutional Court, yet without any consultation with the Court itself?

There is no Law on the Constitutional Court in Bosnia and Herzegovina. The Constitution of Bosnia and Herzegovina does not provide that a Law on the Constitutional Court shall be enacted but it provides that the Constitutional Court shall adopt its own Rules of the Court. Thus, the only act, in addition to the Constitution of Bosnia and Herzegovina, which regulates the activity of the Constitutional Court are the Rules of the Court of BiH which have force of an organic law. According to the Rules of the Constitutional Court, the Constitutional Court is the only competent authority to amend the Rules of the Constitutional Court.

4. Is the Constitutional Court vested with review powers as to the constitutionality of Regulations/ Standing Orders of Parliament and, respectively, Government?

The jurisdiction of the Constitutional Court of BiH is primarily determined by Article VI(3) of the Constitution of Bosnia and Herzegovina. As to the abstract control of constitutionality, Article VI(3)(a) provides that the Constitutional Court shall have jurisdiction to decide “whether any provision of an Entity's constitution or law is consistent with this Constitution”. The Constitution of Bosnia and Herzegovina does not explicitly provide that the Constitutional Court is competent to review the constitutionality of the Rules of Procedure of the Parliamentary Assembly. The Constitutional Court has not had an opportunity so far to interpret its jurisdiction in a case relating to such an issue.

5. Constitutionality review: specify types / categories of legal acts in regard of which such review is conducted.

Article VI of the Constitution of Bosnia and Herzegovina reads as follows:

3. Jurisdiction

The Constitutional Court shall uphold this Constitution.

a) The Constitutional Court shall have exclusive jurisdiction to decide any dispute that arises under this Constitution between the Entities or between Bosnia and Herzegovina and an Entity or Entities, or between institutions of Bosnia and Herzegovina, including but not limited to:

- Whether an Entity's decision to establish a special parallel relationship with a neighboring state is consistent with this Constitution, including provisions concerning the sovereignty and territorial integrity of Bosnia and Herzegovina.

- Whether any provision of an Entity's constitution or law is consistent with this Constitution.

Disputes may be referred only by a member of the Presidency, by the Chair of the Council of Ministers, by the Chair or a Deputy Chair of either chamber of the Parliamentary Assembly, by one-fourth of the members of either chamber of the Parliamentary Assembly, or by one-fourth of either chamber of a legislature of an Entity.

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

c) The Constitutional Court shall have jurisdiction over issues referred by any court in Bosnia and Herzegovina concerning whether a law, on whose validity its decision depends, is compatible with this Constitution, with the European Convention for Human Rights and Fundamental Freedoms and its Protocols, or with the laws of Bosnia and Herzegovina; or concerning the existence of or the scope of a general rule of public international law pertinent to the court's decision.

The provisions of the constitutions and laws of the Entities are explicitly provided so that the linguistic interpretation could lead to a conclusion that the laws of Bosnia and Herzegovina are not subject to the control of constitutionality. However, in its extensive case-law, the Constitutional Court interpreted its jurisdiction on several occasions so that a number of decisions on the constitutionality of the laws of Bosnia and Herzegovina were made.

As to the abstract control of constitutionality, the current case-law has dealt with the control of legislative general acts, not the acts of the authorities of the executive and administrative powers.

In decision no. *U 58/02* of 27 June 2003, the Constitutional Court has taken the view that the decision of the Government of the Republika Srpska approving a decision of the Managing Board of the MDP “Poslovnii sistemi RMK – Prijedor” ZDP “Rudnik krečnjaka i tvornica kreča” Dobož (Lime Mine and Factory) could not be the subject of review of constitutionality before the Constitutional Court of Bosnia and Herzegovina within the meaning of Article VI(3)(a) of the Constitution of Bosnia and Herzegovina, since the Constitutional Court only reviews the constitutionality of the laws.

In decision no. *U 4/05* of 22 April 2005, the Constitutional Court declared itself competent to review the constitutionality of the statutes, i.e. the Statute of the City of Mostar in the particular case. The Constitutional Court found the basis for declaring itself competent in that case in the fact that the statutes of units of local governments and local self-governments are enacted by the representative authorities of those units so that the statutes may be classified according to the authority to enact them as basic general acts for activity of local self-government and government of the same logical type as the laws.

- 6. a) Parliament and Government, as the case may be, will proceed without delay to amending the law (or another act declared unconstitutional) in order to bring such into accord with the Constitution, following the constitutional court's decision. If so, what is the term established in that sense? Is there also any special procedure? If not, specify alternatives. Give examples.**

The issue of legal effects of the decisions of the Constitutional Court is regulated in Article 63 of the Rules of the Constitutional Court, which reads as follows:

1. *The Constitutional Court shall, in the decision granting a request, decide on its legal effect (ex tunc, ex nunc).*
2. *In a decision establishing incompatibility under Article VI.3 (a) and VI.3 (c), the Constitutional Court may quash the general act or some of its provisions, partially or entirely.*
3. *The quashed general act or its quashed provisions shall cease to be in force on the first day following the date of publication of the decision in the Official Gazette of Bosnia and Herzegovina.*
4. *Exceptionally, the Constitutional Court may by its decision establishing the incompatibility under Article VI.3 (a) and VI.3 (c) of the Constitution, grant a time-limit for harmonization, which shall not exceed six months.*
5. *If the established incompatibility is not removed within the time-limit referred to in paragraph 4 of this Article, the Constitutional Court shall, by a further decision, declare that the incompatible provisions cease to be in force.*
6. *The incompatible provisions shall cease to be in force on the first day following the date of publication of the decision referred to in paragraph 4 of this Article in the Official Gazette of Bosnia and Herzegovina.*

Under paragraph 4 of the cited Article it is stipulated that in exceptional cases a time-limit may be determined for harmonization of the law which is declared unconstitutional by the Constitutional Court.

For example, in decision no. *U 17/06* the Constitutional Court established that the challenged provisions of the Law on Minor Offences violating Federation Regulations are inconsistent with Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Constitutional Court ordered the Parliament of the Federation of Bosnia and Herzegovina, in accordance with Article 63(4) of the Rules of the Constitutional Court of Bosnia and Herzegovina, to bring Articles 152, 153, 154, 155, 156 and 157 of the Law on Minor Offences Violating Federation Regulations (*Official Gazette of the Federation of Bosnia and Herzegovina*, no. 9/96 and 29/00) into line with Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms within six months as from the date of publication of this Decision in the *Official Gazette of Bosnia and Herzegovina*. In the instant case, the Constitutional Court decided that the law provisions are inconsistent with the Constitution of BiH. However, the Constitutional Court of BiH left the challenged law provisions in force and gave the Parliament of the Federation of BiH a **maximum time-limit of 6 months** to amend the mentioned provisions.

Therefore, pursuant to the Rules of the Constitutional Court (Article 63 paragraph 4), a maximum time-limit for the harmonization of the law which is declared unconstitutional by the Constitutional Court shall be 6 months. Special procedures under the Constitution of BiH or the Rules of the Constitutional Court are not provided in such cases.

II. RESOLUTION OF ORGANIC LITIGATIONS BY THE CONSTITUTIONAL COURT

1. What are the characteristic traits of the contents of organic litigations (legal disputes of a constitutional nature between public authorities)?

In the legal system of Bosnia and Herzegovina there are two kinds of constitutional disputes between the public authorities, which is as a result of its complex organization: there are the so-called “federal disputes” (between certain administrative/territorial units of the second level - the Entities and between different levels - the State and the Entities, where a special form of those disputes arise relating to the decisions of the Entities to establish special parallel relations with the neighboring countries) and the so-called organic disputes at the state level - between the institutions of Bosnia and Herzegovina. Accordingly, the Constitutional Court, within its authorities provided for under Article VI(3)(a) of the Constitution of BiH, has jurisdiction to decide on positive or negative conflicts of jurisdiction or any other dispute that may arise under relations between the State and Entity authority and/or the institutions of Bosnia and Herzegovina. It should be noted that by Amendment I to the Constitution of Bosnia and Herzegovina, which was adopted in March 2009, a new Article VI(4) was added and under this Article the Constitutional Court of Bosnia and Herzegovina shall have jurisdiction to decide in any dispute relating to protection of the determined status and powers of the Brčko District of Bosnia and Herzegovina that may arise between an Entity or more Entities and the Brčko District of Bosnia and Herzegovina or between Bosnia and Herzegovina and the Brčko District of Bosnia and Herzegovina under this Constitution and the awards of the Arbitral Tribunal.

2. Specify whether the Constitutional Court is competent to resolve such litigation.

Pursuant to Article VI(3)(a) of the Constitution of BiH, the Constitutional Court shall have exclusive jurisdiction to decide any dispute that arises under this Constitution between the Entities or between Bosnia and Herzegovina and an Entity or Entities, or between institutions of Bosnia and Herzegovina. Pursuant to Article VI(4) the Constitution of BiH, the Constitutional Court shall have jurisdiction to decide in any dispute relating to protection of the determined status and powers of the Brčko District of Bosnia and Herzegovina that may arise between an Entity or more Entities and the Brčko District of Bosnia and Herzegovina or between Bosnia and Herzegovina and the Brčko District of Bosnia and Herzegovina under this Constitution and the awards of the Arbitral Tribunal.

3. Which public authorities may be involved in such disputes?

As it has been already stated, disputes may arise between the authorities of Entities and the State and the Brčko District.

4. Legal acts, facts or actions which may give rise to such litigations: do they relate only to disputes on competence, or do they also involve cases when a public authority challenges the constitutionality of an act issued by another public authority? Whether your constitutional court has adjudicated upon such disputes; please give examples.

According to the examples from the case-law of the Constitutional Court, some of the acts which led to disputes arising under conflict of jurisdiction within the meaning of Article VI(3)(a) of the Constitution of BiH are as follows:

- The Agreement on the Establishment of Special Parallel Relationships between the Federal Republic of Yugoslavia and the Republika Srpska (see the decision of the Constitutional Court of BiH No. *U 42/01* of 5 March 2001), which initiated a dispute over the jurisdiction between the State of Bosnia and Herzegovina and the Republika Srpska as one of its two Entities. One of the issues which were dealt with in this case was whether the consent of the Parliamentary Assembly of Bosnia and Herzegovina should have been sought prior to the ratification of the Agreement. As regards this issue, the Constitutional Court noted that based on Article III (2) of the Constitution of Bosnia and Herzegovina, an Agreement on Special Parallel Relationships has a constitutional restriction with respect to the sovereignty and territorial integrity whereas agreements with states and international organizations may be entered into (exclusively) with the consent of the Parliamentary Assembly of Bosnia and Herzegovina. Therefore, an Agreement on Special Parallel Relationships succumbs to the control of the Constitutional Court whereas agreements with states and international organizations require the consent of the Parliamentary Assembly. The Constitutional Court concludes that the consent of the Parliamentary Assembly is not required for the establishment of special parallel relationships with the neighboring countries and, therefore, the Agreement was concluded in the manner consistent with the Constitution of Bosnia and Herzegovina.

- The Law on Insurance Agency in Bosnia and Herzegovina (Decision of the Constitutional Court no. *U 17/09* of 27 March 2010), which was a reason for dispute over the jurisdiction between the State and the Entity. In the instant case the Constitutional Court concluded that the Parliamentary Assembly of Bosnia and Herzegovina has the power to adopt the challenged legal provisions on the basis of Article IV(4)(a) of the Constitution of Bosnia and Herzegovina in conjunction with Article III(1)(a) and (b) of the Constitution of Bosnia and Herzegovina, as they are aimed to harmonize the Entities' legislation in the area of insurance as well as their harmonization with the relevant legislation regulating this matter within the European

Union, whereby Bosnia and Herzegovina is meeting its obligations undertaken under the Stabilization and Association Agreement.

- In decision of the Constitutional Court no. *U 14/04* of 29 October 2004, the Constitutional Court concluded that the provisions of Articles 1 and 2 of the Law on Amendments to the Law on Turnover Tax on Goods and Services (*Official Gazette of the Federation of Bosnia and Herzegovina* no. 39/04) and the provisions of Articles 1 and 2 of the Law on Amendments to the Law on Special Tax on Non-Alcoholic Drinks (*Official Gazette of the Federation of Bosnia and Herzegovina* no. 39/04) are not consistent with Articles I(4), III(3)(b) and III(5)(a) of the Constitution of Bosnia and Herzegovina. The Constitutional Court noted that the Parliament of the Federation of Bosnia and Herzegovina violated the provision of Article III(5)(a) of the Constitution of Bosnia and Herzegovina by entering the scope of competences transferred to Bosnia and Herzegovina by the Federation of Bosnia and Herzegovina by means of an agreement. This was also the dispute arising under conflict of jurisdiction between the State and an Entity - in this particular case the Entity is the Federation of Bosnia and Herzegovina.

5. Who is entitled to submit proceedings before the Constitutional Court for the adjudication of such disputes?

Disputes of this kind may be initiated under the Constitution by the same persons who are authorized to file requests for review of constitutionality as follows: a member of the Presidency, the Chair of the Council of Ministers, the chair or deputy chair of each of the houses of the Parliamentary Assembly; one quarter of the members/delegates of each of the houses of the Parliamentary Assembly, or one quarter of the members of each of the houses of the legislative body of an Entity.

As regards Article VI(4) of the Constitution of BiH (mentioned in item II.1 of the Questionnaire), relating to the Brčko District of Bosnia and Herzegovina, a dispute may be initiated by the majority of representatives in the Assembly of the Brčko District of Bosnia and Herzegovina which includes at least one fifth of the elected representatives from any of the constituent peoples.

6. What procedure is applicable for the adjudication of such dispute?

The Constitutional Court conducts proceedings in accordance with Article VI(3)(a) of the Constitution of BiH. These disputes are dealt with, as a rule, by the plenary session with a possibility to hold a public hearing pursuant to the Rules of the Court. Such proceedings are designated by letter U.

7. What choices are there open for the Constitutional Court in making its decision (judgment). Examples.

When deciding cases involving conflicts of jurisdiction, the Constitutional Court may issue a decision on admissibility or a decision on the merits.

It shall issue a decision on admissibility in case where all formal conditions for the admissibility of a request have not been met. Depending on whether there is a violation of the Constitution of Bosnia and Herzegovina, the Constitutional Court shall issue a decision on the merits granting the request or dismissing it. The Constitutional Court may issue a partial decision if a request contains several issues and if the nature of the case allows it.

The Rules of the Constitutional Court stipulate that the Constitutional Court shall, in the decision granting a request, decide on its legal effect (*ex tunc, ex nunc*). In a decision establishing incompatibility under Article VI(3)(a) the Constitutional Court may quash the general act or some of its provisions, partially or entirely.

No particular means for issuing a decision concerning a dispute on conflict of jurisdiction are prescribed by the Rules and the Constitution of Bosnia and Herzegovina.

8. Ways and means for implementing the Constitutional Court's decision: actions taken by the public authorities concerned afterwards. Examples.

The enforcement of decisions of the Constitutional Court does not fall within the jurisdiction of the Constitutional Court. The Constitutional Court does not have within its organization any kind of enforcement department. However, in the event of a failure to enforce a decision, or a delay in enforcement or in giving information to the Constitutional Court about the measures taken, the Constitutional Court shall render a ruling in which it shall establish that its decision has not been enforced. This ruling shall be transmitted to the competent prosecutor or another body competent to enforce the decision, as designated by the Constitutional Court.

III. ENFORCEMENT OF CONSTITUTIONAL COURT'S DECISIONS

1. The Constitutional Court's decisions are:
 - a) final;
 - b) subject to appeal; if so, please specify which legal entities/subjects are entitled to lodge appeal, the deadlines and procedure;
 - c) binding *erga omnes*;
 - d) binding *inter partes litigantes*.

The Constitution of Bosnia and Herzegovina prescribes in its Article VI(5) that decisions of the Constitutional Court of Bosnia and Herzegovina shall be final and binding. When we say final it means that they may not be challenged as there are no legal remedies against them before any higher domestic instance. These decisions thereby formally gain legal force.

The manner in which the decisions shall be enforced is regulated in more detail by the Rules of the Constitutional Court, which stipulate that decisions of the Constitutional Court shall be final and binding, that every physical and legal person shall be obligated to comply with them and that all bodies shall be obligated to enforce the decisions of the Constitutional Court within their competences established by the Constitution and law.

With decisions involving abstract review of constitutionality substantive finality takes effect *erga omnes*. Regarding decisions issued in the appellate proceedings, such decision are by all means binding *inter partes litigantes*. However, we wish to point out that, in accordance with the aforementioned, every physical and legal person as well as all bodies shall be obligated to enforce the decisions of the Constitutional Court.

2. As from publication of the decision in the Official Gazette/Journal, the legal text declared unconstitutional shall be:
 - a) repealed;
 - b) suspended until when the act/text declared unconstitutional has been accorded with the provisions of the Constitution;
 - c) suspended until when the legislature has invalidated the decision rendered by the Constitutional Court;
 - d) other instances.

The legal effect of a decision of the Constitutional Court is determined by Article 63 of the Rules of the Constitutional Court as cited earlier in the text. Within the context of the posed question the relevant parts of the aforementioned Article read:

2. In a decision establishing incompatibility under Article VI(3)(a) and VI(3)(c), the Constitutional Court may quash the general act or some of its provisions, partially or entirely.

3. *The quashed general act or its quashed provisions shall cease to be in force on the first day following the date of publication of the decision in the Official Gazette of Bosnia and Herzegovina.*

4. *Exceptionally, the Constitutional Court may by its decision establishing the incompatibility under Article VI(3)(a) and VI(3)(c) of the Constitution, grant a time-limit for harmonization, which shall not exceed six months.*

5. *If the established incompatibility is not removed within the time-limit referred to in paragraph 4 of this Article, the Constitutional Court shall, by a further decision, declare that the incompatible provisions cease to be in force.*

6. *The incompatible provisions shall cease to be in force on the first day following the date of publication of the decision referred to in paragraph 4 of this Article in the Official Gazette of Bosnia and Herzegovina.*

3. Once the Constitutional Court has passed a judgment of unconstitutionality, in what way is it binding for the referring court of law and for other courts?

Within its abstract jurisdiction, the Constitutional Court may, by a decision establishing incompatibility under Article VI(3)(a) and VI(3)(c), quash the general act or some of its provisions, partially or entirely. The quashed general act or its quashed provisions shall cease to be in force on the first day following the date of publication of the decision in the *Official Gazette of Bosnia and Herzegovina*. If the aforementioned is related to the fact that the decisions of the Constitutional Court are final and binding and that every physical and legal person shall be obligated to respect them, these decisions shall also be binding for courts as well.

When deciding cases arising out of its jurisdiction under Article VI(3)(b) (proceedings related to individual violations of rights and fundamental freedoms under the Constitution and the European Convention arising out of decisions of ordinary courts and other public authority bodies), the Constitutional Court shall issue a decision granting the appeal, quashing the challenged decision and referring the case back to the court or to the body which took that decision, for renewed proceedings. If the law regulating the competence for acting in the respective legal matter was amended prior to taking of a decision by the Constitutional Court, the court or the body which took the quashed decision is obligated to refer the case to the competent court or body without delay. 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 rights and fundamental freedoms as guaranteed under the Constitution.

In practice, ordinary courts follow the case-law and take into account the positions of the Constitutional Court in their work and invoke them in their decisions.

Another principle established by the Rules of the Constitutional Court which is applicable as a response to the concrete question is contained in Articles 67 and 68 of the Rules which read:

Everyone whose right was violated by a final or legally binding individual act, which was issued in accordance with provisions that ceased to be in force within meaning of Article 63 of these Rules, shall have the right to request the competent body to alter that individual act while the competent body is obligated to renew proceedings and harmonize the act with the decision of the Constitutional Court.

A request for altering a final or legally binding act referred to in Article 67 of these Rules, may be filed within six months as from the date of the publication of the decision in the Official Gazette of Bosnia and Herzegovina, provided that not more than five years have elapsed between the enactment of the act and the decision of the Constitutional Court.

4. Is it customary that the legislature fulfills, within specified deadlines, the constitutional obligation to eliminate any unconstitutional aspects as may have been found- as a result of a posteriori and/or a priori review?

It has been stated earlier in the text that the decisions of the Constitutional Court shall be final and binding and that every physical and legal person and all bodies shall be obligated to respect them. This also includes the legislative bodies in Bosnia and Herzegovina.

The legislative bodies comply with the decisions of the Constitutional Court in most cases. Pursuant to the latest report on enforcement of decisions of the Constitutional Court for the period August 2009 through March 2010, all decision relating to the abstract review of constitutionality have been enforced.

The Constitutional Court has no jurisdiction to conduct a priori review of constitutionality.

5. What happens if the legislature has failed to eliminate unconstitutional flaws within the deadline set by the Constitution and/or legislation? Give examples.

Within the time-limit referred to in paragraph 4 of Article 74 of the Rules of the Constitutional Court, the body obligated to enforce the decision of the Constitutional Court shall be obligated to submit information about the measures taken to enforce the decision of the Constitutional Court, as required by the decision. In the event of a

failure to enforce a decision, or a delay in enforcement or in giving information to the Constitutional Court about the measures taken, the Constitutional Court shall render a ruling in which it shall establish that its decision has not been enforced and it may determine the manner of enforcement of the decision. **This ruling shall be transmitted to the competent prosecutor or another body competent to enforce the decision, as designated by the Constitutional Court.** It is important to point out that, under Article 239 of the Criminal Code of Bosnia and Herzegovina, failure to enforce decisions of the Constitutional Court of Bosnia and Herzegovina shall be punished by imprisonment for a term between six months and five years and, therefore, a ruling on non-enforcement of a decision of the Constitutional Court transmitted to the Prosecutor's Office of Bosnia and Herzegovina, within the context of Article 215 of the Criminal Procedure Code of Bosnia and Herzegovina, shall be regarded as a criminal charge pursuant to which the Prosecutor's Office is under obligation to act by ordering the conduct of an investigation or deciding not to order the conduct of an investigation whereof it shall be obligated to inform the injured party and the applicant.

By its Ruling on Failure to Enforce no. *U 4/04* of 27 January 2007 the Constitutional Court It is hereby established that the Parliament of the Federation of Bosnia and Herzegovina and National Assembly of Republika Srpska failed to enforce the Partial Decision of the Constitutional Court of Bosnia and Herzegovina, no. *U 4/04* of 31 March 2006, within a given time limit of six months from the date it was published in *Official Gazette of Bosnia and Herzegovina*. The Constitutional Court further established that Articles 1 and 2 of the Law on Coat of Arms and the Flag of the Federation of Bosnia and Herzegovina (*Official Gazette of Federation of Bosnia and Herzegovina* nos. 21/96 and 26/96) and Articles 2 and 3 of the Constitutional Law on Flag, Coat of Arms and Anthem of the Republika Srpska (*Official Gazette of Republika Srpska* no. 19/92), shall be rendered ineffective and that they shall be rendered ineffective as of the date following the publishing date of this Ruling in *Official Gazette of Bosnia and Herzegovina*. Pursuant to Article 74(6) of the Rules of the Constitutional Court of Bosnia and Herzegovina, this Ruling shall be remitted to the Prosecutor's Office of Bosnia and Herzegovina.

6. Is legislature allowed to pass again, through another normative act, the same legislative solution which has been declared unconstitutional? Also state the arguments.

In the case-law of the Constitutional Court, as to the abstract review of constitutionality, there were no such situations. Neither the Rules of the Constitutional Court nor the Constitution of Bosnia and Herzegovina have provided for the way the Constitutional Court should proceed in such a situation.