

**Conference of European Constitutional Courts
XIIth Congress**

*The relations between the Constitutional Courts
and the other national courts,
including the interference in this area
of the action of the European courts*

**Report of
the Constitutional Court
of Bosnia and Herzegovina**

I. The constitutional court, the other courts and the constitutionality review

A. The judicial organization of the State

1. The judicial system

1. Please give a brief presentation, using diagrams if necessary, of the different courts that exist in your State and the organization of their powers. This concerns the ordinary courts as well as the administrative or other courts, the courts of the Federal State as well as the courts of the federated States.

Bosnia and Herzegovina is a State composed of two Entities: the Federation of Bosnia and Herzegovina (FBH) and Republika Srpska (RS).

At the level of Bosnia and Herzegovina there is the Constitutional Court of Bosnia and Herzegovina. The composition, the procedures, the jurisdiction and the decisions of the Constitutional Court are provided by the Constitution of Bosnia and Herzegovina. On the basis of constitutional powers, the Constitutional Court of Bosnia and Herzegovina adopted its Rules of Procedure, by which it regulated the organization of the Court, the procedures before the Court and the legal effect of its decisions.

In November 2000, the High Representative for Bosnia and Herzegovina adopted the Law on the Court of Bosnia and Herzegovina. The Court of Bosnia and Herzegovina has not yet started functioning.

The judicial functions in the Federation of BH are carried out by the courts of the Federation: the Constitutional Court, the Supreme Court, Cantonal Courts and Municipal Courts.

The Constitutional Court of the Federation of Bosnia and Herzegovina deals with disputes between Cantons, between a Canton or Cantons and the Federal government, between Federal institutions, and decides on the constitutionality of Federal, Cantonal and Municipal regulations.

The Supreme Court of FBH is the highest appellate court of the Federation. It is also competent for carrying out first instance investigations and trials for certain criminal offences. Furthermore, it decides on lawsuits against final administrative acts of Federal administrative organs (administrative disputes).

Cantonal Courts and Municipal Courts carry out judicial functions according to the Constitution and the laws. Thereby, the Cantonal Courts decide on appeals against decisions of Municipal Courts, and on lawsuits against final administrative acts of Cantonal administrative organs (administrative disputes).

The Constitutional Court of Republika Srpska decides on the conformity of laws and other regulations with the Constitution of Republika Srpska and the laws, and deals with conflicts of competences between organs of the legislative, executive and judicial branch of government.

In Republika Srpska, there are the Supreme Court, County Courts and Basic Courts. The Supreme Court of Republika Srpska is the highest court in Republika Srpska. Inter alia, it decides on ordinary and extraordinary legal remedies against decisions of County Courts, as well as on the legality of final administrative acts of Republic organs.

County Courts decide on appeals against decisions of Basic Courts, adjudicate as first instance courts for certain crimes provided by law, and decide on the legality of final administrative acts in administrative disputes in which the competence of no other court is foreseen.

In the beginning of the year 2000, the District of Brcko was established. This District is a separate administrative unit with respect to the Federation of Bosnia and Herzegovina and Republika Srpska. The judicial system of the District of Brcko is composed of two courts: the Basic Court and the Appellate Court.

2. The constitutional court

2. What is the place of the constitutional court in the judicial organization of the State? If it is part of the judiciary, what is its status within the judiciary?

The position of the Constitutional Court is provided for in the Article VI of the Constitution of BH which defines not only its jurisdiction, but also provides for its organisational structure and its procedure, as well as for the final and binding character of its decision.

The Constitution of BH provides a special position for the Constitutional Court, both in regard to independence with respect to other authorities and in regard to the principle of “deconstitutionalization”, according to which it is rendered impossible for laws to define the jurisdiction and organization of the Court, and according to which the constitutional provisions are the only ones adopted outside the Constitutional Court that set the limits in the determination of the organization and jurisdiction of the Court.

The overriding duty of the Constitutional Court of BH is to uphold the Constitution. The Constitutional Court has exclusive jurisdiction to decide any dispute that arises under the Constitution between the entities, between BH and an entity or entities, or between institutions of BH; jurisdiction to decide whether any provision of BH laws or an entity’s constitution or a law is consistent with the Constitution; jurisdiction to decide on issues referred to it by any court in BH concerning the issue as to whether a law, on whose validity its decision depends, is compatible with the Constitution, the ECHR and its Protocols or with the laws of BH or concerning the existence of or the scope of a general rule of public international law pertinent to the court’s decision.

The Constitutional Court has also appellate jurisdiction over issues under the Constitution arising out of a judgment of any other court in BH. In this regard, the Constitutional Court is the highest judicial body in the land regarding the rights and freedoms enshrined in the Constitution.

B. The respective jurisdictions of the constitutional court and the other courts in the area of constitutionality review

1. Review of laws and other acts

§ 1. Type of review

3. What acts (of domestic law and international law) are reviewed by the constitutional court in relation to the higher standards that are the Constitution, the principles of constitutional value and the provisions of international law?

The laws of Bosnia and Herzegovina and the constitutions and laws of the Entities.

The Constitutional Court also has exclusive jurisdiction to decide whether an Entity's decision to establish a parallel relationship with a neighboring state is consistent with the Constitution, including provisions concerning the sovereignty and territorial integrity of BH.

The Court also decided it is competent to review laws imposed by the High Representative in substitution of the national legislator.

4. Is this competence exclusive? If not, which are the other competent courts in this area? How about the other acts and decisions?

Yes, it is exclusive.

The Constitutional Court has also appellate jurisdiction over issues under the Constitution arising out of a judgment of any other court in BH. In this regard the Constitutional Court is the highest judicial body in the country regarding the rights and freedoms enshrined in the Constitution

The Constitutional Court has also jurisdiction to decide on issues referred to it by any court in BH concerning the issue as to whether a law, on whose validity its decision depends, is compatible with the Constitution, the ECHR and its Protocols or with the laws of BH or concerning the existence of or the scope of a general rule of public international law pertinent to the court's decision.

5. Is the review carried out by the constitutional court a prior or subsequent review?

As a rule, it is a subsequent review.

Still, the Constitutional Court has also jurisdiction in case of a "blocking" of the House of Peoples of the Parliamentary Assembly of BH over issues of vital interest, which represents in many ways an atypical area of activity of a constitutional court, since there will thereby inevitably be a close "interface" between the judiciary of the constitutional court and the legislative authorities. In such a case, the Constitutional Court has to review the "procedural regularity" of a dispute in which a proposed decision of the Parliamentary Assembly is, according to the opinion of a majority of the delegates representing any of three constituent peoples in the House of Peoples, considered to be destructive of a vital interest, whilst at the

same time all “parliamentary means” for the resolution of this issue in the House of People have been exhausted.

This could be considered as a prior review, but the Court has not so far had any case of this type to review.

6. Is the review carried out by the constitutional court an abstract or a concrete review?

Both: an abstract review – in cases of requests of a limited number of authorised organs or parts thereof (requests under Article VI.3 (a) of the Constitution) and a concrete review – in cases referred by lower courts as preliminary questions (requests under Article VI.3 (c)).

§ 2. Referral to the constitutional court

a. Types of referral

7. How can the constitutional court be accessed (action for annulment, preliminary question, constitutional appeal, etc.)? How many cases have there been for each type of referral?

The constitutional disputes may be referred only by a member of the Presidency, by the Chair of the Council of Ministers, by the Chair or 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 (Article VI.3 (a) of the Constitution).

An appeal can be lodged by the parties to the proceedings which ended in a decision challenged by the appeal or which did not produce a decision when this omission is considered to be unconstitutional (Article VI.3 (b) of the Constitution).

Any court in BH can refer an issue to the Constitutional Court concerning whether a law, on whose validity its decision depends, is compatible with the Constitution, the ECHR and its Protocols or with the laws of BH or concerning the existence of or the scope of a general rule of public international law pertinent to the court’s decision (Article VI.3 (c) of the Constitution).

Jurisdiction	Received	Resolved
VI.3 (a)	30	24
VI.3 (b)	416	196
VI.3 (c)	2	2
TOTAL	448	272

b. Actions for annulment

8. Does direct recourse exist to the constitutional court against statutes? And against other regulations and acts?

A direct recourse against statutes exists only for a limited circle of organs or parts thereof (see answer to question 7 above - paragraph 1). The question of whether this could be extended to other regulations or acts has not been decided yet.

9. Who can bring such actions and within what time limit?

See answer to question 7 above - paragraph 1.
There is no time limit for bringing such an action.

10. Can the constitutional court suspend statutes or other regulations and acts?

The Constitutional Court may, until the final decision has been made, fully or partially suspend the execution of laws and acts if their execution may have detrimental consequences that cannot be overcome.

The Court revokes an interim measure when it ascertains that the reasons for which it was taken have ceased to exist.

c. Preliminary issues – plea of unconstitutionality

Who can refer cases to the constitutional court?

11. Which courts can refer cases to the constitutional court? If any court can put a preliminary question, does that mean that a broad or a restrictive interpretation is given to the notion of 'court'?

The BH Constitution allows any court in BH to refer cases to the Constitutional Court. Regarding the notion of "court" in the context of Article VI.3 (c), the Constitutional Court has not yet specified criteria for its interpretation.

12. Are the courts obliged to put the question?

Article VI.3 (c) does not give guidance on whether or not there is an obligation to put the question to the Constitutional Court and the Constitutional Court has not yet decided on this issue. However, the role attributed to the Constitutional Court in Article VI.3 shows that it is conceived as the final authority to interpret the Constitution and, accordingly, to declare a law unconstitutional. This results in an obligation of a lower court to put the question to the Constitutional Court in case of doubts about the constitutionality of a law which is decisive in the case before it.

13. Is it possible to oppose, by a procedure of objection, opposition or recourse, the submission of all or part of a case to the constitutional court by a decision of referral? If so, who can initiate this procedure and how does it proceed? What are the consequences?

No.

14. What is the procedure for referral to the constitutional court? What is the role of the parties in drawing up the preliminary question? Can the preliminary question be raised ex officio? In that case, are the discussions on the question reopened?

Cf. Articles 11 (d) and 14 para. 3 of the Constitutional Court's Rules of Procedure.

The role of the parties in proceedings before ordinary courts in drawing up a preliminary question to the Constitutional Court has not been clarified. In the few cases of that kind that the Constitutional Court had so far, the preliminary question was raised by the ordinary court ex officio. The procedures for referred preliminary questions are still to be elaborated in the developing practice.

15. Do the courts that put the question rule on the constitutionality or unconstitutionality of the regulation at issue?

No. Under this competence of the Constitutional Court, referred questions understand concrete review of laws being applied – not reviewed – in proceedings before courts.

Screening

16. Is there a screening procedure which allows the constitutional court to limit the number of cases or to speed up the hearing of those cases (nonsuit, quick reply, demurrer, evident unfoundedness, identity or similarity of questions which the constitutional court has already answered)? What is the proportion of cases screened in this way?

In view of the nature of the case the Court may decide to apply an expedited procedure.

The Court takes the decision to reject a request if it finds that:

1. it is not competent to decide;
2. the request was submitted by an unauthorized person;
3. the applicant did not rectify the errors in the given period as required;
4. the challenged general act is not in effect;
5. the issue in question was already decided by the Court, and it does not follow from the statement and evidence presented in the claim that there are grounds for a new decision.

The Court takes the ruling to terminate the procedure if in the course of the procedure:

1. the unconstitutionality of the challenged act has been removed;
2. the challenged general act ceased to be valid;
3. the applicant has withdrawn the request.

In case of a situation from item 3 in the preceding paragraph the Court may resume the procedure if there is a manifest violation of the provision of the Constitution regarding human rights and fundamental freedoms.

When the Court, within its competence, receives several requests on the same matter, the Court, as a rule, conducts one set of proceedings and adopt one decision.

The Court may adopt a partial decision if the request contains several issues and if the nature of the case makes it possible.

Scope of referral of the constitutional court

17. What is the import of the considerations of unconstitutionality given by the court that puts the question (court a quo)? Must the constitutional court take these considerations into account or can it ignore them? Can it raise, ex officio or at the request of the parties, the arguments of unconstitutionality not envisaged by the court a quo or is it restricted by the decision of referral? Can the constitutional court review regulations not intended by the preliminary question yet linked thereto?

The Constitutional Court is not obliged to take the lower courts' considerations into account. The Constitutional Court can only examine the arguments of unconstitutionality raised by the court a quo (cf. Article 26 of the Constitutional Court's Rules of Procedure) The Court cannot review regulations not intended by the preliminary question.

18. Are all aspects, both in law and in fact, of the action pending before the court a quo referred to the constitutional court?

The Constitutional Court has jurisdiction only over issues concerning whether a law is compatible with the Constitution, with the ECHR and its Protocols or with the laws of BH.

Relevance of the question

19. Can the constitutional court dismiss the question on the grounds that it is not useful to the settlement of the action brought before the court a quo?

The Constitutional Court has not decided on this issue, but Article VI.3 (c) is quite explicit on the fact that the validity of the decision must depend on the law at issue. If that is not the case, the Constitutional Court would most likely reject the request.

Interpretation of the question

20. Can the constitutional court reformulate the question in order to make it clearer and to define the constitutional debate better? If so, what use is made of this option?

The Constitutional Court is, in principle, bound by Article 26 to examine only the existence of those violations alleged in the request. That, of course, does not prevent it from clarifying the request within the margin set out by it, especially in cases where the issue put before it is of crucial importance.

Interpretation of the reviewed regulation

21. *Must the constitutional court adhere to the interpretation of the reviewed regulation given by the court a quo?*

No, being the final authority to interpret the Constitution.

Jus superveniens

22. *What is the impact of a legislative amendment to the challenged regulation subsequent to the decision of referral?*

The Court takes a ruling to terminate the procedure if in the course of the procedure the unconstitutionality of the challenged act has been removed or the challenged general act ceased to be valid.

Parties

23. *Can the parties before the court a quo or third parties (individuals, institutions, other courts, etc.) participate (voluntarily or compulsorily) in the procedure before the constitutional court? If so, in what way? How are they informed of the procedure before the constitutional court? Can one intervene before the constitutional court on the mere grounds of being a party before a court deciding on merits in an action similar to the one that led the court a quo to put the preliminary question?*

No.

24. *Is there a counsel for the defence? If so, in what form? Is there a counsel for the prosecution with the constitutional court?*

No.

Points of law in the constitutional proceedings

25. *Does the withdrawal of suit before the court a quo or the death of a party before the same court subsequent to the decision of referral have an impact on the progress of the constitutional action?*

The Constitutional Court has not decided on this issue yet. Since the court a quo takes the decision of referral it is up to it to withdraw the request. But even if the court a quo withdraws the request the Court may resume the procedure if there is a manifest violation of the provision of the Constitution regarding human rights and fundamental freedoms.

d. The constitutional appeal (for example recours d'amparo, Verfassungsbeschwerde etc.)

Object of the constitutional appeal

26. *What is the object of the constitutional appeal? Against which acts can such an appeal be lodged? Once a constitutional appeal has been referred to it, can the constitutional court examine the facts of the case?*

An appeal can be lodged against a “judgment of any court in BiH” (Art. VI.3 (b) of BH Constitution). However, in the light of Article 6 ECHR, this has to be interpreted broadly so as to include all kinds of decisions and rulings, regardless of their denomination, but also a failure to take a decision where such failure is claimed to be unconstitutional. The Constitutional Court has not yet decided whether an appeal against an administrative decision should be accepted in case the access to court seems pointless (e.g. because the law does not provide for access to court) or if the appellant has to at least try to pursue his rights before a court.

The establishment of the facts is, in principle, up to the ordinary courts and not subject to review by the Constitutional Court. However, as the case may be, the Constitutional Court may need to review the establishment of the facts if it is questionable whether it was carried out in conformity with constitutional standards.

Allowability of the appeal

27. *Who can refer an appeal to the constitutional court? How?*

The parties to the proceedings which ended in a decision challenged by the appeal. The case of lack of a court decision where the individual has the right to a court decision can also be brought before the Constitutional Court.

Appeals are delivered by mail or are brought directly before the Court.

28. *Is appeal to the constitutional court only possible once all other avenues of appeal have been tried?*

The Constitutional Court may examine an appeal only if all effective legal remedies which are available under the laws of Entities against the judgment challenged by the appeal have been exhausted. This does not relate to some issues concerning Article 6 (right of access to court, reasonable time) and Article 13 (right to an effective remedy before a national authority) of the ECHR.

Screening

29. *Is there a screening procedure which allows the constitutional court to limit the number of cases or to speed up the hearing of those cases (selection of cases, nonsuit, quick reply, demurrer, evident unfoundedness, etc.)? What is the proportion of cases screened in this way?*

The Constitutional Court decides only on those appeals that were put on the list of cases for decision. The list is determined by the President and the Vice- Presidents of the Court by majority vote; the President has the casting vote in case of a tie.

An appeal is not put on the case-list in any of the following cases:

1. if the appeal is anonymous
2. if the appellant has withdrawn his appeal
3. if the time-limit for filing an appeal has not been respected
4. if the appeal has been submitted by an unauthorized person
5. if the Court has already decided on the same matter
6. if the appeal is manifestly ill-founded (*prima facie*).

Upon reviewing the appeals not put on the case list the Court may decide to put them on the list. Where appropriate, appeals included in the list may be removed from the list by the same procedure, and if removed or originally not included in the list, they may be returned or included in the list.

Parties

30. Does the plaintiff participate in the procedure before the constitutional court? If so, in what form? What about the other parties? Can or must certain public authorities intervene in the proceedings?

The Court communicates the appeal to the court which rendered the appealed decision and to the other party in the proceedings leading to the decision challenged by the appeal for the purpose of giving that party the opportunity to submit a reply. The response to the appeal is sent to the plaintiff and other participants in the proceedings.

When during the proceedings before the Court an oral hearing of issues relevant to the decision becomes necessary, the Court shall hold a public hearing. The parties to the proceedings which ended in a decision challenged by the appeal as well as the court which rendered the appealed decision are summoned to the public hearing. If necessary, the Court summons persons who may submit expert opinions and statements relevant to the decision.

31. Is there a counsel for the defence? If so, in what form? Is there a counsel for the prosecution with the constitutional court?

No.

2. Settlement of conflicts between courts

32. Is it the task of the constitutional court to circumscribe the respective jurisdictions of the other courts? If so, how does it proceed?

No.

II. The relations between the constitutional court and the other courts

A. The organic link

33. What are the organic links between the constitutional court and the other national courts (conditions of admission, appointment procedure, etc.)?

According to the Article 5.1. of the Law on the Court of Bosnia and Herzegovina, a Commission for Appointment of the Judges of the State Court consists of 6 members including the president and 2 vice-presidents of the Constitutional Court of BH, the president and the vice president of the Supreme Court of the FBH and the president of the Supreme Court of the RS. The Commission has not started to work yet.

B. The procedural link

34. Are there procedural links between the constitutional court and the court referring the case to it or against which the appeal was lodged (for example, a judge-to-judge meeting in order to clarify or refine the question)? If so, what use is made of this option?

No.

C. The functional link

§ 1. The review and its effects

35. Do the rulings of the constitutional court always constitute a binding precedent for the other courts?

Yes, if the Court ruled on the constitutionality of a law. Otherwise it is legally binding only in the concrete case.

36. What are the review methods of the constitutional court (annulment, dismissal, declaration of constitutionality, declaration of unconstitutionality, interpretative decisions, interpretation reserves, annulment of a judicial decision, establishment of deficiencies, establishment of limited validity, etc.)? If necessary, distinguish for the different types of referral (action for annulment, prejudicial question, constitutional appeal).

In connection with the decision declaring an act incompatible with the Constitution, the adopter of the act may be granted a period, not exceeding three months, within which to adopt it accordingly. If the incompatibility is not eliminated within the set period, the Court declares, in a decision, that the incompatible provision cease to be valid. The incompatible provision cease to be valid on the day of publication of the decision of the Court in the Official Gazette of BH.

If the Court finds that an appeal is well-founded, it may, depending on the nature of the rights and fundamental freedoms, decide on the merits of the case and communicate the decision to the competent Entity authority for the securing of the appellant's constitutional rights that have been violated. The Court may, also, annul the challenged judgment and refer the case back to the court that adopted this judgment for a new examination if the case does not involve only constitutional issues but also requires the examination of other legal issues and facts upon which the evaluation of constitutionality depends. The court whose judgment has been annulled is obliged to adopt another one, in the process of which it is bound by the legal understanding of the Court on the violation of constitutionally established rights and fundamental freedoms of the appellant. If the court fails to act accordingly to the decision of the Constitutional Court, the appellant may institute a new appeal, in which case the Court shall decide on the merits of the case.

37. What are the legal effects of the rulings of the constitutional court (ex nunc, ex tunc; erga omnes, inter partes; etc.), individually, on the original action and on all actions before common law courts, on other regulations, administrative acts - statutory or individual – or judicial decisions, etc. (for example, is there a re-examination procedure)? Can the constitutional court limit or sustain the effects in time?

When adopting a decision, the Court specifies its legal character (ex nunc, ex tunc).

A decision of the Court on constitutionality of laws has an effect erga omnes.

A decision of the Court on an individual appeal has an effect inter partes.

38. Is the authority of the rulings of the constitutional court always respected? Does it sometimes meet with opposition from institutions or courts? Do the other courts sometimes experience difficulties in implementing the rulings of the constitutional court?

In principle, yes. If it is not respected, a request to undertake measures for the execution of the decision of the Court can be submitted to the Court. The Court then confirms by a ruling that the decision has not been executed. The ruling of the Court is submitted to the Council of Ministers of BH or to the government of the respective Entity for the purpose of execution.

§ 2. Interpretation by the constitutional court

a. The case law of other courts accepted by the constitutional court in the exercise of its own jurisdiction

39. Does the constitutional court consider itself bound by the interpretations of the challenged act given by the Supreme Court or other courts (theory of living law, for example)? Can the constitutional court, however, give another interpretation?

In this regard, as in many others, the Constitutional Court sticks to the Strasbourg practice which is also in keeping with other constitutional courts in Europe (e.g. Spain, Germany). As the Court has repeatedly stated in proceedings according to Article VI.3 (b) of the BH Constitution, it is called upon to decide on appeals against judgments of courts in Bosnia and Herzegovina only insofar as they concern «issues under this Constitution»; in principle, it is, therefore, not up to the Court to review the correct interpretation and application of ordinary

law by the other courts. As can be deduced from Article VI.3 of the BH Constitution as a whole, the Court is not designed as a body of super-revision of court decisions, but restricted to check whether the other courts have respected constitutional rights and principles in the course of the interpretation and application of ordinary law. In case this interpretation goes beyond the constitutional limits, the Constitutional Court is of course called upon to prescribe an interpretation that is compatible with the Constitution.

b. The effects of the interpretation of the constitutional court and the acceptance of the case law of the constitutional court by the other courts in the exercise of their own jurisdiction

40. Is the interpretation of the constitutional rules and the legislative rules given by the constitutional court binding on the other courts? What happens in case of non-adherence to the interpretation of the constitutional court?

Yes.

In case of non-adherence, the person affected by a differing (and unconstitutional) interpretation may appeal to the Constitutional Court.

41. Can the constitutional court declare that a rule is constitutional only in the exact interpretation given by it? Can this interpretation deviate from that of “living law”? If so, what use is made of this option?

The Constitutional Court declares a provision unconstitutional only if it cannot be interpreted in a way consistent with the Constitution. In turn, if such an interpretation has been given, it is binding.

42. What are the effects for the other courts of a purely interpretative decision?

They are binding.

III. The interference of the European courts

A. The constitutional court and the other courts vis-à-vis the European Convention on Human Rights and the case law of the European Court of Human Rights

43. Is the constitutional court bound by the case law of the European Court of Human Rights? If this case law is not binding, does it influence the course of action of the constitutional court?

The Constitutional Court is not bound by the case law of the ECHR but the Strasbourg jurisprudence serves as a starting point in human rights cases before the Court.

44. Can the court base its decision on a provision of the European Convention and, in doing so, possibly deviate from the action of the constitutional court?

ECHR has been incorporated into the Constitution of BH and the rights and freedoms set forth in the ECHR and its Protocols apply directly in BH and have priority over all other law.

45. Must a lawsuit have been brought before the constitutional court before an appeal can be made to the European Court of Human Rights (after having tried all internal avenues of appeal)?

Bosnia and Herzegovina is not a member of the Council of Europe and therefore not under jurisdiction of European Court of Human Rights.

B. The constitutional court and the other courts vis-à-vis the case law of the Court of Justice of the European Communities

46. Is the constitutional court bound by the case law of the Court of Justice of the European Communities? If this case law is not binding, does it influence the course of action of the constitutional court?

Bosnia and Herzegovina is not a member of the European Communities and, therefore, does not fall under the jurisdiction of the Court of Justice.

47. Has the constitutional court already referred, or could it refer, cases to the Court of Justice of the European Communities? What is the role of the constitutional court and the other courts in case of non-application of national regulations that are incompatible with Community law?

48. Do national courts have a choice between referring cases to the constitutional court and to the Court of Justice of the European Communities?