



Rapport national / National report / Landesbericht / национальный доклад

**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

XVII Congress of the Conference of European Constitutional Courts

Role of the Constitutional Courts in Upholding and Applying the Constitutional Principles

Questionnaire

For the National Reports

I. The role of the constitutional court in defining and applying explicit/implicit constitutional principles.

1. Does the constitutional court or equivalent body exercising the power of constitutional review (hereinafter referred as the constitutional court) invoke certain constitutional principles (e.g. separation of powers; checks and balances; the rule of law; equality and non-discrimination, proportionality, reasonableness, human dignity, etc.) in the process of constitutional adjudication? To what extent does the constitutional court go in this regard? Does the constitution or any other legal act regulate the scope of constitutional decision-making in terms of referring to specific legal sources within the basic law that the constitutional court may apply in its reasoning?

2. What constitutional principles are considered to be organic in your jurisdiction? Are there any explicit provisions in the constitution setting out fundamental principles? Is there any case-law in respect of basic principles? How often does the constitutional court make reference to those principles?

Answer to the questions Nos. 1 and 2

The Constitution of Bosnia and Herzegovina (Annex 4 to the General Framework Agreement for Peace in Bosnia and Herzegovina, initialled in Dayton, Ohio USA on 21 November 1995 and officially signed in Paris (the French Republic) on 14 December 1995, when it came into effect at midnight), in its preamble, refers to fundamental principles, such as respect for human dignity, liberty, and equality; peace, justice, tolerance, and reconciliation; and also refers to democratic governmental institutions and fair procedures best produce peaceful relations within a pluralist society. In addition, the principles and rights referred to in the

preamble include those explicitly mentioned in international documents, including, *inter alia*, the Charter of the United Nations and the Universal Declaration of Human Rights, and the principle of a market economy. The Constitutional Court has concluded that the preamble to the Constitution of Bosnia and Herzegovina has a strong normative power and is valid standard of judicial control by the Constitutional Court. The normative part of the Constitution of Bosnia and Herzegovina includes, for instance, the principle of the rule of law (Article I(2) of the Constitution of Bosnia and Herzegovina) and the principle of equality (Article II(4) of the Constitution of Bosnia and Herzegovina). The Constitutional Court invokes the mentioned principles in providing reasons for its decisions, but is not limited to legal sources that the Constitutional Court may apply in its reasoning.

In the case-law of the Constitutional Court, the principles enumerated in the preamble are often applied independently or in conjunction with the provisions of normative part of the Constitution of Bosnia and Herzegovina. It may be said that they were largely applied immediately after the establishment of the Constitutional Court of Bosnia and Herzegovina, following the war in Bosnia and Herzegovina. That was a period when it was necessary to build a strong foundation of a democratic state and to resolve a number of issues that remained understated in the Constitution of Bosnia and Herzegovina.

3. Are there any implicit principles that are considered to be an integral part of the constitution? If yes, what is the rationale behind their existence? How they have been formed over time? Do they originate from certain legal sources (e.g. domestic constitutional law or the constitutional principles emanating from international or European law; newly-adopted principles or ones re-introduced from the former constitutions)? Has academic scholars or other societal groups contributed in developing constitutionally-implied principles?

Constitution of Bosnia and Herzegovina is quite unique as it was not prepared nor adopted during a democratic process. It came to existence as an integral part of the international law agreement concluded with an aim to end the war conflict in Bosnia and Herzegovina during the '90s of the last century. Consequently it can be concluded that the influence of the international community in the process of creation of the Constitution of Bosnia and Herzegovina was great. Constitution of Bosnia and Herzegovina contains numerous provisions on the protection of human rights and fundamental freedoms which refer to the international law.

In its case-law, the Constitutional Court has filled certain gaps in the constitutional scheme, thereby influencing the development *i.e.* understanding of the Constitution of Bosnia and Herzegovina. In this regard, it is necessary to highlight Decision No. *U 5/98* (Third Partial Decision), relating to the constituent status of peoples. In addition, in its case-law the Constitutional Court has been developing the principles and concepts that have a constitutional status, as parts of decisions rendered by the Constitutional Court. Thus, the Constitutional Court has contributed in some way to the understanding of the text of the Constitution, it might even be said, to supplementing of the Constitution. In the aforementioned Decision, the Constitutional Court derived three principles from the provisions of the preamble to the Constitution of Bosnia and Herzegovina, which are not explicitly pronounced in the Constitution of Bosnia and Herzegovina. One of them is the **principle of a multi-ethnic state**, as described in paragraphs 53 through 61 of the Third Partial Decision in case No. *U 5/98* of 1 July 2000.

Another principle is the **principle of collective equality of constituent peoples**. In Decision No. *U 5/98* – III the Constitutional Court points out that the constitutional principle of collective equality of constituent peoples, following from the designation of Bosniacs, Croats and Serbs as constituent peoples (subparagraph 10 of the preamble to the Constitution of Bosnia and Herzegovina), prohibits any special privilege for one or two of these peoples, any domination in governmental structures, or any ethnic homogenisation through segregation based on territorial separation. In line with the mentioned principle, the Constitutional Court, for instance, in its Decision No. *U 42/01*, obligated the relevant authorities of the Republika Srpska to publish again the Agreement on the Establishment of Special Parallel Relationships with the Federal Republic of Yugoslavia in the *Official Gazette of the Republika Srpska* but, this time, it had to be published in the three official languages of Republika Srpska. Finally, the third principle – **system of the prohibition of discrimination** (the prohibition of *de iure* and *de facto* discrimination) was developed. These principles have been subsequently applied to different cases before the Constitutional Court.

Article I(2) of the Constitution of Bosnia and Herzegovina reads: *Democratic Principles. Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law and with free and democratic elections.* The legal **principles of the rule of law and the legal state** ensue from the quoted Article. The notion of the legal state entails also the **principle of legal certainty**. In addition, the **principle of separation of powers** is not explicitly mentioned in

the Constitution of Bosnia and Herzegovina but is interpreted as an integral part of the principle of legal state. This principle entails also an obligation of the state to secure an **effective legal protection against the acts of the public authorities**. Therefore, it is about the principles that are not explicitly mentioned but that are widely present in the case-law of the Constitutional Court.

4. What role does the constitutional court has played in defining the constitutional principles? How basic principles have been identified by the constitutional court over time? What method of interpretation (grammatical, textual, logical, historical, systemic, teleological etc.) or the combination thereof is applied by the constitutional court in defining and applying those principles? How much importance falls upon *travaux preparatoires* of the constitution, or upon the preamble to the basic law in identifying and forming the constitutional principles? Do universally recognised legal principles gain relevance in this process??

By its dynamic and evolutive interpretation of the Constitution of Bosnia and Herzegovina, the Constitutional Court contributed to guarantees of equality and constituent status of peoples throughout Bosnia and Herzegovina, and to ensuring the sovereignty, territorial integrity, and international legal personality of the State, and to strengthening legal certainty and the rule of law, as the fundamental constitutional principles.

As to the constitutional principles and methods of the interpretation thereof, some examples in the case-law of the Constitutional Court show that, *inter alia*, the **Vienna Convention on the Law of Treaties** has had an essential role in interpreting the Constitution of Bosnia and Herzegovina. The reason for that is the fact that the Constitution of Bosnia and Herzegovina is a part of an international treaty. In its key Decision on the constituent status of peoples No. U 5/98-III, the Constitutional Court stated as follows: *Unlike the constitutions of many other countries, the Constitution of BiH in Annex 4 to the Dayton Agreement is an integral part of an international agreement. Therefore, Article 31 of the Vienna Convention of the Law on Treaties – providing for a general principle of international law which is, according to Article III.3 (b) of the Constitution of BiH, an “integral part of the legal system of Bosnia and Herzegovina and its Entities” – must be applied in the interpretation of all its provisions, including the Constitution of BiH.*

It is also necessary to mention **historical interpretation** of the Constitution of Bosnia and Herzegovina in the case-law of the Constitutional Court. In the Third Partial Decision of the Constitutional Court in case No. *U 5/98*, relating to a review of constitutionality of the provisions of the Entities' Constitutions, the Constitutional Court mentions additional documents that constituted a basis, inspiration or motive for enacting the Constitution of Bosnia and Herzegovina, *i.e.* the Dayton Peace Agreement in whole. In this regard, the following is stated in the mentioned Decision: *Moreover, contrary to the arguments of the representatives of the People's Assembly of the Republika Srpska and the House of Peoples of the Federation, the legislative history and the text of the Dayton Constitution obviously show that the existing Constitutions of the Entities had not been accepted as such without considering the necessity of amendments. It was stated in the Agreed Basic Principles of Geneva, 8 September 1995, under paragraph 2, sub-paragraph 2 that "Each Entity will continue to exist under its present constitution", however, "as amended to accommodate these basic principles". In addition, this principle was further elaborated in the constitutional system of Dayton in the supremacy clause of Article III.3 (b) – according to which "the Entities and any subdivisions thereof shall comply fully with this Constitution, which supersedes inconsistent provisions of the law of Bosnia and Herzegovina and of the constitutions and law of the Entities, (...)" – as well as the obligation of the Entities, according to Article XII paragraph 2 that "Within three months from the entry into force of this Constitution, the Entities shall amend their respective constitutions to ensure their conformity with this Constitution in accordance with Article III.3 (b)".* The Constitutional Court has acknowledged certain historical interpretive importance to the mentioned documents.

However, in the same Decision, the historical interpretation could not clarify the content of the notion "constituent peoples", referred to in subparagraph 10 of the preamble to the Constitution of Bosnia and Herzegovina. Hence, a **systemic interpretation** was employed, taking into account the part of the Constitution relating to the organisation of the State.

In its Decision No. *AP 979/04* of 23 September 2005, the Constitutional Court stated as follows: *Under the Constitution of Bosnia and Herzegovina, it is not required always to interpret and to apply laws in their lexical (linguistic) meaning, as the Constitution of Bosnia and Herzegovina allows also the purposive or teleological interpretation of laws.*

5. What is a legal character of the constitutional principles? Are they considered to be the genesis of the existing constitutional framework? What emphasis is placed upon the fundamental 2 principles by the constitutional court in relation to a particular constitutional right? Are basic principles interpreted separately from the rights enumerated in the constitution or does the constitutional court construe fundamental principles in connection with a specific constitutional right as complementary means of latter's interpretation? Can the basic principles in your jurisprudence constitute a separate ground for unconstitutionality without their connection with a concrete constitutional norm? Is there any requirement in law placed upon the judicial acts of enforcement of constitutional principles?

With reference to the aforementioned questions, the relevant part of the Third Partial Decision of the Constitutional Court in case No. *U 5/98* of 1 July 2000 reads:

What is, however, the "nature" of constitutional principles to be found both in the provisions of the preamble and the so-called "normative part" of a constitution? As the Canadian Supreme Court held in "Reference re Secession of Quebec" [1998], 2.S.C.R. at paragraphs 49 through 54, "these principles inform and sustain the constitutional text: they are the vital unsaid assumptions upon which the text is based.... Although these underlying principles are not explicitly made part of the Constitution by any written provision, other than in some respects by an oblique reference in the preamble to the Constitution Act, it would be impossible to conceive of our constitutional structure without them. The principles dictate major elements of the architecture of the Constitution itself and are as such its lifeblood. [...] The principles assist in the interpretation of the text and the delineation of spheres of jurisdiction, the scope of rights and obligations, and the role of our political institutions". Thus, "the principles are not merely descriptive, but are also invested with a powerful normative force, and are binding upon both courts and governments". In addition to answering the rhetorical question what use the Supreme Court may make of these underlying principles incorporated into the Constitution by the Preamble, the Court reaffirmed its position held in Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island, [1997], 3.S.C.R.3, at para. 95: "As such, the Preamble is not only a key to construing the express provisions of the Constitution Act, but also invites the use of those organizing principles to fill out gaps in the express terms of the constitutional scheme. It is the means by which the underlying logic of the Act can be given the force of law".

Finally, by referring to the principle of the “promotion of a market economy” according to paragraph 4 of the Preamble to the Constitution of BiH, this Constitutional Court also held in Partial Decision II of the case at hand, at para. 13 (“Official Gazette of Bosnia and Herzegovina”, No. 17/00, “Official Gazette of the Federation of Bosnia and Herzegovina”, No. 26/00 and “Official Gazette of the Republika Srpska”, No. /00), that the Constitution of BiH contains “basic constitutional principles and goals for the functioning of Bosnia and Herzegovina which must be viewed as constitutional guidelines or restrictions for the exercise of the responsibilities of both Bosnia and Herzegovina and its Entities”. Furthermore, previously in case U 1/98 (“Official Gazette of Bosnia and Herzegovina”, No. 22/98) the Court concluded from the first sentence of Article VI.3 of the Constitution of BiH – that the Constitutional Court shall uphold this Constitution – the principle of efficiency of the entire text of the Constitution which must therefore also apply to the Preamble. Hence, the “normative meaning” of the Preamble to the Constitution of BiH cannot be reduced to an “auxiliary method” in the interpretation of that very same Constitution.

In conclusio, it cannot be said thus in abstract terms that a preamble as such has no normative character.

As any provision of an Entity’s constitution must be consistent with the Constitution of BiH, including its Preamble, the provisions of the Preamble are thus a legal basis for reviewing all normative acts lower in rank in relation to the Constitution of BiH for as long as the aforesaid Preamble contains constitutional principles delineating – in the words of the Canadian Supreme Court – spheres of jurisdiction, the scope of rights or obligations, or the role of the political institutions. The provisions of the preamble are therefore not merely descriptive, but are also invested with a powerful normative force thereby serving as a sound standard of judicial review for the Constitutional Court.

In the aforementioned Decision, the Constitutional Court points out that Article I(2) of the Constitution of BiH determines that Bosnia and Herzegovina is a democratic state, which is then further specified by the commitment in paragraph 3 of the preamble “that democratic governmental institutions and fair procedures best produce peaceful relations within a pluralist society”. This constitutional commitment, legally binding on all public authorities, cannot be isolated from other elements of the Constitution, in particular the ethnic structures, and must

therefore be interpreted by reference to the structure of the Constitution as a whole (see Canadian Supreme Court “Reference re Secession of Quebec” (1998), 2.S.C.R., para 50). Therefore, the elements of a democratic state and society and the underlying assumptions – pluralism, fair procedures, and peaceful relations following from the text of the Constitution – must serve as a guideline to further elaborate the question concerning how BiH is structured as a democratic multi-ethnic state.

According to the case-law of the Constitutional Court of Bosnia and Herzegovina it can generally be concluded that subparagraph 3 of the preamble to the Constitution of Bosnia and Herzegovina is often associated with the constitutional provisions (in the normative part).

In its Decision No. *U 19/01*, in which the applicant alleged a violation of subparagraph 1 of the preamble to the Constitution of Bosnia and Herzegovina, the Constitutional Court established that the principles of dignity, liberty and equality referred to in subparagraph 1 of the preamble to the Constitution of Bosnia and Herzegovina were further specified in the human rights and fundamental freedoms referred to in Article II(3), (4) and (5) as well as in Article II(2) in conjunction with the European Convention. In interpreting Article II(3), (4) and (5), the Constitutional Court took into account the aforementioned principles and, consequently, it did not further examine a possible violation of those principles.

In some cases dealt with by the Constitutional Court, where legal issues that could have consequences on property of large groups of citizens arose, the Constitutional Court often referred to subparagraph 4 of the preamble to the Constitution of Bosnia and Herzegovina, which reads: *Desiring to promote the general welfare and economic growth through the protection of private property and the promotion of a market economy.* Those included, *inter alia*, an issue of old foreign currency savings, an issue of war damages, an issue of occupancy right, *etc.* In such cases, the principle of general welfare was applied in interpreting the relevant provisions on fundamental rights.

Thus, it is evident from the case-law of the Constitutional Court that some fundamental constitutional principles contained in the Preamble of the Constitution of Bosnia and Herzegovina are taken into consideration in the interpretation of individual human rights and there is no need to further examine a possible violation of those principles (see decision of the Constitutional Court no. *U 19/01*, paragraph 35). However, at the same time there are examples

in the case-law of the Constitutional Court where principles contained in the Preamble of the Constitution represent a legal basis for adoption of decisions of the Constitutional Court. This occurred in one of the most important decisions of the Constitutional Court, decision on the “constituent peoples” where the significance of line 10 of the Constitution of Bosnia and Herzegovina (*Bosniacs, Croats and Serbs, as constituent peoples...*) came into play (third partial decision in case no. *U 5/98*).

There is no condition for application of the constitutional principles in the adoption of decisions provided for by law in Bosnia and Herzegovina.

6. What are the basic principles that are applied most by the constitutional court? Please describe a single (or more) constitutional principle that has been largely influenced by constitutional adjudication in your jurisdiction. What contribution does the constitutional court have made in forming and developing of such principle(s)? Please, provide examples from the jurisprudence of the constitutional court.

By its dynamic and evolutive interpretation of the Constitution of Bosnia and Herzegovina, the Constitutional Court, within the scope of its jurisdiction, facilitated the effective functioning of state institutions not explicitly mentioned in the text of the Constitution of Bosnia and Herzegovina, aimed at ensuring that the institutions of Bosnia and Herzegovina act in conformity with the **rule of law**. This implies the principle applied by the Constitutional Court on many occasions. Thus, in the case of the Constitutional Court No. U 26/01, in which the Law on the Court of Bosnia and Herzegovina adopted by the High Representative for Bosnia and Herzegovina (Annex 10 on Civilian Implementation of the Peace Agreement – High Representative) was challenged, the applicant claimed that there was not a constitutional basis for enacting the Law on the Court of Bosnia and Herzegovina, since, apart from the Constitutional Court, the Constitution of Bosnia and Herzegovina did not envisage the existence of any other court at the state level. In the aforementioned Decision the Constitutional Court stated as follows: *The establishment of the Court of Bosnia and Herzegovina can be expected to be an important element in ensuring that the institutions of Bosnia and Herzegovina act in conformity with the rule of law and in satisfying the requirements of the European Convention in regard to fair hearings before a court and effective legal remedies. The Constitutional Court also notes that, pursuant to Article VI.3 of the Constitution of Bosnia and Herzegovina, the*

decisions of the Court of Bosnia and Herzegovina will be subject to review by the Constitutional Court as to their constitutionality.

Also, “the Constitutional Court observes that, until the Court of Bosnia and Herzegovina starts functioning, there is no possibility in the legal system of Bosnia and Herzegovina to challenge decisions by the institutions of Bosnia and Herzegovina before an organ which satisfies the requirements of an independent and impartial tribunal. In these circumstances, Bosnia and Herzegovina, functioning as a democratic state, was authorized to establish, in the areas under its responsibility, other mechanisms, besides those provided in the Constitution of Bosnia and Herzegovina, and additional institutions that were necessary for the exercise of its responsibilities, including the establishment of a court to strengthen the legal protection of its citizens and to ensure respect for the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Constitutional Court refers in this respect to Article IV.4 (a) of the Constitution of Bosnia and Herzegovina which provides that the Parliamentary Assembly shall have responsibility for enacting legislation as necessary to implement decisions of the Presidency or to carry out the responsibilities of the Assembly under the Constitution of Bosnia and Herzegovina. Although it is not the task of the Constitutional Court to express an opinion on whether it is appropriate to enact a certain law, the Constitutional Court observes that in the context of Bosnia and Herzegovina, the establishment of the Court of Bosnia and Herzegovina can be expected to strengthen the rule of law which is one of the fundamental principles of any well-functioning democracy.

II. Constitutional principles as higher norms? Is it possible to determine a hierarchy within the Constitution? Unamendable (eternal) provisions in Constitutions and judicial review of constitutional amendments.

1. Do the constitutional principles enjoy certain degree of superiority in relation to other provisions in the basic law? How are constitutional principles and other constitutional provisions related to international law and/or to the European Union law? Are there any provisions in international or the European Union law that are deemed superior than the national constitutional principles? If yes, how such higher international provisions are applied with regard to the national constitutional principles? What is the prevailing legal opinion among both academic scholars and practitioners in your jurisdiction about attaching higher value to certain constitutional principles over other provisions of basic law?

2. How are the constitutional principles related to each other? Is there any hierarchy within those principles? What approach has the constitutional court taken in terms of determining

a hierarchy within the constitution? Is it possible to conclude from the jurisprudence of the constitutional court that it has given principal status to some constitutional principles over the rest of the basic law?

Answers to the questions 1-2:

Incorporation of general principles of the international law is one of the characteristic of the Constitution of Bosnia and Herzegovina. The Preamble states that all three constituent peoples (...) *guided by the purposes and principles of the Charter of the United Nations; committed to the sovereignty, territorial integrity, and political independence of Bosnia and Herzegovina in accordance with international law; determined to ensure full respect for international humanitarian law; inspired by the Universal Declaration of Human Rights, the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, as well as other human rights instruments (...)*. Further, the Constitution directly applies a number of international human rights agreements and provides that the European Convention shall have priority over all other law (Article II). In addition, Article III(3)(b) of the Constitution provides that the general principles of international law shall be an integral part of the law of Bosnia and Herzegovina.

According to the case-law of the Constitutional Court it could not be concluded that there is a hierarchy within of the Constitution of Bosnia and Herzegovina. As the preceding answers show, the constitutional principles are closely interwoven and connected with each other and they complement each other. The principles comprised in the preamble of the Constitution of Bosnia and Herzegovina are taken in connection with other provisions of the Constitution and used for the interpretation thereof. Thus, for example, the Constitutional Court states that respect for human dignity (subparagraph 1 of the preamble to the Constitution of Bosnia and Herzegovina) is an essential element for resolving an issue of lawfulness as regards a deprivation of liberty against a person's will. In addition, the Constitutional Court, by referring to the case-law of the European Court of Human Rights, points out that an unnecessary use of force or any measure taken in response to behaviour of the person deprived of liberty, in principle, constitute a violation of human dignity and Article 3 of the European Convention. Subparagraph 4 of the preamble to the Constitution of Bosnia and Herzegovina has been mentioned above with reference to the right to property, referred to in Article II(3)(k) of the Constitution of Bosnia and

Herzegovina, of large groups of citizens, for example, the issue of old foreign currency savings, the issue of war damages, the issue of occupancy right, *etc.*

3. How is the constitution amended in your jurisdiction? What is the procedure for the constitutional amendment set out in the basic law? How the constitution was established originally and does it explicitly provide for unamendable (eternal) provisions? Is there any difference between the initial manner of constitutional adoption and the existing procedure of the amendment to the basic law? Have the constitutional principles ever been subjected to change in your jurisdiction? If yes, what were the reasons behind it?

It is established under the Constitution that it *may be amended by a decision of the Parliamentary Assembly, including a two-thirds majority of those present and voting in the House of Representatives*. The Parliamentary Assembly has two chambers: the House of Peoples and the House of Representatives. All decisions in both chambers are made by majority of those present and voting, but there are some exceptions mentioned later. Therefore, a two-thirds majority is required to make amendments to the Constitution in the House of Representatives. Consequently, Article X(1) of the Constitution of Bosnia and Herzegovina is *specialis* and requires a qualified majority in respect of Article IV(3)(d), first sentence of the Constitution of Bosnia and Herzegovina, that requires a simple majority in adopting laws or other decisions by the legislative authorities.

Therefore, stricter criteria are applied for amending the Constitution, when comparing the adoption and amendments to other laws or other decisions by the legislative authorities. However, such an exception is not established in respect of the House of Peoples.

Pursuant to Article X(2), the provisions on Human Rights and Fundamental Freedoms referred to in Article II of the Constitution of Bosnia and Herzegovina are not subject to review, if resulting in the elimination or diminishment of the importance of human rights and freedoms. Therefore, the human rights and freedoms referred to in Article II of the Constitution of Bosnia and Herzegovina are safeguarded by the unchangeable provision (so called perpetuity clause). This clause does not relate to other constitutional human rights and freedoms, falling outside the scope of Article II of the Constitution of Bosnia and Herzegovina. However, it could be said that there is no absolute prohibition to enact amendments relating to the human rights and freedoms referred to in Article II of the Constitution of Bosnia and Herzegovina. According to the relevant provision, the human rights and fundamental freedoms may not be eliminated or

diminished, meaning that that amendments to extend or to promote human rights and freedoms are allowed. That is the only permissible method for enacting amendments.

Unlike in many other countries, the Constitution of Bosnia and Herzegovina emerged under specific conditions. Thus, the Constitution had been created in the course of numerous peace negotiations on Bosnia and Herzegovina, which were completed by the General Framework Agreement for Peace in Bosnia and Herzegovina, initialled in Dayton, Ohio, United States of America on 21 November 1995 and signed in Paris, France on 14 December 1995, when it came into force at midnight. Actually, the Constitution of Bosnia and Herzegovina is Annex 4 to the said peace agreement (also known as “the Dayton Peace Agreement”). Therefore, there is considerable difference between the original method of the adoption of the Constitution and the current procedure for amending it. Constitutional principles were never subject to amendments.

4. Should constitutional amendment procedure be subjected to judicial scrutiny or should it be left entirely up to the political actors? What is the prevailing legal opinion in this regard among academic scholars and other societal groups in your jurisdiction?

5. Does the constitution in your jurisdiction provide for constitutional overview of the constitutional amendment? If yes, what legal subjects may apply to the constitutional court and challenge the constitutionality of the amendment to the basic law? What is the legally-prescribed procedure of adjudication in this regard?

6. Is the constitutional court authorised to check constitutionality of the amendment to the basic law on substantive basis or is it only confined to review on procedural grounds? In the absence of explicit constitutional power, has the constitutional court ever assessed or interpreted constitutional amendment? What has been the rationale behind the constitutional court’s reasoning? Has there been a precedent when the constitutional court had elaborated on its authority to exercise the power of judicial review of constitutional amendments either on substantive or procedural grounds? What is legal effect of a decision of the constitutional court finding the constitutional amendment in conflict with the constitution? Please, provide examples from the jurisprudence of the constitutional court.

7. Is there any tendency in your jurisdiction towards enhancing constitutional authority in respect of constitutional court’s power to check amendments to the basic law? Do academic scholars or other societal groups advocate for such development? How the judicial review is observed in this regard? Would the expansion or recognition of constitutional court’s authority encourage the realisation of constitutional ends or threaten its viability? Please, elaborate on existing discussion in your jurisdiction.

Answers to the questions 4, 5, 6 and 7.

Constitutional amendments

In its jurisprudence, the Constitutional Court has never reviewed constitutional amendments. One amendment to the Constitution of Bosnia and Herzegovina has been enacted to date and no procedure for the review thereof has been initiated before the Constitutional Court. The Constitutional Court has no jurisdiction to refer a dispute *ex officio*, meaning that a dispute may be referred by applicants authorised under the Constitution. According to the Constitution, 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 (the Federation of Bosnia and Herzegovina and Republika Srpska).

On the other hand, the jurisprudence of the Constitutional Court shows that the positions taken by the Constitutional Court were established and presented exclusively in its decisions rendered in proceedings initiated by persons authorised under the Constitution. It is often the case that the professional and general public in Bosnia and Herzegovina raises issues relating to amendments to the Constitution. Though aware of the fact that the constitutional and legal organisation is not just a political issue but also an issue of constitutional and legal analysis, members of the Constitutional Court have taken a very cautious approach when taking part in such discussions. However, there are numerous positions taken by academic and professional circles and general public in that regard, but the positions are quite dissimilar and even mutually exclusive, depending largely on whether they come from one or the other Entity.

The answers to the questions posed here are considerably limited by those facts.

Nevertheless, as to the question whether the Constitutional Court has power to review the constitutionality of amendments to the Constitution, it should be taken into account that the Constitutional Court, according to the Constitution of Bosnia and Herzegovina, “shall uphold this Constitution”. In addition, it is necessary to point out that the Constitutional Court has competence to review a procedure in case that a proposed decision of the Parliamentary Assembly is objected as being destructive of a vital interest of one of the constituent peoples

(Bosniacs, Croats, or Serbs). Namely, according to the Constitution of Bosnia and Herzegovina, the Constitution may be amended by a decision of the Parliamentary Assembly. The Parliamentary Assembly has two chambers: the House of Peoples and the House of Representatives. All decisions in the House of Peoples are taken by majority of those present and voting. An exception occurs in case that a proposed decision is declared destructive of a vital interest of one of the constituent peoples (by the majority of a constituent people's caucus). Therefore, in case that the decision, in the proceedings to pass a decision amending the Constitution in the House of Peoples, is declared destructive of a vital interest of one of the constituent peoples and if objected, an issue as to the jurisdiction of the Constitutional Court would be raised in such a specific situation. Furthermore, another situation that would possibly raise an issue in respect of the jurisdiction of the Constitutional Court could occur in case that the constitutionality of amendments to the Constitution, which eliminate or diminish the human rights and freedoms referred to in Article II of the Constitution of Bosnia and Herzegovina or which alter the mentioned Article, is challenged, as Article X(2) of the Constitution stipulates as follows: *No amendment to this Constitution may eliminate or diminish any of the rights and freedoms referred to in Article II of this Constitution or alter the present paragraph.*

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