

# The Lawmaking Potential of the Constitutional Court in Bosnia and Herzegovina's Human Rights Protection Mechanism\*

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## **Abstract**

The organization and functioning of the Constitutional Court of Bosnia and Herzegovina has rightfully drawn the attention of scholars from various fields of contemporary research. This interest is rooted not only in the Court's crucial role in preserving the integrity of this "complex" state but also in the unique nature of its operations. The establishment of the Constitutional Court of Bosnia and Herzegovina occurred under conditions atypical for such institutions, and the initial tasks assigned to it were equally distinctive. As a result, while the Court follows the European model of constitutional review, it has developed several features that are not characteristic of this model. One such feature is the Court's appellate authority, which logically requires its incorporation into the system of general jurisdiction courts. Nevertheless, as the constitutional review body of Bosnia and Herzegovina, the Court approached its competence with creativity, particularly in adapting its atypical appellate authority to the task of ensuring the supremacy of the Bosnian Constitution. This study analyzes the theory and practice of constitutional justice in Bosnia and Herzegovina, aiming to identify the Constitutional Court's place within the mechanism of protecting constitutional rights and freedoms. The novelty of this research lies in the author's attempt to examine the lawmaking potential of the Constitutional Court of Bosnia and Herzegovina, whose judicial activism, according to the author, has played a key role in transforming the Court's appellate authority into the institution of constitutional complaint.

**Keywords:** Judicial Power; Protection of Rights and Freedoms; Constitutional Court of Bosnia and Herzegovina; Constitutional Complaint.

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## A. INTRODUCTION

One of the most pressing political and legal challenges faced by the countries of Central and Southeast Europe in establishing modern liberal constitutional systems has been ensuring the practical implementation of their newly adopted constitutions. In contemporary constitutional theory, the effectiveness of a state's constitution is directly linked to the existence of a judicial institution responsible for constitutional review. For this reason, the early steps in building modern constitutionalism in Central and Southeast European countries focused on establishing the institution of judicial constitutional review. These countries then faced a crucial decision: whether to adopt the American or European model of judicial constitutional review.

In the American model, constitutional review is not separated from the general judicial system. It is carried out either by all (decentralized review) or exclusively by the highest court (centralized review). Countries that implement the decentralized model of judicial constitutional review include Australia, Argentina, Brazil, Canada, Kenya, Nigeria, New Zealand, Norway, the United States, Sweden, Japan, and others. Countries that implement the centralized model of judicial constitutional review include Venezuela, India, Ireland, Colombia, and Estonia. This model presupposes that constitutional review is performed by courts of general jurisdiction. As a result, issues of constitutionality typically arise only during specific criminal, civil, or other cases, often based on the parties' claims. The judge's decision may then be appealed in higher courts, ultimately reaching the Supreme Court. The Supreme Court's ruling is final and binding on all courts, although it does not annul laws; rather, it declares them constitutional or unconstitutional. A law deemed unconstitutional remains in the legal code, but neither courts nor other state bodies may apply it.

The vast majority of post-socialist states chose the European model of judicial constitutional review. By the mid-1990s, countries such as Bulgaria, Hungary, Poland, Romania, and others had established constitutional review bodies based on the European model. Additionally, in the countries of the former Socialist Federal Republic of Yugoslavia (SFRY), constitutional courts based on the European model existed both at the federal level and at the level of republics since 1963 (Polovchenko, 2017; Vučić et al., 2010).

The European model of judicial constitutional review is characterized by several key features: the presence of a specialized constitutional review body, usually a Constitutional Court; the independent status of the Constitutional Court within the judiciary; a distinct legal framework governing the organization and operation of the Constitutional Court; the exclusive focus of the Court on

constitutional legal issues; its own procedural rules for delivering constitutional justice; and the unique legal nature of the Court's decisions. The European model of constitutional review is based on the ideas of the prominent Austrian jurist Hans Kelsen, the founder of normative idealism (normativism) and the creator of the world's first Constitutional Court in Austria (1920). Today, constitutional review bodies modeled after the European system operate in most countries around the world, with over 30 of them located on the European continent.

At first glance, the Constitutional Court of Bosnia and Herzegovina appears to be a typical representative of the European model of constitutional review (Castillo-Ortiz, 2020; Polovchenko, 2022). However, a closer analysis of its organization and functions reveals certain peculiarities (Polovchenko, 2023). It is important to clarify from the outset that the current Constitutional Court of Bosnia and Herzegovina is not a successor to the Constitutional Court of the Republic of Bosnia and Herzegovina. The current state of Bosnia and Herzegovina is founded on the Dayton Peace Agreement, to which the 1995 Constitution is annexed (Kasapović, 2006; Loughland, 2009). Scholars often note that Bosnia and Herzegovina is a symbolic creation, embodying the principles of international law in concrete form (Hajden, 2003, p. 159). Indeed, the 1995 Constitution of Bosnia and Herzegovina was developed during peace negotiations and was adopted on November 21, 1995, as an annex to the Dayton Agreement, signed on December 14, 1995, in Paris by the Presidents of Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia, and international mediators (Kunić, 2005). Thus, as Professor Marković (2012) emphasizes, Bosnia and Herzegovina and its constitution were born from “an act of international law, specifically, an international treaty” (p. 69). Professor Kasim Trnka argues that since the 1995 Constitution was introduced by an international treaty, the constitutional order was not amended in accordance with the procedures outlined in the legitimate and legal Constitution of the Republic of Bosnia and Herzegovina. This creates what can be referred to as constitutional discontinuity (Trnka, 2009, p. 46). Therefore, it is not possible to speak of the current Constitutional Court of Bosnia and Herzegovina as a legal successor to the Constitutional Court of the Republic of Bosnia and Herzegovina, which was a republic of the now-dissolved SFRY. As such, the current Constitutional Court, established under the 1995 Constitution, is a new constitutional body, embodying the principles set out in the Dayton Agreement.

It is also worth noting the significant role played by the United States in mediating the creation and signing of the Dayton Agreement. This undoubtedly influenced the inclusion of elements from the Anglo-Saxon legal tradition in the constitutional foundations of Bosnia and Herzegovina. This influence is

particularly evident in the status of the judges of the Constitutional Court and in the Court's jurisdiction. In support of this statement, one can point to the significant differences in the normative regulation of the status and powers of the Constitutional Court of Bosnia and Herzegovina compared to the Constitutional Courts of the Republika Srpska and the Federation of Bosnia and Herzegovina, whose drafts were developed without external influence. As Professor Mile Dmičić (2012b, p. 305) rightly points out, the appellate authority granted to the Constitutional Court of Bosnia and Herzegovina was influenced by the Anglo-Saxon judicial system, where the highest court has both constitutional authority and jurisdiction typically associated with a supreme court of general jurisdiction.

Indeed, alongside the typical powers of constitutional review bodies modeled after the European example (such as norm control and resolving disputes over jurisdiction), the appellate authority of the Constitutional Court of Bosnia and Herzegovina appears quite unique and, at first glance, does not fit within the conventional scope of powers for a European Constitutional Court. This article is dedicated to analyzing the specific regulatory framework of the appellate authority of the Constitutional Court of Bosnia and Herzegovina and examining its role in the development of this authority.

## B. METHODS

In characterizing the methodology of this study, it is important to note that an interdisciplinary approach was used to conduct a deeper analysis of the phenomena and processes under examination. The necessity of this approach arises from the fact that researching the phenomenon of constitutional justice requires going beyond constitutional legal texts and the science of constitutional law. Therefore, engagement with related disciplines such as legal philosophy, sociology of law, and political science is required. Additionally, the use of an interdisciplinary approach is justified by the fact that the problems of constitutional review are often examined not only by legal scholars but also by experts in sociology and political science, whose conclusions are directly relevant to this study.

As for the specific methods used in this work, they were applied comprehensively, following a cascading approach to research methodology. First, general scientific methods of inquiry were employed (for example, the methods of formal and dialectical logic, and the method of progressing from the abstract to the concrete). The theoretical and cognitive potential of these general scientific methods was applied to the subject of this study, not mechanically, but

in accordance with the goals and objectives of legal research into the specifics of the institution of constitutional justice.

Second, special research methods were utilized, specifically statistical and concrete sociological methods. These methods were used to analyze the legal issues in question from the perspective of the societal processes currently unfolding in a "complex" state like Bosnia and Herzegovina.

Third, specialized legal research methods were employed, notably the formal legal method and the comparative legal method. These methods were used to analyze the specifics of the current legal regulation concerning the formation, status, competence, organization, and activities of the constitutional justice body of Bosnia and Herzegovina. In particular, the formal legal method was used to analyze in detail the normative regulation of the organization and functioning of the Constitutional Court of Bosnia and Herzegovina, specifically in terms of how its functions are carried out. Meanwhile, the comparative legal method was applied to trace the development of the current regulation of the Constitutional Court's legal status within the judicial system of Bosnia and Herzegovina, while also allowing for the analysis of the peculiarities of the Court's legal status and activities based on the principles embedded in the European concept of constitutional review, and considering the practices of constitutional justice bodies in other European states.

The central methods of this study, which reflect the specificity of the research and the novelty of the approach to the problem under investigation, are the system analysis method and the functional approach. These methods were used to examine the role of the Constitutional Court of Bosnia and Herzegovina within the mechanism for protecting constitutional rights and freedoms. The system analysis method was applied to focus on the Court's human rights protection mechanism while investigating the fundamental powers of the Constitutional Court, which are aimed at ensuring constitutional legality and maintaining stability in the rule of law in this "complex" state. Meanwhile, the functional approach was employed to highlight the activism of the Constitutional Court of Bosnia and Herzegovina, which, through its practice, has exceeded the normative boundaries set by the constitution's framers and has become a reliable defender of individual rights and freedoms at the national level.

### **C. RESULTS AND DISCUSSION**

According to Article VI, Section 3(b) of the Constitution of Bosnia and Herzegovina, the Constitutional Court of Bosnia and Herzegovina holds

appellate jurisdiction over matters of constitutional significance related to decisions by any court in Bosnia and Herzegovina. As Professor Dmičić (2012a; 2012b) rightly points out, this authority represents the most significant departure from the classical constitutional powers of European constitutional courts. Indeed, no other country with the European model of constitutional justice has granted such powers (Simović, & Simović, 2013; 2014b). As a result, this authority is considered one of the most controversial aspects of the Constitutional Court's competence.

The primary question is whether the Constitutional Court of Bosnia and Herzegovina acts as a general jurisdiction court when exercising this power, as it reviews specific disputes previously adjudicated by general jurisdiction courts (Nenadić, 2012; Ožegović, 2013). In the appellate process, the Constitutional Court either re-examines the case on its merits and issues a final decision, or it merely annuls the contested decision and refers the case back to the lower court for re-trial. In such instances, the court whose decision was annulled by the Constitutional Court is obligated to issue a new ruling that conforms to the Constitutional Court's judgment. Consequently, some experts, such as Professor Kuzmanović (2002, p. 52), argue that the Constitutional Court of Bosnia and Herzegovina effectively participates in resolving disputes as a general jurisdiction court. However, according to Kata Senjak, a judge of the Constitutional Court of the Federation of Bosnia and Herzegovina, the Constitutional Court acts as the highest instance in relation to general jurisdiction courts, confirming its role as a special institutional guarantor of the protection of rights and freedoms established by the Constitution of Bosnia and Herzegovina (Senjak, 2014, p. 205).

Other scholars, such as Professor Goran Marković, disagree. They contend that the Constitutional Court does not assume the functions of a supreme court, as it is not a general jurisdiction court. It should be noted that the 1995 Constitution of Bosnia and Herzegovina does not mention the judiciary at all. Furthermore, the Court of Bosnia and Herzegovina – the highest judicial body for administrative and criminal cases – was established only in 2002.

When the Constitutional Court reviews specific cases, it does not follow the usual procedures of ordinary courts. Furthermore, Professor Marković (2013, p. 101) emphasizes that the Constitutional Court of Bosnia and Herzegovina is not empowered to examine specific cases unless a constitutional issue arises, which is then the subject of review by the Constitutional Court in connection with the decision of a general jurisdiction court. Thus, in appellate cases, the Constitutional Court primarily examines whether a violation of a constitutional

norm has occurred. Moreover, the Court only hears appeals after all legal remedies provided by law have been exhausted. In considering appeals, the Constitutional Court does not address matters of fact or the application of substantive law; rather, it focuses solely on whether the challenged decision violated a constitutional provision (Marković, 2013, p. 101). Therefore, it becomes clear that the role of the Constitutional Court of Bosnia and Herzegovina in appellate cases is not identical to that of a general jurisdiction court.

Typically, the subject of review in appellate cases before the Constitutional Court of Bosnia and Herzegovina is a human right that has been violated, as guaranteed by the Constitution. The appeal serves as a special legal remedy before the Constitutional Court, with the dispute already adjudicated by a competent civil court. The Constitutional Court's role is merely to determine whether, in the specific case, a constitutional norm has been violated. If such a violation is found, it may result in a different outcome than the one issued by the general jurisdiction court.

It is worth noting that, unlike the constitutions of other Balkan states, the Constitution of Bosnia and Herzegovina does not explicitly require the enactment of a special law governing the Constitutional Court (except for North Macedonia). Instead, it stipulates that issues related to the organization and operation of the Constitutional Court must be detailed in the Rules of the Constitutional Court, which are adopted by the Court itself. Article 18 of the Court's Rules provides a more detailed description of the Court's appellate authority. According to Section 1 of Article 18, the Constitutional Court may consider an appeal only if all effective legal remedies, as provided by law, have been exhausted and if the appeal is filed within 60 days after the appellant received the decision of the last effective remedy they utilized. Thus, in determining the admissibility of an appeal, the Constitutional Court must first establish whether the requirements outlined in Section 1 of Article 18 of the Court's Rules have been met.

In addition, the appellant must list the specific constitutional rights that have been allegedly violated, along with evidence suggesting that such a violation is probable. An appeal may be dismissed if any of the following conditions are met: a) the Constitutional Court lacks jurisdiction to make a ruling; b) the appeal is anonymous; c) the appeal is filed after the deadline; d) the appellant is not authorized to file the appeal; e) the appeal concerns an issue that has already been decided by the Constitutional Court, and the evidence presented does not provide grounds for reconsideration; f) the appellant abuses the right to file an appeal; g) the legal circumstances have changed; h) the appeal

does not meet constitutional standards in terms of subject matter (*ratione materiae*), person (*ratione personae*), or timing (*ratione temporis*); i) the appellant missed the deadline to supplement or clarify the appeal; or j) the appellant has not exhausted all available legal remedies. Furthermore, the Constitutional Court is obliged to reject an appeal as manifestly (*prima facie*) unfounded if it determines that the appellant has not provided evidence of a constitutional rights violation, if the appellant is not personally affected by the violation, or if the appellant has not suffered significant harm—except in cases where human rights considerations, as outlined in the Constitution, require a substantive review of the appeal.

The above analysis demonstrates that the Constitutional Court of Bosnia and Herzegovina has provided exceptionally detailed regulations regarding the admissibility of appeals and the grounds for rejecting them. This level of meticulousness is comparable to, and in many cases surpasses, the regulations governing such matters in general jurisdiction courts and in constitutional courts of other Balkan states.

Regarding the requirement in the Constitutional Court's Rules that all legal remedies must be exhausted, an appellant must pursue a final decision in their case. A final decision is defined as the response received after utilizing the last available legal remedy, which is effective and adequate for reviewing the lower body's decision, both on matters of fact and law.

It should also be noted that many issues related to appellate procedures have been resolved by the Constitutional Court of Bosnia and Herzegovina through its case law, which is based on the decisions of the European Court of Human Rights (ECtHR). In its practice, the Constitutional Court has interpreted the rule on the exhaustion of legal remedies, in line with ECtHR jurisprudence, to be applied with a certain degree of flexibility and without excessive formalism (European Court of Human Rights, 1991). The rule that legal remedies must be exhausted, as prescribed by law, is not absolute and cannot be applied automatically. When assessing compliance with this rule, the specific circumstances of each case must be considered (European Court of Human Rights, 1980). This means that not only the formal existence of legal remedies within the legal system but also the overall legal and political context, as well as the personal circumstances and real possibilities available to the appellant, must be taken into account. The effectiveness of a legal remedy is determined not only by its formal legal provision but also by its practical availability. In one of its decisions, the Constitutional Court of Bosnia and Herzegovina emphasized that one of the fundamental principles of the European Convention on Human Rights

and Fundamental Freedoms is that the legal remedies provided must be easily accessible and understandable to individuals. Moreover, any deficiencies in the legal and judicial system that jeopardize the protection of individual rights should not negatively impact the individual's ability to defend their rights (Constitutional Court of Bosnia and Herzegovina, 2004, 2005a).

A literal interpretation of Article VI, Section 3(b) of the Constitution of Bosnia and Herzegovina suggests that, on appeal, the Constitutional Court may review matters that are disputed based on the decision of any court in Bosnia and Herzegovina. This raised the question of what is meant by the term "other decision": does it refer to a judicial decision or a decision by another state authority? Initially, the Constitutional Court of Bosnia and Herzegovina followed the first interpretation. However, Bosnian legal scholars indicated that a literal interpretation of the above-mentioned constitutional provision is incorrect, as it does not fully ensure the protection of human rights guaranteed by the Constitution, given that such rights can also be violated by acts of various state bodies (Ćeman, 2015; Tadić, 2015). For instance, Professor Goran Marković (2013) points out: "The intent of the constitutional legislator to protect against unconstitutional judicial acts necessitates considering that this goal cannot be fully achieved if protection applies only to judicial decisions" (p. 101). As a result, while the new Rules of the Constitutional Court of 2014 (Constitutional Court of Bosnia and Herzegovina, 2014) do not explicitly state that both judicial and non-judicial decisions can be appealed, the scope of acts that can be challenged through the appeals process has undoubtedly been expanded, including for the protection of individual rights and freedoms.

Another related contentious issue is the scope of the interpretation of the constitutional term "judicial decision" regarding whether it includes decisions of the constitutional courts of the entities. Some judges of the Constitutional Court of Bosnia and Herzegovina have argued that appeals to the Constitutional Court may also be filed against decisions of the entity constitutional courts, as these courts are a special type of judicial body, and their decisions are a form of judicial act (Simović, 2011). According to Professor Dmičić, the practices of the entity constitutional courts require harmonization, and the role of the Constitutional Court of Bosnia and Herzegovina in this harmonization is undeniable. The European Convention on Human Rights and Fundamental Freedoms, which is directly applicable in Bosnia and Herzegovina and takes precedence over other laws, should serve as the basis for this process, bringing Bosnia and Herzegovina closer to the European family of states and its standards.

Professor Marković shares a similar view regarding the Constitutional Court's authority, though with entirely different reasoning. As a firm proponent of the extra-judicial legal nature of the Constitutional Court as a special body representing the fourth branch of power, he leaves aside the doctrinal debate on whether constitutional courts are part of the judicial system. According to Professor Goran Marković (2013, p. 101), constitutional courts do not perform a judicial function, and therefore they cannot be considered part of the judicial system. Marković (2013, pp. 101-102) believes it is justified to interpret that appeals can be filed with the Constitutional Court of Bosnia and Herzegovina against decisions of the entity constitutional courts, as this broadens the scope of constitutional protection, which is particularly important when it comes to human rights and freedoms. On the other hand, the Chairperson of the Constitutional Court of the Federation of Bosnia and Herzegovina, Kata Senjak, holds a different view. According to Professor Senjak (2014, p. 203), if decisions of the entity constitutional courts rendered in abstract norm control cases were subject to appellate review by the Constitutional Court of Bosnia and Herzegovina, this would mean that, through its "appellate authority", the Constitutional Court would be allowed to review the "constitutionality" of the final and binding decisions of the entity constitutional courts, which, of course, does not fall under the jurisdiction of the Constitutional Court of Bosnia and Herzegovina. Unfortunately, the practice of the Constitutional Court of Bosnia and Herzegovina has evolved in a direction where it accepts the appellate review of decisions of the entity constitutional courts, a practice that some scholars have interpreted as leading to legal uncertainty at the entity level. Such intervention in the activities of constitutional review bodies can only be justified, in this context, exclusively in the area of protecting human rights and freedoms (Karan & Aleksić, 2016, p. 110).

Another important issue that sparked broad discussion in the analysis of the appellate authority of the Constitutional Court of Bosnia and Herzegovina was the broad interpretation of the term "decision". The debate centered on whether the term should include not only all types of decisions and rulings but also the absence of a decision, when such absence is considered unconstitutional. In one of its rulings, the Constitutional Court of Bosnia and Herzegovina gave an expanded interpretation of the constitutional provisions of Article VI, Section 3(b) of the Constitution, explaining under what circumstances an appeal may be filed with the Constitutional Court (Constitutional Court of Bosnia and Herzegovina, 2001a). Specifically, the Court concluded that "... an appeal may be filed if a general jurisdiction court fails to issue a final decision; the same applies to acts of other bodies, particularly administrative bodies". Thus, as noted by

Professor Ademović, if a trial at the first instance lasts unreasonably long, a party may appeal to the Constitutional Court of Bosnia and Herzegovina on the grounds that their right to a timely decision has been violated, as this is the responsibility of the state under Article II, Section 3(e) of the Constitution of Bosnia and Herzegovina (Ademović et al., 2012, p. 205).

Additionally, in the new 2014 Rules of the Constitutional Court of Bosnia and Herzegovina, Section 2 of Article 18 introduced a provision stating that the Constitutional Court may, as an exception, consider an appeal even when no decision has been made by a competent court, provided that the appeal indicates serious violations of rights and fundamental freedoms protected by the Constitution or international documents applicable in Bosnia and Herzegovina. Over time, the practice of the Constitutional Court of Bosnia and Herzegovina has been incorporated into the normative provisions of its Rules. Undoubtedly, the influence of the European Convention on Human Rights and the decisions of the European Court of Human Rights on this issue have played a significant role in this development. A considerable number of similar cases can be found in the practice of the Constitutional Court of Bosnia and Herzegovina.

Moreover, in its practice, the Constitutional Court of Bosnia and Herzegovina has also indicated that, based on submitted appeals, it is authorized to review the constitutionality of laws: "In principle, the Court may review the constitutionality of a specific legal provision as part of an appellate proceeding if it believes that the decision in accordance with Article VI, Section 3(b) of the Constitution of Bosnia and Herzegovina is based on that provision" (Constitutional Court of Bosnia and Herzegovina, 2001b). In such cases, however, this concerns norm control, not in the abstract but in concrete constitutional review (Senjak, 2015), as the issue of the constitutionality of a law in an appellate proceeding may only be raised after the completion of the case in a competent body, and the appellate process in the Constitutional Court of Bosnia and Herzegovina is connected to the review of an individual legal act issued under an unconstitutional law.

In several of its decisions, the Constitutional Court of Bosnia and Herzegovina has stated that, under Article II, Section 1 of the Constitution, both Bosnia and Herzegovina and its entities are required to ensure the highest standards of human rights and fundamental freedoms, as the rights and freedoms defined by the European Convention and its protocols are directly applicable in Bosnia and Herzegovina and take precedence over all other laws, as provided by Article II, Section 2 of the Constitution. As a result, a significant body of case law has developed regarding the appellate authority of the

Constitutional Court of Bosnia and Herzegovina. In fact, appellate cases make up 90 percent of the cases heard annually by the Constitutional Court. The vast majority of these cases involve the protection of rights and freedoms, with a broad range of rights being defended by Bosnia and Herzegovina's constitutional review body. However, the majority of these cases concern individual rights. Some examples include decisions where the Constitutional Court of Bosnia and Herzegovina has maintained that torture or inhumane treatment must be minimized, as stipulated by Article 3 of the European Convention. Article 3 "Prohibition of Torture" of the European Convention on Human Rights provides that "No one shall be subjected to torture or to inhuman or degrading treatment or punishment". This article of the Convention protects one of the "absolute rights", and therefore, the state cannot derogate from its observance under any circumstances, even during wartime.

The assessment of this minimum threshold is relative by nature and depends on all the circumstances of the case, such as the nature and context of the treatment, its duration, and its physical and psychological effects. In some cases, gender, age, and the victim's state of health may also be relevant factors. Furthermore, the Constitutional Court has referenced the necessary standards for ensuring effective protection within the appellate procedure. For example, when formulating these standards, the Constitutional Court emphasized that a certain level of suffering is established when sufficient evidence of harm is presented, meaning the appellant must provide at least some elements of proof related to the alleged inhumane treatment (Constitutional Court of Bosnia and Herzegovina, 2005b).

In the case of the Constitutional Court No. AP 3963/09 dated September 14, 2010, based on the documents provided by the appellant in their appeal, it was established that the appellant had received medical treatment in accordance with legislative provisions for the protection of their health. Regarding the appellant's claims that the special police caused physical harm during their detention, the appellant failed to present any evidence, and these claims, along with medical and other documents, were taken into account by the competent general jurisdiction court when issuing its decision. After reviewing all the circumstances of the case, the Constitutional Court of Bosnia and Herzegovina concluded that the claims contained in the appeal regarding the violation of rights under Article II, Section 3(b) of the Constitution of Bosnia and Herzegovina and Article 3 of the European Convention were unfounded.

As previously mentioned, the statistics of cases reviewed by the Constitutional Court of Bosnia and Herzegovina indicate that the overwhelming

majority of appellate cases concern the protection of rights and freedoms, once all other legal remedies have been exhausted. In fact, as noted above, Article 18, Section 2 of the Rules of the Constitutional Court of Bosnia and Herzegovina implies that filing an appeal is directly related to the violation of human rights and freedoms. As a result, many scholars note a direct similarity between the appeals system in Bosnia and Herzegovina and the constitutional complaint system in other countries of the former Yugoslavia (such as Slovenia and Serbia (Borisov, 2015; Pavlov, & Kremyanskaya, 2015; Polovchenko, 2021). Professors Steiner and Ademović (2010, pp. 641-642), for example, believe that the appeals system in Bosnia and Herzegovina closely resembles the constitutional complaint system, although it is a more comprehensive mechanism than the constitutional complaint under German law. Meanwhile, Serbian Professor Darko Simović argues that the constitutional system of Bosnia and Herzegovina does not recognize the institution of a constitutional complaint. In the author's view, both approaches are valid in their own way. On one hand, since appeals to the Constitutional Court of Bosnia and Herzegovina typically concern violations of human rights and freedoms, this aligns the system with that of a constitutional complaint. The significance of this authority is clearly demonstrated through judicial practice, which indicates that this is a constitutional authority predominantly aimed at protecting rights and freedoms. On the other hand, Professor Goran Marković (2013, p. 102) rightly points out that an appeal can also be filed if a judicial decision results from a violation of the competencies of state bodies as established in the Constitution of Bosnia and Herzegovina. In such cases, naturally, the appeals system in the Constitutional Court of Bosnia and Herzegovina is not identical to the constitutional complaint system operating in other states of the former Yugoslavia.

This clear trend does not apply to the Constitutional Court's restraint regarding individual acts and measures of the High Representative. The High Representative has the authority, at their own discretion, to annul decisions of the governmental bodies of Bosnia and Herzegovina and its entities, to dismiss officials at all levels of government in Bosnia and Herzegovina whose actions and decisions pose a threat to the peace and security of Bosnia and Herzegovina, and to temporarily enact their own decisions in the form of laws.

For instance, while the Constitutional Court extended its authority to review the constitutionality of the High Representative's laws in its 2001 decision, it considered itself incompetent to review individual acts and measures of the High Representative, some of which were not even published in official bulletins. The Court explained this by stating that these acts cannot be treated as internal law, according to the formula established in the Court's practice. During their

tenure, for example, the High Representative removed legitimately elected officials, including members of the legislative bodies of the entities. The situation appears particularly egregious, as the High Representative's decisions stated that individuals barred from performing state functions could not do so until the High Representative personally lifted the ban. Naturally, the affected individuals, after exhausting all possible legal remedies, filed appeals with the Constitutional Court of Bosnia and Herzegovina, challenging the inability to contest the High Representative's decisions. The Constitutional Court, noting that these acts did not fall under internal law and referring to the international legal basis of the High Representative's authority, including UN Security Council resolutions, declined to review their constitutionality. However, in one of its decisions—while not questioning the High Representative's decision to prohibit an elected official from performing their duties—the Court did acknowledge that this situation violated Article 13 of the European Convention on Human Rights and Fundamental Freedoms, as there is no effective legal remedy against individual acts of the High Representative in Bosnia and Herzegovina.

#### D. CONCLUSION

In Bosnian academic literature, there is, on the one hand, the view that the Constitutional Court of Bosnia and Herzegovina was originally intended by the constitutional framers to function as a Supreme Court with broad constitutional and political powers, given the influence of Anglo-Saxon law in shaping the core principles of the 1995 Constitution. Indeed, the Constitution of Bosnia and Herzegovina does not provide for the existence of a supreme court, and many of the functions of a supreme court were meant to be carried out by the Constitutional Court. This was primarily evident in the appellate jurisdiction of the Constitutional Court.

On the other hand, Bosnian scholars have noted that through the exercise of its appellate authority, the Constitutional Court of Bosnia and Herzegovina extends beyond the core characteristics of a classical constitutional court, thereby positioning itself among the ordinary general jurisdiction courts (Karan & Aleksić, 2016, p. 110). This situation was further complicated by the fact that the constitutional provisions regulating the status and powers of the Constitutional Court of Bosnia and Herzegovina are rather concise (effectively limited to two articles in the Constitution) and formulated in very abstract terms. Moreover, unlike the constitutions of most Central and Southeast European states, the Constitution of Bosnia and Herzegovina does not mandate the adoption of a special law on the Constitutional Court. Instead, the constitutional provisions

were to be detailed in the Rules of the Constitutional Court of Bosnia and Herzegovina, which were drafted and adopted by the Court itself.

As a result, the Constitutional Court, demonstrating judicial activism in its practice, developed and adopted its own Rules and, in doing so, largely defined its own place within the system of state authorities. This role can be described as representing a fourth constitutional-judicial branch of power (Florczak-Wątor, 2020). The judicial activism demonstrated by the Constitutional Court allows it to be characterized as a "strong" Constitutional Court, capable of engaging in lawmaking activities when necessary. Furthermore, the Constitutional Court of Bosnia and Herzegovina clarified the scope of its powers, particularly its appellate jurisdiction. For example, the Constitutional Court specified that in appellate proceedings before the Constitutional Court of Bosnia and Herzegovina, the parties could include the participants of the proceedings in which the contested decision was made, as well as the court or other body whose decision is the subject of appeal. The terms "court" and "decision" were broadly interpreted by the Constitutional Court both in its practice and in the Rules of the Constitutional Court of Bosnia and Herzegovina, resulting in the inclusion of "administrative body decisions" within the scope of appellate review.

Additionally, the Constitutional Court allowed for the possibility of challenging a violation of the Constitution of Bosnia and Herzegovina through unlawful inaction, in cases where no decision was made by a general jurisdiction court or an administrative body (for example, due to an unreasonably prolonged process). Unfortunately, in its practice, the Constitutional Court of Bosnia and Herzegovina determined that individual decisions of the High Representative cannot be appealed within the appellate procedure, although this issue is directly related to the limited sovereignty of Bosnia and Herzegovina.

Nevertheless, from the foregoing, it can be concluded that the appellate system in the Constitutional Court of Bosnia and Herzegovina has been significantly developed through the broad interpretation by the Constitutional Court and is gradually evolving toward a full constitutional complaint mechanism, which is a characteristic feature of the constitutional review bodies in Central and Southeast European states. Thus, the human rights protection mechanism of Bosnia and Herzegovina is being substantially strengthened through the human rights activities of the Constitutional Court of Bosnia and Herzegovina.

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