

Constitutional Complaint In Constitutional and Legal System Of Montenegro

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Honorable President Arslan,

Honorable Ladies and Gentleman,

I express my sincere gratitude on invitation which has given me honor to take part in the Conference marking 56th anniversary of the existence of the Constitutional Court of Republic of Turkey.

On behalf of the Constitutional Court of Montenegro I cordially congratulate this jubilee to colleagues from the Constitutional Court of the Republic of Turkey. In addition, I wish you much success in the future fulfillment of important tasks.

In accordance with our topic today "Evaluation of the first five years of the individual application", my speech will concentrate on the experience of Montenegro and the Constitutional Court of Montenegro in this matter.

Constitution of Montenegro from 2007, that has established new legal system of independent and sovereign, internationally recognized State of Montenegro, has introduced constitutional complaint as a special legal remedy for protection of individual rights and liberties of the citizens. Constitution has stipulated that Constitutional Court of Montenegro shall decide on constitutional complaint against acts of State Organs after all effective legal remedies have been exhausted.

The introduction of constitutional complaint meant extra protection of citizens' rights in addition to those provided by ordinary courts, which raised the level of protection of human rights in Montenegro to a higher level.

The constitutional complaint has become very popular legal remedy

for the protection of rights, so today, the protection of human rights and freedoms by the constitutional complaint, represents the dominant function of the Constitutional Court. Since the adoption of the Constitution in 2007 until today around 7,000 of constitutional complaints were submitted to the Constitutional Court. Percentage of adopted constitutional complaints each year was around 3%, but in the previous year, 2017, was 9%:

The Law on Constitutional Court of Montenegro from March 2015th, containing the new solutions makes a step forward in improving the protection of human rights and freedoms in Montenegro through constitutional complaint. This Law provides the possibility of submitting a constitutional complaint prior to exhaustion of effective legal remedies, if the applicant of constitutional complaint proves that legal remedy on which is entitled in the concrete case could not, or would not be effective.

To the effectiveness of the constitutional complaint also contributes the solution from the Law on Constitutional Court which stipulates that the constitutional complaint can be submitted for the violation of human rights and freedoms as a result of not only individual act, but action or inaction of state bodies, exercising public authority.

This is a very important innovation, by which solution to the then valid Law on the Constitutional Court of Montenegro is brought into line with the Constitution, but also with the European standards. Due to the fact that there is no legal act which violated rights, the Constitutional Court could not provide protection in case of violation of the right to trial within a reasonable time or non-enforcement of a final or enforceable court judgment, as the European Court found in the judgments *Mijuskovic* against Montenegro and *Bijelic* against Montenegro and Serbia. Therefore, constitutional complaint in such cases was considered as ineffective legal remedy. Now if proceeding before a competent court takes inappropriately long time after legal remedies prescribed, the applicant has the right to submit a constitutional complaint for the violation of rights that occurred due to inaction of state authorities.

In case when the violation was committed by an action of inaction of the competent authority, the Constitutional Court shell through the decision upholding the constitutional complaint, prohibit the further commission of the action, i.e. it shell order the adoption of an act or take other appropriate measure or action removing the already incurred or eliminate future adverse effects of the determined violation of rights.

Law also contains solution that exceptionally, on the request of the applicant submitting the complaint, during the proceedings, the Constitutional Court may order the suspension of the enforcement of an individual act until a final decision is made, if the applicant submitting the complaint makes it certain that there would be irreparable adverse effects.

Further, Law prescribes right of the Constitutional Court, through the decision upholding the constitutional complaint to determine manner of just satisfaction of the applicant submitting the constitutional complaint on the grounds of suffered violation of right in the case that during the procedure of decision making the legal effect of the individual act that is subject of the constitutional complaint has ceased.

These legal solutions were subsequently followed by judgment of the European Court of Human Rights in the case *Sineštaj and others v Montenegro*, in November 2015th, where the Court held the position that constitutional complaint in Montenegro, in principle, can be considered as an effective legal remedy as from March 20th, 2015 or from the date when the new Law on Constitutional Court of Montenegro entered into force. The recognition of the effectiveness of the constitutional complaint meant a great recognition for Montenegro and the Constitutional Court of Montenegro, but also imposed a great responsibility, because in the future, in any case, applicant first has to submit the constitutional complaint for the protection of rights to Constitutional Court of Montenegro, before the addressing the European Court. Therefore, this decision of the European Court is of far reaching importance for the further protection of human rights in Montenegro.

Thank you for your attention!