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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**BOSNIA AND HERZEGOVINA**

**OPINION**

**ON**

**THE METHOD OF ELECTING JUDGES TO THE CONSTITUTIONAL  
COURT**

**Adopted by the Venice Commission  
at its 139<sup>th</sup> Plenary Session  
(Venice, 21-22 June 2024)**

**On the basis of comments by**

**Ms Jana BARICOVÁ (Member, Slovak Republic)**  
**Mr Paolo CAROZZA (Former member, Expert, United States of America)**  
**Mr Christoph GRABENWARTER (Member, Austria)**  
**Ms Hanna SUCHOCKA (Honorary President)**  
**Mr Kaarlo TUORI (Honorary President)**

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## I. Introduction

1. By letter of 15 March 2024, the then-Chairman of the Presidency of Bosnia and Herzegovina, Mr Željko Komšić, requested an Opinion of the Venice Commission on three questions relating to the election of judges to the Constitutional Court of Bosnia and Herzegovina.

2. Ms Jana Baricová, Mr Paolo Carozza, Mr Christoph Grabenwarter, Ms Hanna Suchocka and Mr Kaarlo Tuori acted as rapporteurs for this Opinion.

3. On 30 May 2024, a delegation of the Commission composed of Ms Baricová, Mr Grabenwarter, Ms Suchocka and Mr Tuori, together with Ms Tania van Dijk and Ms Anna Kacmarikova from the Secretariat, held online meetings with the President of the Constitutional Court of Bosnia and Herzegovina, advisors to the Presidency of Bosnia and Herzegovina, the Office of the High Representative and representatives of the European Union delegation in Bosnia and Herzegovina and the European Commission (DG-NEAR). The Venice Commission regrets that the rapporteurs once again did not have the opportunity to meet with members of the National Assembly of Republika Srpska and the House of Representatives of the Federation of Bosnia and Herzegovina to discuss these issues in greater depth. The Commission is grateful to the Council of Europe Office in Sarajevo for the excellent organisation of the online meetings.

4. This Opinion was drafted on the basis of comments by the rapporteurs and the results of the online meetings on 30 May 2024. Following an exchange of views with Mr Željko Komšić, member of the Presidency of Bosnia and Herzegovina, it was adopted by the Venice Commission at its 139th Plenary Session (Venice, 21-22 June 2024).

## II. Background and scope of the Opinion

5. Article VI, paragraph (1)(a) and (b) of the Constitution of Bosnia and Herzegovina reads:

*“1. Composition. The Constitutional Court of Bosnia and Herzegovina shall have nine members.*

*a. Four members shall be selected by the House of Representatives of the Federation, and two members by the Assembly of the Republika Srpska. The remaining three members shall be selected by the President of the European Court of Human Rights after consultation with the Presidency.*

*b. Judges shall be distinguished jurists of high moral standing. Any eligible voter so qualified may serve as a judge of the Constitutional Court. The judges selected by the President of the European Court of Human Rights shall not be citizens of Bosnia and Herzegovina or of any neighbouring state.”*

6. As detailed in its previous Opinion<sup>1</sup>, Bosnia and Herzegovina does not have a Law on the Constitutional Court, leaving it to the Rules of the Constitutional Court (“the Rules”) to regulate a wide array of issues normally covered by a Law on the Constitutional Court. Article 80 of the Rules repeats the above constitutional provision on distinguished jurists of high moral standing, eligible to vote in Bosnia and Herzegovina and additionally provides in paragraph 3: “*The judges shall act in the Constitutional Court in their personal capacity*”. Article 96 of the Rules contains some further regulation of the incompatibilities of the office of a judge of the Constitutional Court, providing *inter alia* that the position of a judge of the Constitutional Court is incompatible with

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<sup>1</sup> Venice Commission, [CDL-AD\(2024\)002](#), Bosnia and Herzegovina - Opinion on certain questions relating to the functioning of the Constitutional Court of Bosnia and Herzegovina, para. 7.

membership of a political party, political organisation, legislative, executive or other judicial authority in Bosnia and Herzegovina or the entities and Brčko District.<sup>2</sup>

7. The request of the then-Chairman of the Presidency states that “*the vagueness of the aforementioned article of the Constitution of Bosnia and Herzegovina has created such a practice that people who do not have any judicial experience at all or, more precisely, who do not have any judicial experience in any of the courts in Bosnia and Herzegovina are often nominated and elected to position of judges of the Constitutional Court of Bosnia and Herzegovina*”. Furthermore, it is pointed out that “*appointments of domestic judges to the Constitutional Court of Bosnia and Herzegovina are made on the basis of ethnic criteria*”, i.e., that it has been an established practice to elect domestic judges based on ethnicity, with two Bosniak judges and two Croat judges elected by the House of Representatives of the Federation of Bosnia and Herzegovina and two Serb judges by the National Assembly of the Republika Srpska. As the then-Chairman considers this to be to the detriment of the Constitutional Court of Bosnia and Herzegovina, he requested an Opinion of the Venice Commission on the following questions:

“1) *What is the practice in the countries of the Council of Europe regarding the minimum criteria and qualifications for candidates for judges of the constitutional court, in terms of the necessary work experience in judicial institutions, especially necessary experience in the position of judges in one of the courts at lower levels or at the state level, such as at for example, the number of years spent as a judge in one of the domestic courts and/or the number of successfully resolved cases?*

2) *What would be the recommendation of the Venice Commission regarding the necessary criteria for the election of judges to the Constitutional Court of Bosnia and Herzegovina in accordance with the practice in the countries of the Council of Europe in comparison with current provisions of the Constitution of Bosnia and Herzegovina?*

3) *Can there be an ethnic criterion when electing judges to the Constitutional Court of Bosnia and Herzegovina, in such a way that when electing judges, it should or has to consider ethnical parity or the same ethnic representation of judges from different ethnic communities in Bosnia and Herzegovina?”*

### **III. Analysis**

#### **A. Qualification criteria for judges of constitutional courts (Question 1)**

8. In replying to the first question, the Venice Commission draws heavily on CODICES, the Commission’s database which contains constitutions and laws on constitutional courts and equivalent bodies of Venice Commission member states in English and French (as well as summaries and full texts of decisions and opinions of constitutional courts and equivalent bodies).<sup>3</sup> Furthermore, in recognition of the fact that constitutional courts are composed in ways that depart considerably from the ways in which ordinary courts are composed, the reply to the first question focuses on specialised constitutional courts, leaving apex tribunals of general jurisdiction exercising constitutional justice aside. Moreover, given that the question explicitly

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<sup>2</sup> In addition, Article 96 also provides that the office of a judge of the Constitutional Court is incompatible with any other position which could affect the impartiality of a judge and that domestic judges cannot be members of an administrative or supervisory committee of a public or private company or other legal person. Judges of the Constitutional Court may continue to teach and work at a university, on a reduced scale, and be engaged in other scientific or professional work or membership of institutes or associations of lawyers and other humanitarian, cultural, sport or other associations, unless these activities are associated with the activities of a political party.

<sup>3</sup> CODICES can be accessed at [www.codices.coe.int](http://www.codices.coe.int). CODICES is regularly updated by liaison officers at constitutional courts and equivalent courts in Venice Commission member states (as well as other jurisdictions) to include amendments to constitutions and laws on constitutional courts as well as recent case-law.

refers to countries of the Council of Europe, only those specialised constitutional courts have been included in this comparative overview, leaving aside member states of the Venice Commission which are not Council of Europe member states.

9. Eligibility criteria for judges of constitutional courts and councils can generally be divided in the following categories: 1) legal qualifications, 2) minimum age and 3) a minimum period of professional experience before the appointment, either in judicial or legal practice or other. In addition, there may be other criteria, in particular regarding ethical and moral standards and incompatibility with other positions and activities.

### 1. *Legal qualifications*

10. Most Council of Europe member states require some formal legal qualification, either explicitly requiring a law degree or higher legal education (as is the case for Albania, Armenia, Austria, Azerbaijan, Czechia, Georgia, Hungary, Latvia, Lithuania, Portugal, Romania, Slovak Republic and Ukraine<sup>4</sup>), requiring them to be lawyers or jurists (Bulgaria, Croatia, Montenegro, Serbia and Spain<sup>5</sup>), be qualified to hold judicial office (Germany<sup>6</sup>) or implicitly, by referring to the professional groups from which candidates are drawn (Italy, North Macedonia<sup>7</sup>). Slightly diverging from this are countries which point in general to the high level of legal expertise required, such as Andorra ("*recognised knowledge of legal and institutional matters*"), the Republic of Moldova ("*outstanding judicial knowledge*"), Poland ("*persons distinguished by their knowledge of the law*")<sup>8</sup> and Slovenia ("*experts in law*").<sup>9</sup> Liechtenstein does not condition membership on formal legal qualifications but requires at least three of the five constitutional justice and three of the five alternative justices to be "*versed in the law*",<sup>10</sup> Türkiye draws candidates from different professional groups, some of which require a legal education<sup>11</sup>, and France does not require members of the Constitutional Council to have any kind of legal qualification or training.

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<sup>4</sup> Article 125 of the Constitution of Albania; Article 165 of the Constitution of Armenia requires the candidate constitutional judge to be "a lawyer with higher education"; Article 147 of the Constitution of Austria; Article 126 of the Constitution of Azerbaijan requires "higher legal education"; Article 84 of the Constitution of Czechia requires a university legal education; Article 88 of the Constitution of Georgia; Section 6 of the Constitution of Hungary; Section 4 of the Constitutional Court Law of Latvia; Article 103 of the Constitution of Lithuania; Article 13 of the Law on the Constitutional Court of Portugal; Article 143 of the Constitution of Romania; Article 134 of the Constitution of the Slovak Republic; Article 11 of the Law of Ukraine on the Constitutional Court.

<sup>5</sup> Article 147 of the Constitution of Bulgaria; Article 122 of the Constitution of Croatia stipulates that judges of the Constitutional Court are elected from among "notable jurists, especially judges, state attorney, attorneys and university law professors"; Article 153 of the Constitution and Article 9 of the Law on the Constitutional Court of Montenegro; Article 172 of the Constitution of Serbia; Article 159 of the Constitution of Spain which provides that "*members of the Constitutional Court shall be appointed from among magistrates and prosecutors, university professors, public officials and lawyers, all of whom must be jurists of recognised standing with at least 15 years' experience in the exercise of their professions*".

<sup>6</sup> Article 3 of the Act on the Federal Constitutional Court of Germany.

<sup>7</sup> Article 135 of the Constitution of Italy provides "*The judges of the Constitutional Court shall be chosen from among magistrates, including those in retirement, of the ordinary and administrative higher Courts, from full professors of law and lawyers with at least 20 years' practice*"; Article 109 of the Constitution of North Macedonia refers to "*outstanding members of the legal profession*".

<sup>8</sup> Article 3 of the Law on the Status of Constitutional Court Judges of Poland is however more specific, adding that persons distinguished by their knowledge of law must also hold qualifications required for the office of a judge of the Supreme Court or for the office of a judges of the Supreme Administrative Court. In turn, Article 30 of the Law on the Supreme Court requires *inter alia* the completion of higher education in law in Poland and a master's degree or foreign qualification in law recognised in Poland.

<sup>9</sup> Article 10 of the Qualified Law on the Constitutional Court of Andorra; Article 138 of the Constitution of the Republic of Moldova; Article 194 of the Constitution of Poland; Article 163 of the Constitution of Slovenia.

<sup>10</sup> Articles 105 and 102 of the Constitution of Liechtenstein; Article 1 of the Constitutional Court Act of Liechtenstein.

<sup>11</sup> Article 146 of the Constitution of Türkiye; Article 6 of Law 6216 on the Establishment and rules of Procedure of the Constitutional Court of Türkiye.

## 2. *Minimum age*

11. A number of constitutions or constitutional laws only consider persons above a certain age eligible to become a constitutional judge. This is either stipulated explicitly (e.g. 25 years in Andorra, 30 years in Georgia, 40 years in Armenia, Belgium, Czechia<sup>12</sup>, Germany, Latvia, Montenegro, Poland<sup>13</sup>, Serbia, the Slovak Republic, Slovenia and Ukraine, 45 years in Hungary and Türkiye<sup>14</sup>) or indirectly with the required years of professional experience resulting in a *de facto* minimum age for appointment (see below for Albania, Austria, Azerbaijan, Bulgaria, Croatia, Italy, Lithuania, the Republic of Moldova, Romania and Spain). A few countries, like France, require only the possession of political rights and could therefore theoretically appoint eighteen-year-olds as members of the Constitutional Council.

## 3. *Minimum period of professional legal experience*

12. Judicial appointments to constitutional courts are generally linked to a certain minimum level of professional legal experience prior to appointment. There are however some notable exceptions: as already indicated above, the French Constitution is silent about any qualification criteria for members of the Constitutional Council, which in theory allows all French citizens enjoying full civil and political rights to become members of the Constitutional Council. Certain constitutions and constitutional laws do not specify the experience required but instead refer to the pertinence of this experience, for example “*professional experience (...) appropriate for the high status of a member of the Constitutional Court*” (Georgia).<sup>15</sup>

13. Some constitutions and constitutional laws are specific on the professional experience required or the professional groups from which constitutional judges are drawn. In Austria, the President, Vice-President, six of the 12 additional members and three of the six substitute members of the Constitutional Court are selected from among judges, administrative officials and professors holding a chair in law (requiring additionally 10 years of professional experience).<sup>16</sup> In Albania, at least 15 years of experience as a judge, prosecutor, advocate, law professor or lector, senior employee in the public administration (with a renowned activity in constitutional, human rights, or other areas of law) is required.<sup>17</sup> Belgium requires five years of practice in one of five specific categories of positions, whereby also a system of proportional representation of professions or professional groups is foreseen.<sup>18</sup> The Croatian Constitution refers to “*notable jurists*” and qualifies this as “*especially judges, state attorneys, attorneys and university law*”

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<sup>12</sup> Article 84 of the Constitution of Czechia requires candidates for the Constitutional Court to be “*eligible for election to the Senate*”, for which Article 19 of the Constitution sets a minimum age of 40 years.

<sup>13</sup> Article 3 of the Law on the Status of Constitutional Court Judges of Poland stipulates that persons distinguished by their knowledge of law must also hold qualifications required for the office of a judge of the Supreme Court or for the office of a judge of the Supreme Administrative Court. Article 30 of the Law on the Supreme Court requires persons eligible for the position of judge of the Supreme Court to be 40 years of age.

<sup>14</sup> Respectively, Article 10 of the Qualified Law on the Constitutional Court of Andorra; Article 88 of the Constitution of Georgia, Article 165 of the Constitution of Armenia; Article 34 of the Special Act on the Constitutional Court of Belgium; Article 3 of the Act on the Federal Constitutional Court of Germany; Section 4 of the Constitutional Court Law of Latvia; Article 153 of the Constitution of Montenegro; Article 172 of the Constitution of Serbia; Article 134 of the Constitution of the Slovak Republic; Article 9 of the Constitutional Court Act of Slovenia; Article 148 of the Constitution of Ukraine; Section 6 of Act CLI of 2011 on the Constitutional Court of Hungary; Article 146 of the Constitution of Türkiye.

<sup>15</sup> Article 7 of the Organic Law of Georgia on the Constitutional Court.

<sup>16</sup> Article 147 of the Constitution of Austria.

<sup>17</sup> Article 125 of the Constitution of Albania.

<sup>18</sup> The five categories of functions are: 1) Justice, Attorney-general, First Advocate-General or Advocate General at the Supreme Court, 2) member of the Council of State or Auditor-General, Assistant-Auditor General, First Auditor or First Legal Secretary at the Council of State, 3) Legal Secretary at the Constitutional Court, 4) professor or associate professor at law or 5) member of the Senate, the House of Representatives or a community or regional parliament, whereby it is also provided that the first four categories provide at least for one constitutional justice each (Article 34 of the Special Act of 6 January 1989 on the Constitutional Court of Belgium).

*professors*".<sup>19</sup> In Germany, three members of each of the two eight-member senates of the Federal Constitutional Court are to be elected from judges of supreme federal courts, with at least three years' experience in that position<sup>20</sup>. In Italy, judges of the Constitutional Court are appointed from magistrates (including retired magistrates) from ordinary and administrative supreme courts (without a minimum duration of having held this position) and from professors of law and lawyers with a minimum of 20 years' practice.<sup>21</sup> Judges of the Constitutional Court of Luxembourg are required to have been judges, without a minimum duration of having held such a position.<sup>22</sup> Poland requires at least 10 years' professional experience as a judge or prosecutor, as President, deputy president or counsel of the Prosecutor-General's Office, advocate, legal adviser or public notary (with this requirement being waived for professors or doctors of law employed at higher education establishments in Poland).<sup>23</sup> In Portugal, six of 13 judges at the Constitutional Court must be selected from among judges (whereby the others are selected from jurists).<sup>24</sup> The Constitution of Spain requires at least 15 years' experience as a magistrate, prosecutor, university professor, public official or lawyer (all of whom must be jurists of recognised standing).<sup>25</sup> Türkiye requires eligible candidates to either be or have been president or a member of the Court of Cassation, the Council of State, the Military Court of Cassation, the Military Supreme Administrative Court or the Court of Accounts, having worked as a rapporteur at the Constitutional Court for a period of five years, being or having been professor or associate professor in the field of law, economics or political science at a higher education institution, or for lawyers, high-level executives, first category judges and public prosecutors to have worked for at least 20 years in their field.<sup>26</sup>

14. Other constitutions and laws on constitutional courts refer to legal experience in more general terms, with some variety in the length of time of the legal experience required: ranging from five years in "*the sphere of law*" (Azerbaijan), to 10 years "*active in the legal profession*" (Czechia), in "*a legal speciality or in judicial speciality in scientific education work*" (Latvia) or "*in a field of law or in a branch of science and education as a lawyer*" (Lithuania), 15 years of professional experience as a lawyer (Armenia), practicing law (Bulgaria, Serbia and the Slovak Republic), in the legal profession (Croatia<sup>27</sup>, Montenegro<sup>28</sup>), in the legal field, legal education or scientific activity (Republic of Moldova) or in the field of law (Ukraine), 18 years of experience in judicial or

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<sup>19</sup> Article 5 of the Constitutional Act on the Constitutional Court of Croatia specifies that "*jurists with at least 15 years of experience in the legal profession, who have been distinguished by their scientific or professional work or public activity*".

<sup>20</sup> Article 2 of the Act on the Federal Constitutional Court of Germany.

<sup>21</sup> Article 135 of the Constitution of Italy.

<sup>22</sup> Article 3 of the Law of 27 July 1997 on the Organisation of the Constitutional Court of Luxembourg provides that the President of the Superior Court of Justice, the President of the Administrative Court and the two judges of the Court of Cassation are *ex officio* members of the Constitutional Court and that the other five members must all be qualified judges.

<sup>23</sup> Article 3 of the Act on the Status of Judges of the Constitutional Tribunal, with reference to the qualifications required for the office of a judge of the Supreme Court, outlined in Article 30 of the Act on the Supreme Court.

<sup>24</sup> Article 122 of the Constitution of Portugal.

<sup>25</sup> Article 159 of the Constitution of Spain.

<sup>26</sup> Article 6 of the Law 6216 on the Establishment and Rules of Procedure of the Constitutional Court.

<sup>27</sup> Article 122 of the Constitution of Croatia only speaks about "*notable jurists*" specifying however "*especially judges, state attorneys, attorney and university law professors*", whereby in Article 5 of the Constitutional Act on the Constitutional Court qualifies that these have to be jurists with "*15 years of experience in the legal profession, who have been distinguished by their scientific or professional work or public activity*" (or if having obtained a doctoral degree in legal science, this may be 12 years of experience in the legal profession)

<sup>28</sup> While Article 153 of the Constitution of Montenegro speaks of "*distinguished jurists, who have (...) 15 years of service in the legal profession*", Article 9 of the Law on the Constitutional Court of Montenegro specifies that distinguished jurists are professors of legal sciences, judges, public prosecutors, lawyers, notaries, attorney working for state authorities, state administration bodies and local self-government or local government authorities, as well as lawyers working in companies and legal entities enjoying a professional and personal reputation.

academic activities in law (Romania) and 20 years of professional work in a position for which a law degree is required (Hungary<sup>29</sup>).<sup>30</sup>

15. A comparative overview of the composition in practice of constitutional courts across Council of Europe member states, however, reveals certain insights regarding the professional background of constitutional judges that are not evident from an analysis that focuses only on the requirements outlined in the constitutions (or constitutional laws) of these countries. Many constitutional courts share a common feature in their composition, namely that a rather large number of their members are law professors. In Austria, Germany, Italy, Portugal, Spain and Hungary, they are the most strongly represented professional group. By contrast, in Belgium, only about one-third of the constitutional justices are professors, with former civil servants from various areas of the administration being the most strongly represented (although quite a few also teach at universities). In France, public administration and politics are frequently represented, with professors, judges and other legal professions not necessarily being in the majority.

#### 4. Other criteria

16. Other common criteria for constitutional court judges relate to ethical and moral standards, for example “*being appreciated for (...) ethical and moral integrity*” (Albania), having “*high (...) moral qualifications*” (Armenia), “*moral integrity*” (Bulgaria), “*character beyond reproach*” (Czechia), “*impeccable reputation*” (Latvia, Lithuania), “*of good character*” (Poland), “*moral qualities*” (Slovak Republic), “*high moral values*” (Ukraine), and/or the absence of a criminal record (Albania, Hungary, Poland, the Slovak Republic) which is sometimes implicit (for example, by the formulation “*meeting general requirements for employment in state bodies*”, as in Montenegro).<sup>31</sup> The requirements in Albania are the most explicit in this respect, requiring candidates (in addition to the absence of criminal proceedings or having been convicted to a prison sentence) to also not be subject to any disciplinary measures or having been dismissed in the past due to disciplinary grounds and to have successfully passed the verification of the declaration of personal assets (and those of their family).<sup>32</sup> It must be borne in mind that ethical and moral standards are rarely made more explicit, but instead taken into account during the selection process for a judicial vacancy.

17. In addition, criteria for candidates for constitutional court judges refer *inter alia* to citizenship (e.g., Armenia, Azerbaijan, Bulgaria Croatia, Georgia, Hungary, Latvia, Liechtenstein<sup>33</sup>, Lithuania, Republic of Moldova, Portugal, Slovak Republic, Ukraine) sometimes with the

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<sup>29</sup> In addition to persons with twenty years of professional work experience in a position for which a law degree is required, “*theoretical lawyers of outstanding knowledge*” – i.e., university professors or doctors at the Hungarian Academy of Science – without 20 years of experience are also eligible to become judges at the Constitutional Court (Section 6 of the Act CLI on the Constitutional Court).

<sup>30</sup> Respectively Article 126 of the Constitution of Azerbaijan, Article 84 of the Constitution of Czechia, Section 4 of the Constitution of Latvia, Article 103 of the Constitution of Lithuania, Article 147 of the Constitution of Bulgaria, Article 172 of the Constitution of Serbia, Article 134 of the Constitution of the Slovak Republic, Article 5 of the Constitutional Act on the Constitutional Court of Croatia, Article 153 of the Constitution of Montenegro, Article 138 of the Constitution of the Republic of Moldova, Article 11 of the Law on the Constitutional Court of Ukraine, Article 143 of the Constitution of Romania and Section 6 of Act CLI on the Constitutional Court of Hungary.

<sup>31</sup> Article 7/a of Law No. 8577 of 10 February 2000 on the Organisation and Functioning of the Constitutional Court of Albania; Article 4 of the Constitutional Law of the Republic of Armenia on the Constitutional Court; Article 147 of the Constitution of Bulgaria; Article 84 of the Constitution of Czechia; Section 4 of the Constitution Court Law of Latvia; Article 103 of the Constitution of Lithuania; Article 3 of the Act on the Status of the Judges of the Constitutional Tribunal of Poland, with reference to Article 30 of the Act on the Supreme Court of Poland; Article 134 of the Constitution of the Slovak Republic, Article 11 of the Law on the Constitutional Court of Ukraine, as well as Section 6 of Act CLI of 2011 on the Constitutional Court of Hungary and Article 9 of the Law on the Constitutional Court of Montenegro.

<sup>32</sup> Article 7/a of Law No. 8577 of 10 February 2000 on the Organisation and Functioning of the Constitutional Court of Albania.

<sup>33</sup> Only the President, the Vice-President and one judge, together with three of the five alternative judges, are required to be citizens of Liechtenstein (Article 3 of the Constitutional Court Act of Liechtenstein).



additional qualification that this needs to be the only citizenship a person has; full legal capacity (Albania); being fit enough to fulfil judicial duties (Poland); having voting rights (Armenia, Azerbaijan); being eligible for election to Parliament (Czechia, Germany, Hungary and the Slovak Republic); fully enjoying civil and political rights (Portugal); proficiency in the local language(s) (Armenia, Ukraine and Belgium<sup>34</sup>); or not having served, worked in, or for or cooperated with certain state security bodies in recent history (Poland).<sup>35</sup>

18. Finally, to ensure judicial independence, practically all constitutional courts in Council of Europe member states provide for the incompatibility of the office of a constitutional court judge with other occupations. A first category of incompatibilities is that of holding the office of a constitutional judge simultaneously with certain other public offices. This is the case, for example, in Austria, Germany, Italy, Liechtenstein, Republic of Moldova and Spain, with some of these states referring to all public offices and some listing the incompatible offices.<sup>36</sup> A second category is made of restrictions regarding political functions and activities, as is the case, for example, in Albania (no political function in the public administration or leadership position in a political party in the last 10 years), Armenia (not being a member or founder of any party, hold a position in the party, speak on behalf of the party or otherwise be engaged in political activity), Hungary (no membership of a political party or engage in any political activity and not having been a member of the government, leading official in any political party or having been a leading state official in four years prior to the appointment), the Republic of Moldova (requiring a person appointed as constitutional court judge to suspend his/her activity within the political party or political organisation), Spain (no management role in a political party or employment in the service of a political party), Portugal (not hold any duties in party organs, political associations or foundations connected to them, nor be involved in any political or party activity of a public nature) and Ukraine (no membership or holding a position in a political party or other organisation that pursues political objectives or participates in political activities, nor participating in managing or financing a political campaign or other political activities).<sup>37</sup> A third category of incompatibilities prohibits constitutional judges to be engaged in any paid work (other than scientific, educational, and creative work), which is, for example, the case in Armenia and Ukraine, any professional or commercial activities, as is, for example, the case in Spain, or any public and private office, other than that of academic activities in law, as is, for example, the case in Romania.<sup>38</sup> It is thus apparent that the office of constitutional judge is increasingly understood as an exclusive professional occupation, whose

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<sup>34</sup> Article 31 of the Special Act of 6 January 1989 on the Constitutional Court of Belgium prescribes that the Constitutional Court is composed of 12 judges, of which six shall be Dutch-speaking and six shall be French-speaking.

<sup>35</sup> Article 4 of the Constitutional Law on the Constitutional Court of Armenia; Article 126 of the Constitution of Azerbaijan; Article 4 of the Constitutional Court Act of Bulgaria; Article 5 of the Constitutional Act on the Constitutional Court of Croatia; Article 88 of the Constitution of Georgia; Section 6 of the Act CLI of 2011 on the Constitutional Court of Hungary; Section 4 of the Constitutional Court Law of Latvia; Article 1 of the Constitutional Court Act of Liechtenstein; Article 103 of the Constitution of Lithuania; Article 138 of the Constitution of the Republic of Moldova; Article 13 of the Law on the Constitutional Court of Portugal; Article 134 of the Constitution of the Slovak Republic; Article 11 of the Law on the Constitutional Court of Ukraine, as well as Article 7/a of the Law No. 8577 on the Organisation and Functioning of the Constitutional Court of Albania; Article 3 of the Act on the Status of the Judges of the Constitutional Tribunal of Poland, with reference to Article 30 of the Act on the Supreme Court of Poland; Article 84 of the Constitution of Czechia; Article 3 of the Act on the Federal Constitutional Court of Germany; Article 31 of the Special Act of 1989 on the Constitutional Court of Belgium.

<sup>36</sup> Article 147 of the Federal Constitutional Law of Austria; Article 3 of the Act on the Federal Constitutional Court of Germany; Article 135 of the Constitution of Italy; Article 4 of the Constitutional Court Act of Liechtenstein; Article 11 of Law No. 317-XIII on the Constitutional Court of the Republic of Moldova; Article 159 of the Constitution of Spain.

<sup>37</sup> Article 125 of the Constitution of Albania; Article 4 of the Constitutional Law of Armenia on the Constitutional Court; Article 24 of the Constitution of Hungary and Section 6 of Act CLI of 2011 on the Constitutional Court; Article 11 of Law No. 317-XIII on the Constitutional Court of the Republic of Moldova; Article 159 of the Constitution of Spain; Article 28 of the Law on the Constitutional Court of Portugal; Article 11 of the Law on the Constitutional Court of Ukraine.

<sup>38</sup> Article 4 of the Constitutional Law of the Republic of Armenia on the Constitutional Court; Article 159 of the Constitution of Spain; Article 61 of the Law on the Organisation and Operation of the Constitutional Court of Romania; Article 11 of the Law on the Constitutional Court of Ukraine.

independence requires the constitutional court judge to vacate other public – and sometimes also private – functions, with the privileged exemption of university professorships being common across Council of Europe member states.

### 5. *Summing up*

19. In view of the above, the qualification criteria for constitutional court judges vary considerably between Council of Europe member states. It is not possible to find a common European standard. Most Council of Europe member states with specialised constitutional courts or councils require some formal qualification in law - either explicitly or implicitly by reference to professions for which a legal qualification is required - or otherwise refer to the high level of expertise required. The formulation “*distinguished jurists*” in the Constitution of Bosnia and Herzegovina does not diverge from this. Furthermore, quite a few member states only consider persons above a certain age eligible to become a constitutional court judge, either by specifically mentioning a minimum age for constitutional court judges (usually around 40 years of age) or by virtue of the minimum number of years of professional experience required (or both). Most constitutions and/or laws on constitutional courts contain as an eligibility criterion for constitutional court judges a certain level of professional legal experience prior to appointment, either by specifying the professions or professional groups (i.e., judges, professors of law etc.) from which candidates are drawn or by requiring experience in the legal field in general, with a duration anywhere from five to 20 years. Other common eligibility criteria refer to ethical and moral standards, in a similar way as the formulation “*high moral standing*” in the Constitution of Bosnia and Herzegovina, incompatibilities (with those holding or having held certain offices or functions not being eligible), citizenship, political rights and command of state language(s), with some other criteria being specific to the context of the country concerned.

20. It is clear that prior work experience as a judge is in many countries only one of the various ways that can lead to being appointed to the constitutional court. Only a few countries require that part of the constitutional court’s members have previously served as judges (for example, Belgium, Portugal and Germany<sup>39</sup>), but only one country (Luxembourg<sup>40</sup>) requires all its constitutional judges to have experience in the judiciary. No country has introduced the number of successfully resolved cases as a criterion for appointment to the constitutional court. As the Venice Commission has noted before, “*constitutional courts often value a diverse composition*”.<sup>41</sup> In this context, it has also been critical of too high a proportion of members of the constitutional court coming from the judiciary, as this could influence the interpretative methods used by the court, and it considered it advisable to increase the representation of law professors on the constitutional court.<sup>42</sup> Indeed, in those countries where constitutional courts are specialised, it is typical that constitutional courts are composed in ways that depart considerably from the ways in which ordinary courts are composed, with the former having a much broader flexibility and diversity in their composition, in recognition of the very different political and institutional role that they play compared to ordinary courts. This again tends to weigh against any strict requirement of prior judicial experience in lower or state courts being a formal requirement in Bosnia and Herzegovina.

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<sup>39</sup> Article 34 of the Special Act of 1989 on the Constitutional Court of Belgium; Article 222 of the Constitution of Portugal; Article 2 of the Act on the Federal Constitutional Court of Germany.

<sup>40</sup> Article 3 of the Law of 27 July 1997 on the Organisation of the Constitutional Court of Luxembourg.

<sup>41</sup> Venice Commission, [CDL-AD\(2017\)001](#), Slovak Republic - Opinion on questions relating to the appointment of Judges of the Constitutional Court, para. 56.

<sup>42</sup> Venice Commission, [CDL-AD\(2004\)024](#), Türkiye - Opinion on the Draft Constitutional Amendments with regard to the Constitutional Court of Turkey, para. 18.

## **B. Recommendation(s) of the Venice Commission regarding the criteria for the election of constitutional court judges (Question 2)**

21. Regarding the question “*What would be the recommendation of the Venice Commission regarding the necessary criteria for the election of judges to the Constitutional Court of Bosnia and Herzegovina in accordance with the practice in the countries of the Council of Europe in comparison with current provisions of the Constitution of Bosnia and Herzegovina*”, the Venice Commission reiterates the point made above that the requirements for constitutional court judges vary considerably between Council of Europe member states and it would be difficult to find common European standards, except at a very high level of generality.

22. Four considerations should be taken account in this context. First of all, as also noted above, systems of constitutional adjudication can benefit greatly from diversity in their composition, from the inclusion of a broad range of backgrounds and areas of substantive experience and expertise, which can bring depth and breadth to the court’s work. Second, constitutional courts are institutions whose legitimacy and trust by the public depend on the high stature and integrity of their members. Their effectiveness in the constitutional system of checks and balances depends on the *gravitas* of the judges and the high technical quality and integrity of their work. This counsels in favour of having high standards of professional qualification. Third, each constitutional system needs to take into account the particularities of the local circumstances and in particular those of the legal profession. For example, how deep is the pool of legal professionals to draw on? How young is the population of legal professionals, in that – for example – a minimum age requirement would constitute an obstacle to getting the right expertise at the court? Fourth, in specifying minimum criteria of qualification, it is important to consider also the need for some flexibility in every constitutional system to adapt to changing needs and perceptions over time. For this reason, more general formulations as “moral integrity” or “recognised professional competence” can be useful insofar as they indicate broad principles but require constant discussion about how they should be interpreted and implemented at any given time.

23. The formulation found in the Constitution of Bosnia and Herzegovina on “*distinguished jurists*” (with high moral standing and the right to vote), which is understood by the Venice Commission as persons with thorough knowledge of the law (be it a judge, practicing lawyer, legal scholar or other), is broad enough to allow both for diversity in composition and flexibility over time, as mentioned in the previous paragraph. If further qualifications were to be added to this formulation, in the view of the Venice Commission, this cannot be done through amendments of the Rules of the Constitutional Court, notwithstanding its earlier finding that the Rules “*can be regarded as an organic regulation fulfilling the role of a sui generis law*”.<sup>43</sup> While the Rules can impose obligations upon sitting judges, they cannot regulate the phase of the preceding appointment procedure. This would otherwise provide for a form of co-opting not foreseen by the Constitution of Bosnia and Herzegovina, by having judges at the Constitutional Court decide, through establishing eligibility criteria in the Rules, who will join them on the bench.

24. The main recommendation of the Venice Commission as regards eligibility criteria would be to establish a minimum level of professional legal experience. Looking at the constitutions and constitutional laws of neighbouring countries, it is noted that most contain a similar phrase as the one in the Constitution of Bosnia, with some countries additionally a minimum age or a minimum number of years of professional experience or both.<sup>44</sup> These two criteria are functionally

<sup>43</sup> [CDL-AD\(2024\)002](#), *op. cit.*, para. 24.

<sup>44</sup> Article 122 of the Constitution of Croatia provides that constitutional justices are to be elected from among “*notable jurists, especially judges, state attorneys, attorney and university law professors*”. The Constitutional Act on the Constitutional Court elaborates on this (Article 5), clarifying that these are jurists with at least 15 years of experience in the legal profession, who have been distinguished by their scientific or professional work or public activity. Those with a “doctoral degree in law” who fulfil these conditions only need to have 12 years of experience.

overlapping, in-as-much as a minimum number of years of professional experience also establishes a minimum age. The minimum professional experience seems to be the more central of the two, both because it can substitute for the age requirement and is directly related to functional competence.

25. As outlined in response to the first question above, the actual years of professional experience vary considerably among Council of Europe member states, ranging from five to 20, with a majority falling between 10 and 15 but others only specifying non-numerical requirements such as “*known juridical or institutional experience*”.<sup>45</sup> The required length of professional experience should not be too low given the *gravitas* of the position of a constitutional court judge but should not be too high either in order not to completely exclude young constitutional judges.<sup>46</sup> It might vary between different professional groups (e.g. lower requirements for judges and law professors and higher requirements for legal practitioners), but care should be taken that different criteria for different groups does not lead to discriminatory consequences.<sup>47</sup>

26. Furthermore, as done in neighbouring countries, it could be further specified what legal professions (i.e., judges, law professors, lawyers etc.) are included in the term “*distinguished jurist*”. When it comes to the formulation “*high moral standing*”, the Venice Commission considers that this would be better guaranteed through a well-designed selection procedure rather than by attempting to define this in a more precise way. Indeed, it notes that other Council of Europe member states with a similar formulation have not attempted to legislate this in more detail.

### C. Ethnic criteria in the selection of judges of the Constitutional Court (Question 3)

27. When it comes to the question “*Can there be an ethnic criterion when electing judges to the Constitutional Court of Bosnia and Herzegovina, in such a way that when electing judges, it should or has to consider ethnical parity or the same ethnic representation of judges from different ethnic communities in Bosnia and Herzegovina?*”, the Venice Commission notes that currently Article VI of the Constitution does not include any ethnic criteria, unlike constitutional provisions on other state institutions, nor does it prescribe that each constituent people has two seats on the Constitutional Court of Bosnia and Herzegovina. The neutral wording in the Constitution when it comes to the constitutional judges makes the intention of drafters clear: the Constitutional Court is to be established as a truly federal body, not based on ethnic criteria.

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Article 153 of the Constitution of Montenegro provides that constitutional justices are elected from among distinguished jurists who have turned at least 40 years of age and have 15 years of service in the legal profession. Article 172 of the Constitution of Serbia provides that a justice shall be elected and appointed from among “*prominent lawyers of at least 40 years of age with 15 years of professional experience in law*”. The Law on the Constitutional Court of Montenegro elaborates on this, providing that persons must meet the general requirements for employment in state bodies, and that distinguished jurists are to be considered professors of legal science, judges, public prosecutors, lawyers, notaries, attorneys working for state authorities, state administration bodies and local self-government or local government authorities, as well as lawyers working in companies and legal entities enjoying a professional and personal reputation.

<sup>45</sup> See, for example, Article 96 of the Constitution of Andorra.

<sup>46</sup> For example, in the case of Ukraine, the Venice Commission found that the requirement of 15 years of professional experience risked completely excluding younger judges. See Venice Commission, [CDL-AD\(2008\)015](#), Ukraine – Opinion on the Draft Constitution, para. 80. In respect of Latvia, the Venice Commission considered that that the 10 years work experience after having acquired a bachelor’s degree was reasonable, “*keeping in mind both the limited pool of candidates in a smaller country like Latvia and the necessarily high exigencies they have to be confronted with*” and considered that “*they will not necessarily lead to a Constitutional Court consisting of career judges and prosecutors only, but will leave space for other legal professionals (e.g. lawyers or law professors) as well and hence allow for a composition of judges different from the ordinary judiciary, which would comply with the logic of a specialised Constitutional Court*” ([CDL-AD\(2009\)042](#), Latvia – Opinion on Draft Amendments to the Law on the Constitutional Court, para. 12). See on the need to promote the representation of youth in decision-making also the Council of Europe’s [Reykjavik Declaration](#) “United Around Our Valued”, adopted at the 4<sup>th</sup> Summit of Heads of State and Government of the Council of Europe (Reykjavik, 16-17 May 2023).

<sup>47</sup> Venice Commission, [CDL-AD\(2011\)040](#), Opinion on the law on the establishment and rules of procedure of the Constitutional Court of Turkey, para. 23.

28. As is outlined in the letter from the then-Chairman of the Presidency, in spite of the absence of ethnic criteria for the selection of judges of the Constitutional Court, *in practice* the domestic judges are selected on the basis of ethnicity, with the two judges elected by the National Assembly of Republika Srpska always being Serbs and the four judges elected by the House of Representatives of the Federation of Bosnia and Herzegovina always comprising two Bosniaks and two Croats. This practice is flagrantly discriminatory (in that *de facto* it does not allow anyone other than Serbs from the Republika Srpska to be elected by the Republika Srpska or anyone other than Bosniaks and Croats from the Federation of Bosnia and Herzegovina to be elected by the Federation of Bosnia and Herzegovina) and needs to be changed. It is however the responsibility of the appointing authorities to overcome their current ethnic mind-set and change this practice. The Venice Commission urges the appointing authorities to consider a wider range of “*distinguished jurists of high moral standing*” for a vacancy at the Constitutional Court than only those with the “right” ethnicity.

29. The Venice Commission regularly recommends establishing mechanisms which help to ensure a balanced composition of constitutional courts.<sup>48</sup> As it has said before, “*given that the Constitutional Court is to decide on a wide range of issues including very sensitive ones, its composition (...) has to be established in a way which results in the trust of society in the Court as a neutral arbiter*”.<sup>49</sup> In its 1997 Report, the Commission explained what it means by pluralism: “*Constitutional justice must, by its composition, guarantee independence with regard to different interest groups and contribute towards the establishment of a body of jurisprudence which is mindful of this pluralism*”.<sup>50</sup> As it has said before, also in respect of Bosnia and Herzegovina, “[*b*]y likening the composition of the court to the composition of society, such criteria [*i.e.*, ethnic, linguistic or other criteria] for a pluralistic composition can be an important factor in attributing the court with the necessary legitimacy for striking down legislation adopted by parliament as the representative of the sovereign people. (...) While the composition of a constitutional court should reflect *inter alia* ethnic, geographic or linguistic aspects of the composition of society, once appointed, each judge is member of the court as a collegiate body with an equal vote, acting independently in a personal capacity and not as a representative of a particular groups”.<sup>51</sup>

30. The Commission agrees that the composition of the Constitutional Court should reflect as much as possible the country’s diversity in terms of ethnic, gender, linguistic, religious or other criteria, as this diversity would enhance the legitimacy of and public trust in the Constitutional Court. However, membership of the constitutional court should, as a matter of principle, first and foremost, be dependent on objective qualification criteria, clearly set in the Constitution or law (whereby the question of the level of regulation of these matters deserves further reflection). Making membership dependent on a person’s affiliation to an ethnic community would in fact lead in the first place to granting special rights for constituent peoples to the exclusion of minorities or citizens of Bosnia and Herzegovina (as well as the granting of special rights for certain constituent people on parts of the territory of Bosnia and Herzegovina to the exclusion of both other constituent people and others).<sup>52</sup> Further, individual constitutional court judges should not be considered to represent - and much less so, to act in the interests of - specific

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<sup>48</sup> [CDL-AD\(2009\)014](#), Opinion on the Law on the High Constitutional Court of the Palestinian National Authority para. 13; [CDL-AD\(2011\)010](#), Opinion on the draft amendments to the Constitution of Montenegro, as well as on the draft amendments to the law on courts, the law on the state prosecutor’s office and the law on the judicial council of Montenegro, para. 27; [CDL-AD\(2015\)027](#), Opinion on the Proposed Amendments to the Constitution of Ukraine regarding the Judiciary as approved by the Constitutional Commission on 4 September 2015, para. 24.

<sup>49</sup> [CDL-AD\(2009\)014](#), *op. cit.*, para. 13.

<sup>50</sup> Venice Commission, [CDL-STD\(1997\)020](#), the Composition of Constitutional Courts – Science and Technique of Democracy, no. 20 (1997), p. 21.

<sup>51</sup> Venice Commission, [CDL-AD\(2005\)039](#), Opinion on proposed voting rules for the Constitutional Court of Bosnia and Herzegovina, paras. 3 and 13.

<sup>52</sup> See, *mutatis mutandis*, ECtHR, [Zorić v. Bosnia and Herzegovina](#), no. 3681/06, 15 July 2014, para. 43, [Šlaku v. Bosnia and Herzegovina](#), no. 56666/12, 26 May 2016, para 40, as well as [Pilav v. Bosnia and Herzegovina](#), no. 41939/07, 9 June 2016 and [Pudarić v. Bosnia and Herzegovina](#), no. 55799/18, 8 December 2020.



constituencies in the country, or be perceived to do so. This would undermine the authority and impartiality of the Constitutional Court as an institution governed by the rule of law rather than the interests of political constituencies. In this context, the Venice Commission also recalls its previous Opinion on proposed voting rules for the Constitutional Court of Bosnia and Herzegovina, in which it spoke out against introducing the ethnic origin of a judge as an element of decision-making.<sup>53</sup> Finally, aiming for “ethnic parity or the same ethnic representation” of judges from different ethnic communities would in fact introduce a system of ethnic quotas at the Constitutional Court, which goes against the letter and spirit of the Constitution of Bosnia and Herzegovina, as explained above. The Venice Commission can therefore not support this.

31. In sum, ethnic criteria, alongside gender, linguistic, religious or other criteria, could be part of the general considerations of each electing body with a view to achieving a pluralistic and balanced composition of the Constitutional Court. However, strict ethnic requirements or quotas are not consistent with the distinctive role and responsibility of the Constitutional Court as a federal institution reflecting and serving the rule of law.

#### IV. Conclusion

32. On 15 March 2024, the then-Chairman of the Presidency of Bosnia and Herzegovina posed three questions to the Venice Commission. In recognition of the fact that constitutional courts are composed in ways that depart considerably from the ways in which ordinary courts are composed, the Venice Commission has focused in its replies to these questions on specialised constitutional courts, leaving apex tribunals of general jurisdiction exercising constitutional justice aside, and has limited itself to Council of Europe member states.

*Question 1: What is the practice in the countries of the Council of Europe regarding the minimum criteria and qualifications for candidates for judges of the constitutional court, in terms of the necessary work experience in judicial institutions, especially necessary experience in the position of judges in one of the courts at lower levels or at the state level, such as at for example, the number of years spent as a judge in one of the domestic courts and/or the number of successfully resolved cases?*

33. The minimum criteria and qualifications for candidates for judges of the constitutional court vary considerably between Council of Europe member states. While a few countries require that part of the constitutional court’s members have previously served as judges, this is not commonplace. It is instead more common that countries require legal education and some professional experience in any legal area (thus including the judiciary) or list prior professional experience as a judge as one of several ways to become a constitutional justice. The requirement for prior experience, whether as a judge, scholar or other legal professional, ranges from five to 20 years, with the majority seeming to fall between 10 and 15 years. In no country is the number of successfully resolved cases a factor in the appointment of constitutional judges.

*Question 2: What would be the recommendation of the Venice Commission regarding the necessary criteria for the election of judges to the Constitutional Court of Bosnia and Herzegovina in accordance with the practice in the countries of the Council of Europe in comparison with current provisions of the Constitution of Bosnia and Herzegovina?*

34. The Venice Commission would recommend to further refine or clarify the formulation “*distinguished jurists*” in Article VI of the Constitution by establishing a minimum level of professional legal experience in a range of, for example, 10 to 15 years and further specifying what legal professions (i.e., judges, law professors, lawyers etc.) are covered by this term.

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<sup>53</sup> [CDL-AD\(2005\)039](#), *op. cit.*, paras. 10 and 24.

*Question 3: Can there be an ethnic criterion when electing judges to the Constitutional Court of Bosnia and Herzegovina, in such a way that when electing judges, it should or has to consider ethnical parity or the same ethnic representation of judges from different ethnic communities in Bosnia and Herzegovina?*

35. In the view of the Venice Commission, the wording of the Constitution of Bosnia and Herzegovina leaves no doubt that the Constitutional Court was established as a truly federal body. Unlike constitutional provisions on other state institutions, the Constitution does not prescribe any ethnic criteria for the appointment of domestic judges to the Constitutional Court, nor does it prescribe that each constituent people has a certain number of seats on the Constitutional Court of Bosnia and Herzegovina. It solely prescribes that the Assembly of Republika Srpska appoints two judges, and the House of Representatives of the Federation appoints four judges to the Constitutional Court of Bosnia and Herzegovina. Selecting such judges on the basis of their affiliation to a constituent people on a certain territory is, in view of the Venice Commission, discriminatory.

36. The Venice Commission stresses that the composition of the Constitutional Court should reflect as much as possible the country's diversity in terms of gender, ethnic, linguistic, religious or other criteria, as this pluralism would enhance the legitimacy of and public trust in the Constitutional Court. However, making membership specifically dependent on a person's affiliation to an ethnic community would in fact lead in the first place to granting special rights for constituent peoples to the exclusion of the other citizens, including those belonging to the minorities of Bosnia and Herzegovina (as well as granting special rights to certain constituent people on parts of the territory of Bosnia and Herzegovina to the exclusion of both other constituent peoples and others). Further, individual constitutional court judges should not be considered to represent - and much less so, to act in the interests of - specific constituencies in the country or be perceived to do so. This would undermine the authority and impartiality of the Constitutional Court as an institution governed by the rule of law. In this context, the Venice Commission also recalls a previous Opinion on proposed voting rules for the Constitutional Court of Bosnia and Herzegovina, in which it spoke out against introducing the ethnic origin of a judge as an element of decision-making. Finally, aiming for "ethnical parity or the same ethnic representation" of judges from different ethnic communities would in fact introduce a system of ethnic quotas, which goes against the letter and spirit of the Constitution of Bosnia and Herzegovina as underlined above. The Venice Commission can therefore not support this. Ethnic criteria, alongside as gender, linguistic, religious or other criteria, could be part of the general considerations of each electing body with a view to achieving a pluralistic and balanced composition of the Constitutional Court. However, strict ethnic requirements or quotas are not consistent with the distinctive role and responsibility of the Constitutional Court as a federal institution reflecting and serving the rule of law.

37. The Venice Commission remains at the disposal of the authorities of Bosnia and Herzegovina for further assistance in this matter.