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PROJECT

FIGHTING ILL-TREATMENT AND IMPUNITY AND ENHANCING THE APPLICATION OF ECtHR CASE LAW ON THE NATIONAL LEVEL „FILL"

ANALYSIS OF THE CONSTITUTIONAL COURT DECISIONS

PROJECT COMPONENT	**EVALUATION OF DECISIONS OF THE CONSTITUTIONAL COURT OF MONTENEGRO – CONSTITUTIONAL COMPLAINTS**
SPECIFIC OBJECTIVE	**STRENGTHENING INSTITUTIONAL CAPACITIES OF THE CONSTITUTIONAL COURT OF MONTENEGRO FOR APPLICATION OF THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS**
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SENIOR PROJECT OFFICER AT THE COUNCIL OF EUROPE	**IVONA DRAGUTINOVIĆ, MONTENEGRO**
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INTRODUCTION

The Council of Europe contracted Ms Slavica Banić[1], a lawyer from Zagreb, Republic of Croatia, as an international legal expert (hereinafter: the expert) to carry out an analysis of decisions of the Constitutional Court of Montenegro with a particular focus on the decisions rendered upon constitutional complaints lodged to the Constitutional Court. This analysis was carried out in the framework of the EU-CoE Horizontal Facility Action "Fighting Ill-Treatment and Impunity and Enhancing the Application of the ECtHR Case-Law on National Level - "FILL". The goals of the project include strengthening institutional capacities of the Constitutional Court of Montenegro for more efficient implementation of the case law of the European Court of Human Rights.

The analysis was done on the corpus of constitutional complaints processed in the period from 2008 – 2016 (hereinafter: the Analysis). It includes a qualitative analysis of the structure of decisions rendered upon constitutional complaints and application of the Convention standards developed by the European Court of Human Rights.

The analysis was done on 45 randomly selected decisions rendered upon constitutional complaints, out of the 63 that were submitted. Of those 45, in 12 decisions constitutional complaints were granted (accepted), in 15 they were dismissed on the merits, in 8 they were rejected on procedural grounds (because procedural requirements for the decision-making were not met) and in 10 constitutional complaints were rejected as manifestly ill-founded.

The analysis was preceded by two official visits. The first visit took place in the period from 27 to 29 March 2017, while the second one was implemented in the period from 15 to 17 May 2017. The first visit included interviews with representatives of the Constitutional Court of Montenegro (CCoM), the Supreme Court of Montenegro (SCoM), the Ombudsman and Montenegrin Agent before the European Court of Human Rights. Second visit focused on discussions, exchange of views and clarifications with the representatives of the Constitutional Court of Montenegro about the draft analysis and the next steps to be taken in the development of the final results. Information that the expert got in these discussions are presented on page 2 and duly included in the analysis.

The analysis is divided into three parts. The basis for this analysis is the overview of the legal framework for the position and jurisdiction of the CCoM with regard to constitutional complaint – the Constitution of Montenegro, the Law on the Constitutional Court of Montenegro and the Rules of Procedure of the Constitutional Court of Montenegro. This framework was the basis for the analysis and examination of the legislative aspects of constitutional complaint as a special remedy for protection of human rights and freedoms in Montenegro. To be more precise, we provide an overview of the characteristics of constitutional complaint within the constitutional framework of Montenegro, and in this context, we analyse the functioning of the Constitutional Court of

[1] **The expert wishes to thank the Council of Europe for the confidence she was awarded to perform the given task and for the opportunity to expand her expertise on the constitutional order of Montenegro, as well as to share her knowledge and experience gained in the field of constitutional law. Furthermore, the remarks and views expressed in this analysis are presented in good faith and with due respect for the efforts invested by the Constitutional Court of Montenegro to appropriately respond to the demands of protection of human rights and freedoms of its citizens.**

Montenegro with regard to constitutional complaint i.e. its organogram presenting the work of the panels and the Administrative Office.

The second part of the analysis focuses on the approach of the Constitutional Court to the structure of the decision on constitutional complaint and contested court decisions as the basis for examining alleged violations of human rights and freedoms; consideration of the acceptance and implementation of European Court standards in the examination of alleged violations and of the quality of the statements of reasons in the Constitutional Court decisions. In addition to analysing the structure of the decisions, and the reasoning and application of European Court standards, the present analysis is concerned with the organization of work of the Constitutional Court in the processes initiated by constitutional complaints. It also deals with the potential opportunities to improve the process, which is a prerequisite for effective decision-making within a reasonable time. The third part of the analysis offers recommendations developed on the basis of the achieved results.

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PART I

1. MEETINGS WITH REPRESENTATIVES OF INSTITUTIONS RELEVANT FOR PROTECTION OF HUMAN RIGHTS AND THOSE REPRESENTING JUDICIAL BRANCH OF POWER IN MONTENEGRO

During the first visit (27 – 29 March 2017) the expert conducted an interview with the Ombudsman of Montenegro[2], the representative of the Supreme Court of Montenegro[3], Montenegrin Agent before European Court of Human Rights[4] as well as with the President of the Constitutional Court of Montenegro[5] and a judge of the CCoM who was the President of the CCoM until January 2017.

Within the second visit (15 – 17 May 2017), a number of meetings were held with representatives of the CCoM delegated by the President of the CCoM.

The interviews done with other collocutors (outside of the CCoM) focused on three aspects:

- The collocutors' views on the level of protection of human rights and freedoms and the problems they encounter in their work,
- Level of satisfaction with the work of the CCoM in general,
- The quality of decisions of the CCoM.

The Ombudsman of Montenegro, Montenegrin Agent before the ECtHR and the judge of the SCoM informed the expert about their scope of work and the problems they face in the field of protection of human rights. Expressing their views about the level of protection of human rights and freedoms in Montenegro, they underlined that Montenegro is yet to work hard on changing significantly its approach to both protection of human rights and freedoms and examining violations thereof. In general, the level of knowledge and implementation of Convention standards in trials is modest and requires systematic and continuing training, which should begin already at the law faculties. Difficulties and circumstances of the transition to new legislation generate situations resulting in violations of human rights and freedoms, which courts often fail to react upon appropriately. The reforms that Montenegro is going through, typical for societies in transition, are placing greater demands on the judiciary, and thereby on the CCoM, too. The weak point of the Montenegrin judiciary, according to the interviewees, is the trial within (un)reasonable time. The issue of protection of human rights in criminal proceedings in cases where detention is imposed is right behind it.

Assessing the CCoM work in general, the interviewees confirmed that there were some positive developments, both in applying European standards and in influencing changes in the work of regular courts, but they also said that the Constitutional Court was slow in rendering decisions.

[2] Montenegro, hereinafter: **MNE**
[3] The Supreme Court of Montenegro, hereinafter: **SCoM**
[4] European Court of Human Rights, hereinafter: **ECtHR**
[5] The Constitutional Court of Montenegro, hereinafter: **CCoM**

As for the quality of the CCoM rulings, the opinion of the representative of the SCoM is that the Constitutional Court goes into the facts previously established in the regular court proceedings. In such a way it goes beyond constitutional jurisdiction. On the other hand, the rulings of CCoM are such that it is sometimes impossible to identify the real reasons for the established violation, which makes it difficulties for the regular courts to act.

Interviews with the representatives of the CCoM during the first visit indicated to two dimensions of the problem:

- Constitutional complaints challenging individual enactments of competent authorities are usually written in the same form as appeals to regular courts and do not contain the substance that falls within constitutional law. Frequently, the complainants just copy their appeals to regular courts and only add reference to articles of the Constitution without explaining what constituted the violation they complain against. Most commonly, the complaints refer to wrong application of substantive law, which leads to the conclusion that the Constitutional Court is perceived as a regular court. All of this leads further to incomprehensible constitutional complaints, which impedes the work of the Constitutional Court;
- In addition to this, the Constitutional Court faces the problems of the lack of staff and difficulties in ensuring systematic training of the existing one, which is caused by an overwhelming workload (incoming cases). It is made worse by the expectations of the general public that the Constitutional Court should remedy every instance of injustice in the world and by the fact that some pieces of legislation were adopted abruptly without any thorough analysis, which generates dilemmas in their interpretation and application.

During the second visit, the representatives of the CCoM and the expert jointly considered the draft analysis and clarified certain aspects relating to concrete cases. At the request of the expert, they also explained the flow of files and the manner of their processing. The gained insight into the way of work inspired the expert to devote some attention to the question of “equipment” of the Office that is in charge of following the ECtHR case law and development of the case law of the Constitutional Court.

2. STATISTICS ON APPLICATIONS FROM MONTENEGRO BEFORE ECtHR (as of 1 January 2017)

According to information available at http://www.echr.coe.int/Documents/CP_Montenegro_ENG.pdf, on 1 January 2017 the situation with regard to applications from Montenegro was as follows:

- In 2016, the ECtHR considered 224 applications, out of which 220 were declared inadmissible or stricken out.
- In 2016, 2 judgments were rendered with regard to 4 applications establishing at least one violation of the ECHR.
- On 1 January 2017, 151 applications were pending before ECtHR, 33 of which were allocated to single judge, 52 were allocated to panels of 3 judges and 23 cases were allocated to panels of 7 judges.
- In the ruling *Siništaj et al. v. Montenegro* of 24 November 2015 (Applications No. 1451/10, 7260/10 and 7382/10, paragraph 123) ECtHR declared that constitutional complaint can, in principle, be considered an effective legal remedy in Montenegro as of 20 March 2015.

3. STATISTICS RELATED TO CONSTITUTIONAL COMPLAINTS AT THE CCoM FOR THE PERIOD 2016 – 2017

Statistics related to the status of constitutional complaints as of 09 May 2017:

- The total number of pending constitutional complaints was **1262**, out of which 29 from 2014; 311 from 2015; 610 from 2016 and 312 from 2017.
- Between 1 January 2017 and 9 May 2017, 367 constitutional complaints were received, while 312 are in procedure.

According to the statistical overview of the work of the Constitutional Court during 2016, available at http://www.ustavnisud.me/upload/praksa.html, relating to constitutional complaint, in 2016 the CCoM rendered 34 decisions on granting constitutional complaints, 758 decisions on dismissal of constitutional complaints, 259 rulings on rejection of constitutional complaints and 4 rulings on suspension of proceedings initiated upon constitutional complaints.

Out of the total number of resolved cases, decisions granting complaints account for 3%, rulings on rejection for 25%, while there are 72% decisions dismissing complaints.

4. CONSTITUTIONAL COMPLAINT WITHIN THE LEGAL ORDER OF MONTENEGRO

4.1. Constitutional Framework

4.1.1. The Constitution of Montenegro ("Official Gazette of Montenegro", No. 1/2007 and 38/13 – Amendments I to XVI to the Constitution of Montenegro)

"Jurisdiction

Article 149

The Constitutional Court shall decide on the following:

(…)

"*on constitutional complaint lodged due to violation of human rights and freedoms guaranteed by the Constitution, after exhaustion of all effective legal remedies. "*

4.1.2. The Law on the Constitutional Court of Montenegro ("Official Gazette of Montenegro", No. 11/2015)[6];

„Chapter III.

Proceedings Before the Constitutional Court and Legal Effect of its Decisions

3. Proceedings upon Constitutional Complaint

Article 68

Constitutional complaint may be lodged by any natural or legal entity, organization, settlement, group of persons or other form of organization that does not have the property of a legal entity, if they believe that their human right or freedoms guaranteed under the Constitution have been violated by an individual enactment, act or omission of state authorities, state administration bodies, local authorities, local self-government bodies, legal entities or other entity exercising public authority. A constitutional complaint may be lodged after the exhaustion of effective legal remedies, which implies that the complainant has to exhaust all legal remedies during the course of the proceeding to which he is entitled in accordance with the law, including effective and extraordinary legal remedies and other specific remedies which can lead to changes to the individual act in favour of the complainant, or to the termination or remedy of the act, or termination of omission of state authority, state administration body, local authority, local self-government body, legal entity or other entity exercising public authority.

A constitutional complaint may be lodged before the exhaustion of effective legal remedies referred to in paragraph 2 of this Article if the complainant manages to prove that the legal remedy to which he is entitled in the case is not or was not effective.

Article 69

Constitutional complaint shall be lodged within 60 days from:

- The date of rendering the individual enactment against which a constitutional complaint may be lodged in accordance with the present Law;

[6] Law on the Constitutional Court of Montenegro, hereinafter: LCCoM

- The date of termination of the current act violating human right or freedom guaranteed by the Constitution, if there is no effective remedies against such act;

- The last day on which the omission that violated a human right or freedom guaranteed by the Constitution could have been avoided, if there is no effective legal remedy against such omission.

In case of act or omission that last continuously for a long time, the constitutional complaint may be lodged during such act or omission, if the applicant explains in the constitutional complaint why that particular act or omission leads to prolonged violation of his/her human right or freedom guaranteed by the Constitution, what constitutes the prolonged violation of that right or freedom, and if s/he proves that there is no effective legal remedy against such act or omission.

If in the case referred to in paragraph 2 of this Article the violation comprises failure of the to act within a reasonable time, constitutional complaint may be lodged only if the legal remedies for protection of the right to trial within a reasonable time, in accordance with the law governing the protection of right to trial within a reasonable time, had been exhausted, or if the applicant proves that the remedies have not been or would not be effective.

Article 70

Parties to the proceedings initiated by constitutional complaint are the complainant referred to in Article 68 paragraph 1 of this Law and any state authority or state administration body, local government body or local self-government body, legal entity or other entity that exercises public authority, against whose act or due to whose act or omission the constitutional complaint has been lodged.

Article 71

The person, who missed the deadline for lodging a constitutional complaint due to justifiable reasons, shall be allowed a reinstatement by the Constitutional Court if, within15 days of the termination of the reasons that caused the failure, lodges a proposal for reinstatement and a constitutional complaint. Reinstatement may not be requested after the expiry of three months from the date of missing the deadline referred to in paragraph 1 of this Article.

Article 72

Constitutional complaint shall contain: personal name, permanent or temporary residence and address, name and registered office of the complainant, reasons for the constitutional complaint with a substantiated allegation of violation of human rights or freedoms guaranteed by the Constitution, request that the Constitutional Court has to decide about, and a signature of the complainant, or a person issued a special power of attorney to lodge a constitutional complaint.

In addition to the data referred to in paragraph 1 of this Article, a constitutional complaint lodged against an individual enactment shall contain the reference number and date of the individual enactment against which it was lodged and the name of the authority who issued it, and if it is filed due to omission, it shall contain the name of the authority that failed to act or that took an action that is the subject of the constitutional complaint.

Constitutional complaint shall be supported by a certified copy of the disputed individual enactment, evidence that the effective legal remedies have been exhausted, facts on which the claim on the violation of rights and freedoms is based, as well as other evidence of significance for rendering decision.

Article 73

Constitutional complaint shall not suspend enforcement of the individual enactment against which it was lodged. Exceptionally, the Constitutional Court, in the course of the proceeding, may order the suspension of enforcement of an individual enactment until the final decision, at the request of the complainant, if the complainant can demonstrates that enforcement will cause irreversible detrimental consequences.

Article 74

Constitutional complaint shall also be delivered to other persons whose rights and obligations may be affected by the decision of the Constitutional Court by which the constitutional complaint would be granted, and such persons shall have the right to send their responses on the constitutional complaint within a period specified by the Constitutional Court.

Article 75

The Constitutional Court shall decide on the violation of human rights or freedoms guaranteed by the Constitution quoted in the constitutional complaint.

Article 76

Once the Constitutional Court has established that a human right or freedom guaranteed by the Constitution was violated by the challenged individual enactment, it shall grant the constitutional complaint and repeal that enactment, in whole or in part, and submit the case to a repeated procedure to be conducted by the authority which had passed the repealed enactment.

If, at the time of passing the decision on the constitutional complaint the legal effect of the individual enactment that is subject to constitutional complaint is terminated, and the Constitutional Court finds that this enactment had violated a human right or freedom guaranteed under the Constitution, it shall pass a decision granting the constitutional complaint and set the just satisfaction to the complainant due to the violation of the human right or freedom guaranteed by the Constitution.

In the case when the violation was committed by acting or omission of state authorities, state administration bodies, local authorities, local self-government bodies, legal entity or other entity that exercises public authority, the Constitutional Court shall by a decision granting the constitutional complaint prohibit further act or order the adoption of the enactment or taking other appropriate measure or action to remedy the existing or future damaging consequences of the violation of human rights or freedoms guaranteed by the Constitution.

Article 77

If the Constitutional Court repeals an individual enactment and returns the case for a repeated procedure, the competent authority shall be obliged to take the case into procedure promptly, but at latest within 30 days from the day of receipt of the Constitutional Court decision. In the reopened proceedings, the competent authority referred to in paragraph 1 of this Article shall comply with the legal reasoning of the Constitutional Court expressed in the decision and shall make a new decision during the repeated proceedings within a reasonable time.

Article 78

The decision of the Constitutional Court by which the constitutional complaint has been granted, shall have legal effect as of the day of delivery to the parties in the procedure, in compliance with the Rules of Procedure.

4.2. Characteristics of Constitutional Complaint

In Montenegrin legal system, constitutional complaint is a special tool for protection of human rights and freedoms guaranteed under the Constitution. Based on the given constitutional and legislative framework, the essential characteristics of constitutional complaint are as follows:

1. With regard to **authorized person**, constitutional complaint may be lodged by:
   - any natural or legal person,
   - organization,
   - settlement,
   - group of persons and
   - other forms of organizations that do not have the nature of a legal person.
2. Constitutional complaint may be lodged due to **violation of constitutional rights and freedoms** committed through
   - An individual enactment,
   - Act or
   - omission.
3. **The entities that can render the enactments that can violate constitutional rights include**:
   - state authority,
   - state administration body,
   - local self-government body, local administration body,
   - legal person or other entity exercising public authority.
4. In the legal system of Montenegro, the **principle of subsidiarity** (Article 68 paragraph 1) is applicable to constitutional complaints. This means that constitutional complaint may be lodged only after all effective legal remedies have been exhausted. As an exception to this principle, constitutional complaint can be lodged even before effective legal remedies are exhausted (Article 68 paragraph 2), if the applicant proves that the legal remedy he/she is entitled to in the concerned case is not or would not be effective.
5. Constitutional complaint does not suspend enforcement (Article 73 of the LCCoM), except in cases where Constitutional Court orders suspension of enforcement of an individual enactment pending the final decision. This can be done at the request of the complainant, if the complainant can prove the onset of irremediable detrimental consequences.
6. The **adversary principle** (limited) of the constitutional court proceedings is based on Article 70 of the LCCoM, pursuant to which the parties to the proceedings are the complainant and the state authority, state administration body, local self-government body, local administration body, legal entity or any other entity exercising public authority, against whose enactment, or act or omission the constitutional complaint is lodged. Furthermore, the LCCoM (Article 74) provides that constitutional complaint shall also be delivered to other persons whose rights and obligations might be affected by the decision of the Constitutional Court to grant the constitutional complaint, and

these persons shall have the right to send their statements regarding the constitutional complaint.

7. Article 75 of the LCCoM stipulates that the **Constitutional Court is bound** by the contents of the constitutional complaint. It is on the grounds of Article 75 that the Constitutional Court decides about violations of a human right or freedom guaranteed under the Constitution and complained against in the constitutional complaint.
8. The CCoM has a **cassation authority** if constitutional complaint is granted and therefore the legal effect of such a decision is *ex nunc* (Article 76 of the LCCoM).

4.3. Legal Framework for Deciding on Constitutional Complaint

4.3.1. Rules of Procedure of the Constitutional Court of Montenegro (Official Gazette of Montenegro, No. 7/2016)

"I. GENERAL PROVISIONS

Article 1

(1) In addition to the matters stipulated in the Law on Constitutional Court of Montenegro, the Rules of Procedure of the Constitutional Court (hereinafter referred to as the Rulebook) shall regulate the organization, proceeding before the Constitutional Court as well as the other issues of importance for the work of the Constitutional Court.

II ORGANIZATION OF THE CONSTITUTIONAL COURT

Article 11

(1) The Constitutional Court consists of the President and judges.
(2) The Constitutional Court has an Expert and Administrative Office (hereinafter: the Office).

III. ORGANIZATION OF WORK IN THE CONSTITUTIONAL COURT

Article 25

(1) The Constitutional Court shall operate in the following organization formations: sessions of the Constitutional Court, sessions of panels, expert meetings of the judges, collegiate body of judges and working bodies of the Constitutional Court.
(2) If no unanimity has been achieved during a panel session, constitutional cases and cases initiated by constitutional complaint shall be considered at Constitutional Court sessions.
(3) Constitutional complaints shall be considered at panel sessions.
(4) Expert meeting is a format where judges consider constitutional matters.
(5) The collegiate body of judges is a format of work of the Constitutional Court where issues of importance for the functioning, management and international cooperation of the Constitutional Court are discussed.
(6) The Redaction Commission is a standing working body of the Constitutional Court.
(7) The Constitutional Court may, as needed for certain tasks, form other standing and temporary working bodies.

(8) Constitutional Court shall render a decision to form its working bodies as proposed by the President. Such a decision shall also define the composition and tasks of the working body.

2. **Panels of the Constitutional Court for Deciding on Constitutional Complaints**

1) General Provisions on the Panels

a) Composition of the Panels and Authorities of the Chair of the Panel

Article 32

(1) The Chair and the members of a panel shall be appointed by the President every year in December for the period from 1 January until 31 December of the subsequent year.
(2) The decision referred to in paragraph 1 of this Article shall be a part of the annual allocation of tasks.

Article 33

The Chair of a panel shall have the following duties:

- To prepare and propose the agenda of the panel session;
- To convene and chair the panel session;
- To signs rulings and decisions adopted at a panel session;
- To signs the minutes of the panel session and individual excerpts of the minutes relating to conclusions and voting on any adopted ruling or decision;
- To present and explain measures for more effective coordination of work of two or more panels in the same or similar cases at expert meetings of judges.

b) The Work of the Panels

Article 36

(1) Panel sessions shall be held as needed, provided that they must be held if the requirements set out in Article 40 paragraph 2 and/or Article 41 paragraph 2 of these Rules of Procedure are in place.

(2) Panel sessions shall be attended by the judges who are members of a panel, and they may be attended by the head of an organizational unit, advisors and recording clerks.

c) Referral of Cases to the Constitutional Court Session

Article 37

(1) If a decision proposed by the judge-rapporteur, which is considered at a panel session, has not been decided on unanimously, it shall be deemed that the decision was not rendered.

(2) In the case referred to in paragraph 1 of this Article, the following shall be entered into the records: the information on how the judges cast their vote; the finding that the decision was not rendered unanimously and the conclusion that the case is referred to the Constitutional Court Session due to the failure to render a unanimous decision at the panel session.

(3) After closing of the panel session, the chair of the panel shall forward the case referred to in paragraph 1 of this Article to the President who shall refer it to the Constitutional Court Session for consideration.

Article 38

(1) Panel session may conclude that a decision proposed by a judge-rapporteur should be deliberated in a Constitutional Court Session, because the case is of particular importance for the protection of rights and freedoms of citizens.

(2) In the case referred to in paragraph 1 of this Article, the records should contain the data that the judges did not vote on the case and that the case was referred to a Constitutional Court Session, along with a brief explanation of reasons for considering the case of being of particular importance to the protection of rights and freedoms of citizens.

(3) After conclusion of the session, the chair of the panel shall forward the case referred to in paragraph 1 of this Article to the President who shall refer it to the Constitutional Court Session for consideration.

2) Establishing and Scope of Tasks of Individual Panels

Article 39

The following panels shall be established within the Constitutional Court:

a) Panel for dealing with prerequisites for deciding on constitutional complaints on the merits.

b) Panel for deciding of constitutional complaints on the merits:

- First Panel

- Second Panel.

a) The panel for considering the prerequisites for rendering decisions on constitutional complaints on the merits

Article 40

(1) The panel for considering the prerequisites for deciding on constitutional complaints on the merits shall render rulings rejecting constitutional complaints and terminating the procedure in cases where the prerequisites for deciding on a constitutional complaint are not met.

(2) The session of the panel referred to in paragraph 1 of this Article shall be held if more than 50 cases had been prepared for the session.

b) The panel for deciding on constitutional complaints on the merits

Article 41

(1) Panels for deciding on constitutional complaints on the merits shall decide whether a constitutional right of a complainant had been violated by an impugned individual enactment, or act or omission by a state authority, state administration body, local self-government or local administration body, legal person or other entity exercising public authority, which shall be

indicated in his/her timely and admissible constitutional complaint, which is eligible for constitutional court consideration.

(2) The session of a panel referred to in paragraph 1 of this Article shall be held if there are more than 20 cases prepared for the session.

Article 42

(1) If the President of the Constitutional Court thinks it is necessary for the improvement of efficiency and cost-effectiveness of the work of the Constitutional Court or for other justifiable reasons, he/she is authorized to propose to the Constitutional Court the establishment of other panels for consideration of constitutional complaints.

(2) If a new panel is established to decide about urgent constitutional complaints or cases involving short deadlines or which cannot be delayed, the Constitutional Court may decide that the newly established panel shall decide both on the procedural prerequisites and the merits of the constitutional complaints, and that the panel session be held even when there is only one case prepared for the session."

4.4. Overview of the Method of Deciding on Constitutional Complaint

4.4.1.

The CCoM renders decisions on constitutional complaints:

- in panels and
- at the session of the Court.

The CCoM decides in panels when the decision is rendered unanimously, and at the session of the CCoM when unanimity was not achieved in the panel session. At the panel session, it may be concluded that the decision proposed by the judge-rapporteur should be decided on at a Constitutional Court Session, because the case is of particular importance for the protection of rights and freedoms of citizens. In such a case it should be entered in the records that the decision on the constitutional complaint was not rendered. The case is referred to the session of the Court, which then decides about the constitutional complaint.

According to Article 69 of the Rules of Procedure, a judge or other standing working body of the CCoM may, based on a written and reasoned submission, request for review of a rendered decision or ruling adopted upon constitutional complaint pending the dispatch of the constitutional complaint from the CCoM. In such a case the President of the CCoM or chair of the panel shall put the revision of the decision/ruling on the agenda of the Constitutional Court Session/panel session, but only in case there are new findings or facts that are essential for the protection of constitutionality or legality, or which might have an impact on decision-making.

The following has been set up for the purpose of deciding on constitutional complaints:

1) a panel for considering the prerequisites for deciding about constitutional complaints on the merits
2) 2 panels for deciding about constitutional complaints on the merits (First Panel and Second Panel)

The Panel for considering the prerequisites for deciding on the merits of constitutional complaints renders decisions about the prerequisites for deciding about constitutional complaints and passes:

- rulings on rejection of constitutional complaints and
- rulings on suspension of proceedings

The panels for deciding about constitutional complaints on the merits decide about:

- whether a challenged individual enactment, act or omission violated a constitutional right of an complainant, which is to be indicated to in his/her timely submitted and admissible constitutional complaint, eligible for consideration by the Constitutional Court.

4.4.2.

In the framework of the constitutional court proceedings, constitutional complaints have the following identifiers:

Už-III (CC-III) proceedings for rendering decisions about constitutional complaint;

Už-IIIa (CC-IIIa) proceedings for rendering decisions about constitutional complaints before exhaustion of effective legal remedies;

Už-IIIb (CC-IIIb) proceedings for rendering decisions about constitutional complaints pertaining to protection of the right to trial within a reasonable time;

Už-IIIc (CC-IIIc) proceedings for rendering decisions about constitutional complaint due to violation of a right by means of an act or omission;

4.4.3.

The Redaction Commission

Pursuant to Article 45 of the Rules of Procedure, the Redaction Commission comprises a chair and three members. Two members of the Redaction Commission are judges, one in the capacity of a chair of the Commission and the other one as member, while the other two members are appointed persons, one of whom is the secretary to the Commission.

The Redaction Commission (Article 46 of the Rules of Procedure) adopts final texts of decisions and rulings adopted at Constitutional Court sessions and at panel sessions. If this Commission is of the opinion that it is necessary, it has the authority to propose to the Constitutional Court to reconsider the final enactments adopted at a Court session or panel session, prior to their dispatch from the Constitutional Court.

4.4.4.

The Office – organization

According to Article 11 of the Rules of Procedure of the CCoM, the Constitutional Court has an Expert and Administrative Office (hereinafter referred to as: the Office). It does expert, administrative and general tasks for the Constitutional Court. The Office comprises (Article 20) the Secretary General, the Deputy Secretary General, heads of organizational units, constitutional-court advisors, advisors and other civil servants and state employees.

The Office establishes various organizational units. Their managers are appointed and dismissed by the Constitutional Court, at the proposal of the President. The head of an organizational unit manages, coordinates, and co-signs draft decisions and rulings, and is responsible for effective and timely performance of tasks within the competence of the organizational unit.

Advisors (Article 23) prepare proposals of decisions and rulings according to instructions of the judge-rapporteur. They are responsible for the technical-legal preparation and processing of assigned cases. When processing cases, advisors have to observe and apply relevant case law and legal positions of the CCoM in cases of the same or similar nature, as well as the ECtHR case law. Advisors sign the prepared proposals and are responsible for the contents and accuracy.

Within the working visits to the Constitutional Court the expert was explained how the Office and panels work in practice (during the first visit in March 2017). After the draft analysis was considered, additional clarifications were given during the visit in May 2017.

As explained verbally, all the lodged constitutional complaints are first referred to the panel that assesses the prerequisites for deciding on the merits of constitutional complaints. The panel carries out a preliminary analysis in two directions. The constitutional complaint is first scrutinized from the aspect of compliance with procedural requirements for lodging a constitutional complaint (timeliness, exhaustion of legal remedies, existence of an individual enactment and alike). If this panel establishes that the constitutional complaint has fulfilled the procedural requirements, in that same session it considers whether the constitutional complaint is manifestly ill-founded.

Constitutional complaints that do not meet procedural prerequisites and those that are manifestly ill-founded are assigned to one of the judges – members of the Panel to consider prerequisites, and to an advisor for further processing of the case and preparation of the proposal of the ruling on rejection. At one of the subsequent sessions, the same panel decides on the proposal of the ruling on rejection on both grounds.

Constitutional complaints which, in the opinion of the Panel for considering the prerequisites meet the prerequisites and are not manifestly ill-founded, i.e. those that have met these two procedural filters, are returned to the registry which puts the initials of the appropriate judge-rapporteur and advisor in charge of further processing and submission of a draft decision on the merits or lack of merits to the First and Second Panel.

Representatives of the CCoM informed the expert that the Constitutional Court does not have a filing and record office which could be the first place after reception of the constitutional complaint to examine the nature of the constitutional complaint in terms of the challenged subject matter and which would, keeping in mind the identifiers referred to in the Rules of Procedure, determine a preliminary identifier. According to the representatives of the CCoM, clerks in the registry assign the identifiers, while the control is done by the Secretary General. The expert also asked if there was any organizational unit that would systematically and continuously monitor and consolidate the case law of the CCoM, or check to which extent the draft decisions or rulings are in line with the case law, or a unit that would be committed solely to following ECtHR case law. Representatives of the CCoM explained that there was no such organizational unit and that only one person had the duty to follow the case law in general, which is insufficient considering the influx of files and their movement across the panels.

PART II

5. ANALYSIS OF RULINGS AND DECISIONS OF THE CONSTITUTIONAL COURT OF MONTENEGRO

5.1. General remarks

Constitutional complaint can result in decisions or rulings, while in terms of their substance we can distinguish four sub-types. It was therefore agreed that the expert would be provided with randomly chosen rulings and decisions of all four sub-types from the period 2008-2016.

The Constitutional Court of Montenegro selected 63 decisions and rulings that contain constitutional complaints and court rulings challenged by constitutional complaints. The expert elaborated 45 rulings and decisions in detail.

This analysis is focused on the decisions on dismissal and rulings on rejection of constitutional complaints on procedural grounds and due to the fact that they were manifestly ill-founded. These three types of rulings i.e. decisions on constitutional complaints may be used as grounds for the seeking protection of human rights and freedoms before the European Court of Human Rights. The decisions on granting constitutional complaints due to established violations are analysed in the context of the quality of reasoning.

. The expert analysed:

- 8 rulings on rejection of constitutional complaints for procedural reasons (from 2014. to 2016);
- 10 rulings on rejection of constitutional complaints because they were ill-founded (from 2015);
- 15 decisions on dismissal of constitutional complaints for obvious lack of merits (from 2012 to 2016);
- 12 decisions on granting of constitutional complaints (from 2011 to 2014);

The analysis focused on the approach of the Constitutional Court of Montenegro in terms of:

- Structure of rulings and decisions (including the examination of facts and circumstances of the case);
- The quality of the statements of reasons of the Constitutional Court of Montenegro
- And the acceptance and the application of ECtHR standards in examining the alleged violations.

5.2. Rulings on rejection of constitutional appeals on procedural grounds

Starting from the subsidiary character of the constitutional complaint in Montenegro, the Law on Constitutional Court stipulates that several prerequisites have to be met to lodge a constitutional complaint. The rulings on rejection of constitutional complaints that were used in this analysis lead to the conclusion that the constitutional complaints were rejected due to:

1) Failure to exhaust all effective legal remedies before lodging a constitutional complaint (4 constitutional complaints)
2) Failure to comply with the 60 day deadline for lodging a constitutional complaint (1 constitutional complaint)
3) Failure to comply with the requirement that there must be an individual enactment that may be challenged by means of constitutional complaint (one constitutional complaint)
4) Lack of authority for lodging a constitutional complaint (1 constitutional complaint)
5) Failure to comply with the requirement of completeness and accuracy of the submitted documents (1 constitutional complaint)

Už-III-52/14	Lawyer	Article 32 of the Constitution	Judgment of the High Court Podgorica – for compensation of unpaid wages	rejected – procedure not completed – legal remedies not exhausted
Už-III-103/14	Lawyer	Article 8 and 64 para. 1 of the Constitution	Judgment of the Administrative Court– difference in severance pay	rejected - legal remedies not exhausted
Už-III-11/16	Lawyer	Article 32 of the Constitution	Judgment of the HC Podgorica – for right of way	rejected - untimeliness
Už-III-87/16	In person	Article 32 of the Constitution and article 6 of the ECHR	Judgment of the High Court –rejection of the bill of indictment of the injured party as prosecutor	rejected – the injured party as prosecutor – inapplicability of Article 32 in the procedure
Už-III-127/16	Lawyer	Article 32 and article 58 of the Constitution	Judgment of the HC – building on someone else's property	rejected – legal remedies not exhausted
Už-III-132/16	Lawyer	Article 32 of the Constitution	Judgment HC – for compensation	rejected – not compliant with procedural requirements
Už-III-142/16	In person	Article 17 para. 2 and 19 of the Constitution	Judgment SC MNE – request for extraordinary consideration of the judgment of the Admin. Court	rejected – not an individual act on rights and obligations (motion for retrial)
Už-III-178/16	Lawyer	Article 32 and 58 of the Constitution	Judgment of HC Podgorica – for compensation	rejected - legal remedies not exhausted

5.2.1. Structure of the rulings and the quality of reasoning

As the analysis focuses on the rulings rejecting constitutional complaints on procedural grounds, the structure of the rulings is more or less uniform. A possible shortcoming that has been noticed is vague identification of enactments challenged by the complaint, which may lead to the lack of comprehensibility and transparency.

When it comes to the quality of the reasoning, it should be noted that the quoting of the legal basis is more or less uniform. The quality of the reasoning, in terms of contents, is dealt with below, within the analysis of the use of ECtHR standards in examining violations.

5.2.2. Adoption and application of ECtHR standards in examining violations

In the mentioned rulings, the question of whether all effective legal remedies were exhausted deserves special attention as an important aspect in the context of application of the Convention standards. Other rules related to the fulfilment of procedural requirements will be tackled together.

5.2.2.1. Exhaustion of all effective legal remedies

Pursuant to Article 68 paragraph 2 of the Law on the Constitutional Court[7], constitutional complaint may be lodged after all effective legal remedies are exhausted. This means:

a) that the complainant is obliged to use all legal remedies he was entitled to according to the law;

b) that the exhaustion of legal remedies also involves the use of effective extraordinary legal remedies,

c) that the applicant is obliged to exploit other special legal remedies that may lead to the change in the individual enactment in favour of the applicant...(...);

It is apparent from the above that an important precondition related to the exhaustion of legal remedies is that legal remedy is effective.

Therefore the analysis of rulings rejecting constitutional complaints due to the failure to exhaust all effective legal remedies shows that the CCoM case law has to be considered in relation to ECtHR standards regarding this issue.

The ECtHR has developed a number of rules related to the issue of exhaustion of legal remedies, including **flexibility,** i.e. **avoidance of excessive formalism** and **availability and effectiveness of the legal remedy.**

Thus in regard of **avoiding excessive formalism**, the ECtHR has repeatedly stated that the rule of exhaustion of domestic legal remedies „*must be applied with a certain degree of flexibility and without excessive formalism*“[8] and that it is „*neither absolute nor can it be applied automatically.*“[9]

[7] Article 68 para. 1 of the Law on the Constitutional Court reads:
[8] Lehtinen v. Finland (Odluka ESLJP, App. 39076/97, 14 Oct, 1997)
[9] Ibid.

Regarding the rule of effectiveness, the ECtHR holds that the applicant should '*have normal access to available legal remedies that are appropriate to provide recompense in respect to the alleged complaints. The existence of legal remedies must be sufficiently certain, not only in theory, but in practice as well. "*[10]

The rules on flexibility and avoidance of excessive formalism and availability and effectiveness (appropriateness) of legal remedies can be put in the context of the analysis of the rulings rejecting constitutional complaints if the complainant fails to exhaust '*the request for extraordinary consideration of the Court decision'* after the judgment of the Administrative Court of Montenegro.

According to the Law on Administrative Dispute[11], the above-mentioned request is an extraordinary legal remedy against a final decision of the Administrative Court that the party may use, but doesn't have to. The request can be lodged on the grounds of misapplication of substantive law and breach of the rules of procedure that could be of importance for resolving the matter and the Supreme Court has the obligation to pass a decision regarding such request.

The rulings on rejection indicate to the conclusion that the case law of the CCoM on this issue requires that, before lodging a complaint to the Constitutional Court, complainants who intend to challenge a final decision of the Administrative Court must first exploit the possibility of lodging the request to the Supreme Court. This reasoning implies that CCoM assumes that the request for extraordinary reconsideration is an effective legal remedy in terms of the Law on Constitutional Court, but it does not provide reasons for such an opinion.

Such practice should be considered and possibly brought into context of the aforementioned Convention standards, since the issue of exhaustion of effective legal remedies has been regulated in a similar manner and Convention standards represent a good guide for taking the necessary steps when examining the effectiveness of the used legal remedies.

Furthermore, since the request for extraordinary reconsideration is a legal remedy that the party may use, but doesn't have to, it would be useful, in the interest of legal certainty, to support statement of reasons with the arguments for considering this legal remedy effective for the purposes of exhaustion of all legal remedies, taking into account the circumstances of each particular case.

Another important aspect concerning the issue of effectiveness is related to the use of effective remedies in civil and criminal proceedings. The provided rulings on rejection deal with the use of extraordinary effective legal remedies in civil proceedings. They are significant for our analysis because the action of the CCoM in this matter requires the existence of established, predictable and available case law of the Supreme Court of Montenegro regarding the interpretation of procedural provisions pertaining to the possibility of lodging an extraordinary legal remedy – appeal on points of law.

[10] Tudor Tudor v. Romania (2009), This rule was also confirmed in the judgement Sejdić v. Italy in which ECtHR concluded that it was '*the obligation of the state to convince the court that the legal remedy was effective and available in theory and practice at the relevant moment, i.e. that it was available and could have provided a compensation in relation to the complaint and that it had reasonable chances for success'*

[11] Under the Law on Administrative Dispute (Off. Gazette of MNE, No.60/03 and 32/11), the request for extraordinary reconsideration of a court decision is regulated in articles 41 through 47, as well as under the Law on Administrative Dispute (Off. Gazette of MNE, No. 54/16) which defines it as a request for examination of a court decision, as opposed to the law that was in force until 2016.

CCoM representatives informed the expert that if constitutional complaint is lodged at the same time as the appeal on points of law the decision upon which is uncertain, the CCoM notifies the applicant that "the deadline stops running " pending the outcome of the appeal on points of law. After the decision about the appeal on points of law is rendered the procedure in the Constitutional Court continues. In other cases CCoM relies on available case law of the Supreme Court of Montenegro.

There is an objective danger that the case law of the Constitutional Court related to the issue of whether legal remedies were exhausted (in terms of use of extraordinary legal remedies) will not be uniform. Reasons for this situation include frequent amendments to procedural legislation governing the field of lodging extraordinary legal remedies. If the transitional arrangements are not "verified" in the case law of regular courts, the application of these provisions by the CCoM could put the Constitutional Court in the position to interpret the procedural norms governing the field of lodging these legal remedies. In such a way, bearing in mind the European Court standards regarding the boundaries of its jurisdiction, the Constitutional Court might be put in the position of a court of third or fourth instance.

5.2.2.2. Other procedural requirements

The analysis of the rulings shows that CCoM has adopted the practice of ECtHR when it comes to the application of the rules on the rights of victims in criminal proceedings initiated by a private prosecutor to file a constitutional complaint. They also accepted the rule that the constitutional complaint should be rejected if it challenges the decision of the competent court that dismisses a petition for reopening of procedure, because that is a procedural legal remedy that does not deal with the issue of rights and obligations of the applicant.

As for the general prerequisites for lodging constitutional complaint concerning the comprehensibility, completeness and the citing of constitutional rights considered to be violated, the analysis shows that the CCoM is flexible in this matter. If there are some general shortcomings, CCoM invites the complainant to complement or amend the complaint within a reasonable deadline. Failure to comply with the CCoM demand leads to rejection of the constitutional complaint as incomplete.

However, the ruling on rejecting constitutional complaint if lodged by a victim in the criminal proceedings requires the CCoM to take a clear position with regard to this issue in the near future. The case that we analysed contained, namely, several entwined issues – eligibility of the individual act, eligibility of the attorney to lodge the constitutional complaint and applicability of Article 6 of the ECHR cited by the Constitutional Court in its decision on rejection.

5.3. Ruling on rejection of constitutional complaint as manifestly ill-founded

Article 37, item 5 of the Law on the Constitutional Court stipulates that the court shall reject the constitutional complaint by which the procedure is initiated, if, after examination, it establishes that the complaint is manifestly ill-founded or based on the abuse of law. This article of the Law on the Constitutional Court is in line with Article 35, item 3 of the ECHR based on which the ECtHR will declare inadmissible every individual application lodged on the basis of Article 34 of the ECHR, if it finds the application incompatible with the provisions of the Convention and additional protocols, manifestly ill-founded or an abuse of the right to individual application…'

The ECtHR has split the standard of "manifestly ill-founded" into four categories:

- „Fourth instance" complaints,
- Complaints in situations where it is evident or likely that there is no violation,
- Unsupported complaints, and finally
- Confusing or unconvincing complaints.

These four categories are further divided into subcategories, with all of them being the manifestation of the principle of subsidiarity of the ECHR.

Bearing in mind that the focus of the analysis is on the structure of the rulings and on the quality of reasoning, as well as on the acceptance of ECtHR standards in examining violations, the analysis of the rulings rejecting constitutional complaints as manifestly ill-founded revealed the following:

Už-III-177/15	Lawyer	Violation of Articles 3, 58 of the Constitution and Article 6 para. 1 and Article 1 P1 ECHR	Judgment of HCP – lack of capacity to be sued
Už-III-225/15	Lawyer	Violation of Article 32 of the Constitution	Judgment for criminal offence - bribery
Už-III-304/15	Lawyer	Violation of Article 8 and 32 of the Constitution and Article 6 and 14 of ECHR	Judgment of HCP – dispute about compensation
Už-III-383/15	Lawyer	Violation of Article 32 of the Constitution and Article 6 of the ECHR	Judgment SC MNE – damages
Už-III-416/15	Lawyer	Violation of Article 28 para. 2. and 32 of the Constitution, and Article 6 ECHR	Judgment HCP – dispute regarding damages
Už-III-448/15	Lawyer	Violation of 6, 9, 17, 20,24, 32 and 58 of the Constitution and Article 6 ECHR	Judgment SC MNE – dispute regarding damages
Už-III-673/15	Lawyer	Violation of Article 20 and 58 of the Constitution	Judgment SC MNE – dispute regarding compensation of land

			property
Už-III-722/15	Lawyer	Violation of Article 58 and 64 of the Constitution and Article 1 P1 ECHR	Judgment SC MNE – dispute regarding payment of benefits for flights
Už-III-737/15	Lawyer	Violation of Article 19 and 32 of the Constitution and Article 6 para. 1 ECHR	Judgment SC MNE – labour dispute – reinstatement and compensation
Už-III-760/15	Lawyer	Violation of Article 20, 21, 32 and 58 of the Constitution and Article 6 ECHR and Article 1 P1 ECHR	Judgment SC MNE – dispute for determining that contract is null and void

5.3.1. Structure of the ruling and quality of reasoning:

Just like the structure of the rulings on rejection on procedural grounds, the structure of these rulings is more or less uniform too. The identification and designation of the enactments challenged by the complaint are not clear. It makes it difficult to understand the subject matter of the constitutional complaint.

With respect to the quality of reasoning, the rulings are burdened with repetitive and, to a certain extent, objectified allegations and references to the case law of the ECtHR, which prevail in relation to the facts of the constitutional complaint.

5.3.2. Acceptance and application of ECtHR standards in examining violations

In general, constitutional complaints rejected as manifestly ill-founded are largely incomprehensible, confusing i.e. their content is incoherent and they contain renditions of the cases and personal opinions about various forms of miscarriage of justice. In almost all cases they point to inappropriate application of the law, express disagreement with the enforcement or with the assessment of evidence and alike. This means that they are written in form of an appeal. Explanations about the violations are scarce or inexistent. Since all constitutional complaints were lodged by lawyers, the present analysis possibly indicates to a wider problem – very low level of understanding of the essence of constitutional complaint among the persons who are legally authorized to provide legal services.

An analysis of rulings on rejection of constitutional complaints as manifestly ill-founded indicates that the Constitutional Court accepts and applies the ECtHR standard in this field, but unlike the ECtHR, it fails to connect it to the complaints put forward.

Statements of reasons that support the rulings on rejection mostly comprise a collection of all forms of a Convention standard for manifestly ill-founded complaints. Thus, for example statement of reasons for one ruling on rejection can contain all of the following arguments:

- that the applicant has failed to indicate to any violation of guarantees of the concerned rights, but challenges the application of procedural/substantive law;
- that it had no jurisdiction to examine the conclusions about the application of substantive law,

- that it is not a court of "third or fourth instance" and therefore has no jurisdiction to consider the allegations that had previously already been considered;
- that the formal reference to violations without citing accurate and legally based allegations constituting constitutional grounds make a constitutional complaint (prima facie) manifestly ill-founded.

In other cases statements of reasons contain a summary reasoning and arguments:

- that (the Court) cannot replace the consideration of facts of regular courts by its own assessment, because they are to consider the evidence brought before them and establish the facts relevant to the outcome of the procedure and
- that the complainant challenges the established facts, suggesting different conclusions without offering arguments and evidence instead, from which it could be inferred that his/her right under Article 32 of the Constitution had been violated.

This rather formulaic approach of the Constitutional Court in the rulings on rejection of constitutional complaints as ill-founded, is perceived by the expert as an expression of increased caution of the CCoM caused by the degree of incomprehensibility, confusion and provision of the statement of grounds in the constitutional complaints that are subject of consideration.

However, such caution of the CCoM is expressed in the statements of reasons for rulings that are all very similar and only adjusted to the facts and circumstances of the case and allegations expressed in the constitutional complaint, without pointing to the essence of the complaint. Thus, no matter how justified, this caution may produce a counter-effect i.e. it can inspire mistrust of the applicants that their constitutional complaint will be considered with due diligence.

The uniform approach of the CCoM to the reasoning of its rulings is also manifested in the fact that most of them refer to certain ECtHR judgments: *Vanek v. Slovakia*, No. 53363/99 as of 31 May 2005, *Mezötűr-Tiszazugi Vizgazdalkodasi Tarsulat v. Hungary*, No. 5503/02 as of 26 July 2005. Furthermore, several rulings also quote the judgments *Pronin v. Ukraine*, No. 63566/00 as of 18 June 2006, *Thomas v. the United Kingdom*, No. 19354/02 as of 10 May 2005 and *Garzičić v. Montenegro*, No. 17931/07 as of 21 September 2010.)

Thus, the judgment *Vanek v. Slovakia* is continuously related to the argument that the "constitutional complaint is manifestly ill-founded, if it lacks prima facie facts and evidence from which it can be clearly inferred that the cited violations of human rights and freedoms were possible". On the other side, the judgment Mezötűr-Tiszazugi Vizgazdalkodasi Tarsulat v. Hungary is related to the argument that „the facts against which the constitutional complaint was lodged do not apparently constitute a violation of the rights referred to by the applicant, i.e. the applicant has no "arguable claim".

The rich and versatile case law of the ECtHR that deals with the reasons for declaring complaints manifestly ill-founded might serve as a good basis for the CCoM to change its approach and to refer more to ECtHR case law in its rulings rejecting complaints as manifestly ill-founded.

One aspect of the rulings rejecting constitutional complaints as manifestly ill-founded, which calls for caution, is the so-called „*hidden complaints*" in constitutional complaints that have been rejected, and which could be aligned under the Convention standard of complaint „**at least**

essentially". It is the ECtHR standard used in the context of exhausting domestic legal remedies which requires that complaints that are intended to be filed with the ECtHR subsequently, should be lodged with the appropriate domestic authority, at least essentially. The ECtHR has repeated this standpoint in a number of its decisions (e.g. *Pavlović v. Croatia* or *Orlić v. Croatia*) with detailed explanation of reasons for such an approach, establishing a violation of conventional law thereafter. Hence, a flat citation of violations of the Constitution of Montenegro or of the European Convention by a complainant addressing the Constitutional Court should not be reason enough for rejection, if from the contents of the constitutional complaint it is possible to discern arguments of equivalent or similar effect, which give rise to more detailed analysis.

5.4. General remarks on decisions on dismissal and granting of constitutional complaints

The analysis of decisions on dismissal and decisions on granting constitutional complaints differs from the analysis on rulings on rejection of constitutional complaints on procedural grounds and rejection of constitutional complaints as manifestly ill-founded. A reason for that is the fact that these constitutional complaints had already passed the filter as not being "manifestly ill-founded". As such they were considered on the merits and the result was establishment of the violation or no violation.

Just like in case of constitutional complaints rejected as manifestly ill-founded, constitutional complaints that have resulted in decisions on the merits, very much look like appeals lodged before regular courts. The prevailing objections that they contain refer to substantive and procedural flaws. Only because it is required by the Constitution violations of articles of the Constitution are mentioned, without further reasoning.

However, before giving a particular opinion about these decisions, the expert will comment on the structure of the decisions on the merits, noting that the majority of views expressed in relation to them may also relate to the structure of the analysed rulings, which are somewhat different due to the method of rendering thereof, and may have their own specific features.

5.4.1. Structure of the decisions

Decisions on dismissal or granting a constitutional complaint can be described as follows:

1) The first point of the reasoning contains a reference to who lodged the constitutional complaint, note that the constitutional complaint is timely and admissible, a designation of the individual enactment that is challenged by the constitutional complaint as well as a reference to the violations of the constitutional rights. The same point contains factual allegations of the constitutional complaint, which are usually given in one sentence and are separated by semicolon (;);
2) The second point consists of the legal basis for the CCoM to proceed, with statements about the boundaries of such proceedings.

3) The third point includes an analysis of files that the CCoM uses as a source to draw the facts and circumstances relevant for the decision-making in the constitutional court case. Within this point, the matter of the dispute is always mentioned first, followed by the decisions of the first instance and second instance court and the Supreme Court, if appeal on points of law was lodged, which is followed by a factual presentation of the court findings.
4) The fourth point consists of reference to the applicable law, i.e. relevant provisions of the Constitution, ECHR and substantive law applied in the procedure.
5) In the fifth point, the CCoM establishes the relation of the violations stated by the complainant and, taking into account the allegations of the complaint, issues the constitutional framework for consideration of the constitutional complaint.
6) The sixth point begins with the court's view on the merits of the constitutional complaint. It starts from the applicant's allegations of injury and gives an explanation. The reasoning for the most part begins with the Constitutional Court's view that:

> " *the task of the Constitutional Court is not to review the conclusions of the ordinary courts….and that "the task of the Constitutional Court is to examine whether the proceeding as such was fair in manner required by the Article 6 paragraph 1 of the Convention, and whether the decisions of the ordinary courts violate constitutional rights.*"

Within the framework of these allegations the Constitutional Court refers to the judgements of the European Court that he uses to draw the boundaries for its conduct. After that the assessment is issued based on the perspective of the Constitutional Court. Most frequently the decisions are of the same format and use templates expressing no violation. In some cases there are discrepancies between what is said in the constitutional complaint and what is the understanding of the Constitutional Court.

The expert believes that the general approach of the CCoM to the objections from the constitutional complaint as well as to the finding of the court causes difficulties in understanding both the constitutional complaint and the matter of dispute. Factual summary of the objections, in majority of cases expressed within a single sentence, separated by a 'semicolon', makes it difficult to present the allegations from the constitutional complaint and the facts and circumstances of the case established in the judicial procedure. For example, the CCoM lists the allegations of the constitutional complaint and only after that, in item three it defines the subject matter of the judgments that are challenged. It is also worth noting that the CCoM quotes the relevant parts of the judgements only when assessing the merits, if it deems it appropriate.

Even though the CCoM lists and provides detail of all the objections from the complaint as well as all the court findings, the decision on dismissal or on granting is still incoherent because, in the structural sense, the objections are not directly linked to their origin (i.e. the findings from the challenged enactments). In conclusion, until the findings from the regular proceedings that have been presented are read, it is difficult to comprehend the allegations of the complaint.

Reshaping the contents of the decision in which the CCoM would first provide basic information on the subject matter of the challenged dispute and then continue with the presentation of facts and circumstances of the case, combining views from the constitutional complaint with court findings, would contribute to the clarity of the decision. Sole listing of the

objections and court findings in order to consider the alleged violations reduces the 'vitality' of the decision.

Since CCoM has partly already accepted the structure of the decisions of ECtHR (regarding the approach to the assessment of the applicable law and allegations) it would be appropriate to consider the possibility of reconstruction of the first part of the decision in accordance with the comprehensive ECtHR approach that will primarily be reflected in a clearer initial marking of the challenged enactments and harmonized linking of allegations from the constitutional complaint with court findings.

5.5. Decisions dismissing constitutional complaints

The table of the analysed cases shows the following:

- In almost 90% of cases, constitutional complaints were lodged by lawyers on the behalf the complainants;
- Regardless of the type of proceeding, almost 90% of the cases are related to the violation of the right to fair trial, guaranteed by Article 32 of the Constitution and Article 6 paragraph 1 of the ECHR;
- Only one constitutional complaint alleges only the violation of Article 32 of the Constitution and Article 6 paragraph 1 of the ECHR, while all other Constitutional complaints allege multiple violations of the constitutional and Convention rights, and violations of the constitutional principles;
- 10 constitutional complains originate from civil proceedings, 4 from criminal proceedings and one from administrative procedure.

As a complement to the table, the result of consideration is that:

- All decisions on dismissals thoroughly cite the ECHR case law related to violation of individual rights and
- More than 90% of decisions were refer to the provision of Article 32 paragraph 1 of the Constitution of Montenegro, i.e. Article 6 paragraph 1 of ECHR

Už-III-691/11	Lawyer	Violation of Article 6, 8, 17, paragraph 2, 32, 33 of the Constitution	Judgment of HCP – criminal offence of ill-treatment
Už-III-98/12	In person	Violation of Article 8, 13, 17, 22, 33, 36, 45, 124, 147 of the Constitution	Judgment of SC MNE – decision on conflict of interest
Už-III-292/12	Lawyer	Violation of Article 32 and 58 of the Constitution	Judgment SC MNE –

			property rights
Už-III-568/12	Lawyer	Violation of Article 17, 19, 32 and 58 of the Constitution and Article 3 ECHR	Judgment of SC MNE on declaring a preliminary contract null and void
Už-III-68/13	Lawyer	Violation of Article 32, 33, 35, 37 of the Constitution	Judgment of HCP – crim. off. bribery
Už-III-290/13	Directly in person	Violation of Article 9, 31, 32, 58, 59, 62 of the Constitution and Article 6, 13 and 17 of the ECHR	Judgment of BC HN – dispute regarding enforcement of judgment
Už-III-560/13	Lawyer	Violation of Article 8 and 32 of the Constitution and Article 6 and 14 ECHR	Judgment of HCP – dispute regarding payment
Už-III-83/14	Lawyer	Violation of the Article 17, 32 and 58 of the Constitution	Judgment of SC MNE – claim for determination of inheritors
Už-III-192/14	Lawyer	Violation of article 28 paragraph 2 and 32 of the Constitution and Article. 6 ECHR	Judgment of HCP – dispute regarding compensation of damage
Už-III-421/14	Lawyer	Violation of Article 19, 32, 58 and 60 of the Constitution and Article 6 ECHR and Article 1 P1. ECHR	Judgment of SC MNE for determination of property rights
Už-III-558/14	Lawyer	Violation of Article 32 of the Constitution and Article 6 ECHR	Judgment of ACP – dispute regarding complaint against decision on acceptance of offer
Už-III-635/14	Lawyer	Violation of Article 32 and 38 of the Constitution	Judgment of SC MNE in the dispute for damages for unlawful deprivation of liberty
Už-III-147/15	Lawyer	Violation of Article 19, 32 35 para. 2 and 3 of the Constitution and Article 6 para. 1 ECHR	Judgment of HCP– criminal offence of mediation in prostitution
Už-III-277/15	Lawyer	Violation of the Article 6, 8, 17, 19, 32, 37 of the Constitution and Article 6 and 7 ECHR	Judgment of SC MNE – dispute for declaring a contract null and void
Už-III-136/16	Lawyer	Violation of the Article 28k 29 paragraph 1 and 2, 30, paragraph 1. and 4, 68, 69	Decision of HC Bijelo Polje – extension of detention

		and Article 5 para. 1 c, Article 3, ECHR and Article 2 P4 ECHR	

5.5.1. Accepting and the applying ECHU standards

It can be concluded without any doubt that the decisions on dismissal of constitutional complaints that were subject of our analysis abound with references to ECtHR views used to explain the subject matter of the standards of a convention right. This shows that CCoM is adopting the ECtHR standards.

The remarks we want to give are mainly technical. Case law of the ECtHR is referred to inconsistently because some rulings lack the key identifiers, e.g. the number of the application. Almost all cases lack the reference to the relevant paragraph or item that is required for accurate citing. This makes a possible comparison and subsequent verification significantly difficult and ambiguous. It has also been noticed that some sentence constructions that express the conventional standard are not sufficiently understandable and require editing and, more importantly, translation checking.

We can see that, in most of decisions, CCoM refers to Convention standards in its attempt to respond to the complainant's claims of various violations, although these may not be relevant for the decision. This is occasionally redundant, given the fact that CCoM considers decisions largely from the aspect of the right to a fair trial. In addition to that, it has been noted that in most cases CCoM quotes the same judgments of the ECtHR and the same viewpoints when responding to certain questions, regardless of the subject of the constitutional complaint.

Continuous quoting of the same judgments of the European Court in regard to the violation of the right to a fair trial, regardless of the nature of case, can lead to 'fossilisation' of the Court judgments and gradually reduce their authenticity. As in the case of rulings on rejection (see p.) it can be seen that decisions, due to such approach, do not differ among each other substantially. Violation of the right to a fair trial has too many facets to be brought down to several standards that serve as a rationale of objections in different constitutional complaints. In cases where the parties complaint of the violation of property rights, the court, although quoting the framework of the Convention standard of protection of property rights, assessed the complaints from the aspect of violation of the right to a fair trial.

An essential remark that can be made is the following:

A detailed quoting of the ECtHR case law does not mean that the CCoM implements that case law always appropriately in a concrete case. In that particular sense, it is the quality of the reasoning that is at stake. This is a general approach of subjecting the complaints to the Convention standard without providing clear answers to the question of why the violation was not established.

This approach of the CCoM is not an isolated case, it is present in other constitutional courts in the region, which the expert attributes to the process of maturing and development of constitutional protection of human rights and freedoms. CCoM is the youngest in the region in this process.

In the opinion of the expert, the core of the CCoM's approach that is reflected in the statements of reasons is to a large extent based on the assessment of legality of the actions of courts and other authorities, which means that the CCoM (unintentionally) assumes the role of an appellate court or of a third or fourth instance court.

In conclusion, the expert cannot object to the invested effort that is evident from the decisions on dismissal of constitutional complaints, both in terms of addressing the objections raised and in terms of presenting the ECtHR practice in regard to certain rights that have been presented as violated. The weakness, if it can be characterised as such, of the approach of the CCoM, in the opinion of the expert, is reflected in ‚avoiding'to confront the actual objections and giving their own assessment thereon. This shortcoming should be viewed in the light of the level of development and understanding of the constitutional complaint as an institute for protection of human rights and freedoms that requires time, training and patience.

5.6. The decisions granting constitutional complaints

In addition to the data from the table below, focus should be put on the following:

- The violation of the right of access to justice was established in 6 decisions;
- 2 decisions relate to the violation of the right to an effective remedy;
- 2 decisions relate to the violation of the right to freedom of speech;
- 2 decisions relate to arbitrary interpretation of applicable law;

Už-III-369/10	Lawyer	Violation of Article 47 of the Constitution and Article 10 EK	Judgment of HCP – for defamation
UŽ-455/10	Lawyer	Violation of Article 47 of the Constitution and Article 10 EK	Judgment of HCP – defamation
Už-III-187/11	Directly in person	Violation of Article 32 and 58 of the Constitution	Judgment of SC MNE – damages for copyright
Už-III-683/11	Lawyer	Violation of Article 20 and 32 of the Constitution and Article 6 and 13 EK	Ruling of SC MNE – matter of dispute value of the claim
Už-III-155/12	Directly in person	Violation of Article 32 and 58 of the Constitution	Judgment of BC B – unlawful enforcement
Už-III-572/12	Lawyer	Violation of Article 19 and 32 of the Constitution	Ruling of HC BP – compensation of expenses
Už-III-634/12	Lawyer	Violation of Article 32 of the Constitution and Article 6 EK	Judgment of SC MNE – annulment of unlawful decision
Už-III-100/13	Directly in person	Violation of Article 8, 32, 73 of the Constitution	Judgment of SC MNE – dispute due to discrimination regarding decision on housing issue
Už-132/13	Directly in person	Violation of Articles 8, 17,	Judgment of SC MNE –

		20, 32 of the Constitution and Articles 6, 13, 14, 17 EK and Article 1 par. 12 EK	annulment of disciplinary measure on the grounds of discrimination
Už-410/13	Lawyer	Violation of Article 8, 20, 32, a58, 147 and Articles 6, 13, 14, Article 1 par 1 EK	Judgment of SC MNE – compensation of non-pecuniary damages
Už-III-350/14	Lawyer	Violation of Article 17, 19, 32 and 58 of the Constitution and Article 6 St1 Article 1 St.1 and 2 P1 EK	Judgment of SC MNE – for surrender of possession – inheritance of co-ownership
Už-III-519/14	Directly in person	Violation of Article 32 of the Constitution	Judgment of HCP – compensation of defence expenses

5.6.1 Acceptance and application of ECHR standards

The most common reason for the granting constitutional complaints is the violation of one of the aspects of the right to a fair trial, guaranteed by the Article 32 of the Constitution of Montenegro, i.e. Article 6 paragraph 1 of the Convention.

With regard to acceptance of the ECHR's standards, the decisions contain standards presented in detail, which are also implemented in the context of the factual allegations. Comprehensiveness and analytical detail are clearly visible in decisions dealing with the recusal of judges, i.e. violations of the right to an impartial and independent court, as well as in cases dealing with the issue of freedom of speech.

Analysing the decisions granting complaints due to violation of the right of access to justice or arbitrary interpretation, we noticed that there is a tendency to focus on the assessment of legality, just as with the decisions on dismissal. In this respect, all the remarks and opinions that have been made with respect to the decisions on dismissal are applicable to the decisions on granting constitutional complaints. There is one difference though, CC of Montenegro has managed to make regular courts more careful in regard to the excessive formalism that impeded the applicants' access to court protection.

6. Overview of the work of the organisational unit for constitutional complaints

This analysis contains (page 18, highlighted in grey colour) an account of the information that the expert was given in the interviews with the representatives of the CCoM about the flow of files, from reception to decision making at the panel or Court session. On the inquiry about the manner of functioning of the organisational unit for constitutional complaints, the expert was informed that 11 advisors work on the cases. Out of this number, 7 advisors process cases in merits and 4 advisors deal with cases for which a decision on dismissal had previously been

brought. On average, one advisor at the CCoM processes around 105 cases, while a junior advisor processes around 120 cases.

As mentioned in the same paragraph, the Constitutional Court of Montenegro does not have filing and record office. This is a service that should track in a uniform manner the flow of the files from their reception at the Court. On the other hand, it should record and collect all the information of importance for the functioning of the CCoM. Such filing and record offices play a pivotal role in the functioning of any Court. In addition to this the Constitutional Court of Montenegro does not have a unit for following the ECtHR case law and it does not have any unit for following and harmonizing its own case law, which raises serious issues..

Given the fact that the judges and advisors work with no assistance from a case law unit, which could warn them of the facts important for decision-making prior to issuing final decisions, makes the efforts invested in drafting the decisions that were analysed enormous and worthy of praise.

The absence of such services might lead to inconsistencies in the constitutional case law, which could seriously undermine the results achieved so far.

Furthermore, the reception of the constitutional complaints and designation of files depends on the record office that is supervised by the Secretary General, which creates slight disarray in the flow of files. The reception must be technically equipped and staffed so that in any given moment it is clear where the file is and what action has been undertaken in regard to it.

Finally, the information that the head of the organisational unit must review and initial the proposals of decisions on constitutional complaints appears to be a great and unnecessary burden, bearing in mind the provisions of the Rules of Procedure about the independence of advisors in the work on cases.

The question of flow of files was not included in the expert's Terms of Reference. However, this question affects the efficiency of operation of the CCoM, which in its turn affects ensuring of trial within a reasonable time. Therefore it is not possible to avoid considering it in the manner as presented herein. The expert believes that without the unit for following case law and without a well-established reception and harmonization office, the efficiency of the Constitutional Court of Montenegro could gradually suffer.

PART III

7. RECOMMENDATIONS

Care for protection of human rights and freedoms of citizens is embedded in every society that aspires to democracy and the rule of law. The Constitution of Montenegro designated the Constitutional Court as the principal guardian of such care in Montenegrin society, introducing constitutional complaint as a special legal remedy for protection of human rights and freedoms of citizens.

Since the beginning of its operation until today, which is not a long period of time, the Constitutional Court has made a lot of progress. This can be seen if we compare its decisions from the earliest period of development of the institute of constitutional complaint and the recent ones. This is also confirmed by the finding of the ECtHR that constitutional complaint is an effective legal remedy for the protection of human rights.

However, the circumstances in which the Constitutional Court is operating are not favourable. In organizational-technical terms, the Court lacks an office that would monitor, coordinate and compile information on the most important issues within its scope of work. The Court does not have an office for monitoring and consolidating case law either. The number of staff in place is not sufficient to be able to respond to the challenges that the Constitutional Court of Montenegro will face in the future. A growing influx of files on one hand, and increasingly complex problems on the other hand, objectively put pressure on the CCoM and affect its efficiency and trial within a reasonable time.

Based on the present analysis, a number of recommendations are provided to serve the CCoM as support in its further work and strengthening of its capacities for better application of ECtHR standards, which, taken together, leads to more effective protection of human rights in Montenegro.

The recommendations are divided into general and specific ones.

General recommendations

1. **The lack of knowledge about the institute of constitutional complaint and its limitations in examining violations of human rights is of no benefit to either the citizens or lawyers who are legally authorized to provide legal counselling. The analysed constitutional complaints indicate that training of lawyers should be a permanent task of judges of the CCoM and constitutional-court advisors. Such training must consist of training about how to compose constitutional complaints, training about techniques of interpretation of the Constitution and informing the lawyers about case law of the Constitutional Court and rules originating from the case law.**
2. **Training of constitutional-court advisors should also be a permanent task of the CCoM. To ensure high-quality and balanced decisions the work on the preparation**

of case files has to be of high-quality as well. If one wants to know the law of the Convention he/she has to have language skills and be able to ensure efficient exchange of information. One of the priorities of the Constitutional Court should be the training of the existing personnel who should work on mastering the techniques of examining violations and get the training on the Convention standards to be more efficient in identifying and solving the problems. This requires the establishment of a filing and record office as the main link between the panels and judges and advisors. The establishment and staffing of the office for monitoring and consolidation of the case law of the Constitution Court and ECtHR should be one of the future priorities in the work of the Constitutional Court.

Specific recommendations are related to the analysis of decisions and rulings. A ***"general specific recommendation"*** is to consider the possibility of partial revision of the structure of decisions and rulings in accordance with the views presented in the analysis. It could be done as follows:

1. In line with the approach of the ECtHR to the facts and circumstances of the case, to express and connect the complaint and court findings in the initial part of the statement of reasons. This should be done in a clearer, simpler and more structured manner. The introductory part (first count – along with the designation of the complainant) should contain the scope of the challenged enactment[12]. This should be integrated in the rest of the statement of reasons that should follow the ECtHR approach to consideration of applicable law, complaints and assessment of the violation.

As for types of decisions considered in the analysis, we have the following recommendation:

1. **Procedural rule that stipulates that effective legal remedies have to be exhausted is an essential aspect of the subsidiary character of constitutional complaint. The broadly set legal framework on exhausting all effective legal remedies, including the extraordinary ones and those that can lead to the amendment of individual enactments, requires special attention of the CCoM when they are assessing which exhausted or not exhausted legal remedy meets the requirement of effectiveness, and how or why such case law has been created. ECtHR standards on procedural rules on admissibility of an application after exhausting domestic legal remedies is a good guide for the CCoM to reconsider its own procedures related to certain legal remedies. These standards may also be used for assessing whether, in line with the rules on available and effective legal remedies, certain legal remedies that are available to citizens may be considered effective and therefore have to be exhausted in line with Article 35 of the European Convention, which corresponds entirely to Article 68 of the Law on the Constitutional Court.**
2. **Constitutional Coufrt is recommended to start a judicial dialogue with the Supreme Court of Montenegro about harmonization of the rules on interpretation of the**

[12] E.g. to indicate how the applicant is challenging the verdict by which s/he was "*sentenced to imprisonment on the grounds of the criminal act of abuse in business operations, under the Criminal Code…"*

procedural provisions on the possibility to lodge extraordinary legal remedies, the use of which is a procedural requirement for lodging a constitutional complaint. This judicial dialogue will contribute to a greater degree of legal certainty in the interpretation of procedural provisions upon which both the CCoM and the regular courts base their jurisdiction. It will allow both sides to act in the constitutional framework of their jurisdictions, and will prevent CCoM to take the position of a "third or fourth instance" court because of the interpretation of procedural rules.

3. **Poor understanding of the institute of constitutional complaint, which is perceived in the society as yet another legal remedy for ensuring legal protection, leads to the situation that lodged constitutional complaints frequently lack constitutional substance. One dimension of the work of the CCoM includes training of citizens and lawyers through the Constitutional Court rulings and decisions. In this respect, CCoM is recommended to change its current approach. It should abandon the concept of summary listing of all categories of manifestly ill-founded complaints which, when structured as they are now, constitute a vague statement of reasons from which it is not possible to discern the real reason for considering the constitutional complaint manifestly ill-founded. We recommend that identifying reasons for considering an application manifestly ill-founded is done in a more free and clearer way and that the features that make the constitutional complaint inappropriate for consideration are clearly given.**

   In addition, we recommend that the Constitutional Court should follow Practical Guide on Admissibility Criteria of the ECtHR published in the Serbian or Croatian language, available on the internet pages of the ECtHR: http://www.echr.coe.int/Documents/Admissibility_guide_SRP.pdf **or** http://www.echr.coe.int/Documents/Admissibility_guide_HRV.pdf **.**

4. **We recommended training on ECtHR standards regarding individual Convention rights. The goal of this recommendation is to ensure that the so-called hidden complaints can be recognized because, in terms of the Convention rights, they produce the same of similar effect as the expressed ones and are accepted by the ECtHR in the context of exhaustion of legal remedies, because they are "at least essentially" substantiated.**
5. **We have noted that the statement of reasons in the analysed decisions dismissing or granting constitutional complaints are sometimes burdened with excessively detailed citation of Convention standards which, in the end, is not applied by the CCoM. The purpose of such citation is to respond to the complainant's allegations of violation of these rights. Although this might contribute to the general education about the essence of the Convention and Constitution standards, in relation to a given case it does not contribute to the transparency of the decision. It would therefore be beneficial for the quality of the decisions and rulings if the Court could avoid listing of the Convention standards that are not applicable and will not be used in a particular decision.**
6. **Citing Convention standards without establishing their concrete links to the substance of the complaint turns the decision into a standardized response, which**

differs only with regard to the facts and circumstances of the case being the subject of the decision. An unambiguous relation to the complaint approved or dismissed by the CCoM is a prerequisite for a reasoned and good decision. In this regard, we recommend to the Constitutional Court to compose statements of reasons that reflect the position of the CCoM on a particular issue, given the fact that it has the best knowledge on domestic conditions and circumstances, and then to support such position with the Convention standards.

In conclusion, given the analysed approach of the CCoM, visible from the analysed decisions, the expert does not doubt that it will lead to a higher degree of protection of human rights and freedoms. In the period from 2010 until today, an immense improvement in the statement of reasons can be noticed, as well as efforts invested therein. Avoiding excessive formalism in relation to the right of access to justice, protection of freedom of expression, responses to constitutional complaints lodged by citizens without any support of legal counsels are obvious results achieved by the Constitutional Court of Montenegro.

The remarks given in this analysis are aimed at supporting further improvement of the quality of the statements of reasons and they are made with good intentions. From her personal experience, the expert is aware of numerous difficulties a Constitutional Court is faced within a society undergoing transitional reforms on one hand, and building a society on democratic principles on the other hand. Wanderings and confusions in both of these areas leads to ratification of policy in which the Constitutional Court becomes a leverage of democratic development and main guardian of the rule of law in which protection of human rights is of utmost importance.