

Conference on Subsidiarity Principle: National Implementation of the European Convention on Human Rights, 4 May 2023

Session I – National implementation of the ECHR prior to, and independently of the processing of cases by the Court, part D. Other tools to nourish the shared responsibility to apply the ECHR, Analytical and organisational tools developed under the CoE cooperation to strengthen the national application of ECHR

Ladies and gentlemen,

my name is Šeila Brković - Imamović. I have over 15 years of experience in the justice sector of Bosnia and Herzegovina, working on various posts within the Secretariat of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina. I am currently acting as deputy chief of the Judicial Documentation and Education Department. This department had the great privilege of cooperating with the Council of Europe on different projects, including the ones aimed at strengthening HJPC's central database of court decisions and generally improving access and harmonization of the case law.

It is my great honour to participate at today's Conference dedicated to such an important theme. I am particularly glad to be able to learn more about different projects and platforms aimed at strengthening national implementation of the European Convention and about the endeavours of other CoE member states also aimed at achieving this important goal. I am positive that the information we exchange today will inspire us all to steer our efforts on both individual and collective levels.

The first tool I want to present today is a **platform for harmonising judicial practice**. This mechanism is called „Panels for case-law harmonization“. It was introduced back in 2013/2014, with the assistance of the CoE project. It is a well-structured cooperation platform that fosters continuous and professional dialogue between the courts of the highest instance in Bosnia and Herzegovina with the ultimate goal of harmonizing case law across the country.

There are four courts involved in the work of this mechanism: the Supreme Court of Federation of Bosnia and Herzegovina, the Supreme Court of the Republic of Srpska, the Appellate Court of Brčko district and the Court of Bosnia and Herzegovina. High Judicial and Prosecutorial Council, an institution where I work, coordinates this mechanism.

Why is this platform for continuous dialogue important? Bosnia and Herzegovina, as you probably all know, has a complex territorial and administrative organization that reflects the organization of the judiciary. Without going into too much detail, I will only point out that Bosnia and Herzegovina, unlike other countries, doesn't have one Supreme Court or a Court of Cassation that has jurisdiction over the entire country, and that would naturally be in charge of ensuring that the case-law across the country is harmonized for the benefit of its people.

Instead, there are four Courts of highest instance in Bosnia and Herzegovina, whose names I mentioned earlier. Each of them has jurisdiction over a certain part of the country, applying laws relevant to that particular administrative area and ensuring that case law in that particular part of the country is harmonized to the extent possible. To this end, each of the mentioned

courts uses more or less standard mechanisms for case-law harmonization, the most important, being the appeal process itself or different forms of preliminary rulings.

But what can be done if there is a long-lasting diverging case law between these four courts that has great negative impacts on equal access to justice for people in different parts of the country? In these situations, „Panels for harmonization of case-law“ intervenes. Namely, the four mentioned courts that, as I explained, have no hierarchical or jurisdictional links between them agree to sit together and work together to try to overcome the fact that one or more of them interprets the same or similar provisions of the law differently than the others.

„Panels for case-law harmonization“, has its own set of Rules that all involved parties have agreed upon, outlining:

- the procedures that will be followed when non-harmonized practice is identified,
- how meetings and agendas will be agreed upon, i.e. what legal issue will be discussed,
- what procedures within each Panel court will be set in motion in case the discussions at the Panel meetings has been successful,
- and what will happen if Panel courts do not agree to harmonize their case law on a certain topic.

Thus, these Rules formalize the entire process of case-law harmonization across the country and set clear principles on how this mechanism operates and when it is used. Most importantly, it contains certain safeguards for ensuring that the independence of each court and their judges in processing and adjudicating specific court cases are maintained and non-compromised. Each decision reached at the Panel meeting is reached unanimously, and even then, things are not finished. Rather, every decision made at the Panel meeting is confirmed afterwards within each Panel court in a regular procedure foreseen by the law for the adoption of legal stances.

For those of you who like numbers, I will just say that from 2014, the total of 37 Panel meetings were held, including 15 panel meetings regarding non-harmonized case law in criminal matters, 13 meetings regarding matters from civil law and 9 meetings concerning administrative law. As for results, the panel courts have so far agreed to harmonize case law or initiate certain legislative changes in more than 15 legal issues.

For illustration, these issues range from how certain court fees related to, let's say, civil cases will be calculated and paid, issues related to reimbursement of non-material damages, issues related to special investigative actions and a right to an interpreter in criminal proceedings.

The Panel Courts take great care of how certain legal issue is resolved by the ECtHR, not only in cases related to Bosnia and Herzegovina but in relation to other CoE countries. This was, for example, the case in the last issue I mentioned, the right to an interpreter, an issue that had become more important in the context of migration when the panel courts noticed that the relevant provisions of the criminal procedural codes lacked needed quality and have thus proposed certain legislative changes to conform to standards foreseen by Article 6 of the Convention.

As a final note on this particular mechanism developed in cooperation with the CoE, I would like to say that the Panels for case-law harmonization were created out of necessity and are a result of an agreement between the courts and High Judicial and Prosecutorial Council of BiH. Its work is driven by the professionalism of BiH judges and other legal professionals involved

in the process bearing in mind the legal principles essential in every democracy, that is, the Rule of Law, equality of all before the law and legal certainty.

Our job, of course, is not over. Apart from assisting in organizing panel meetings and everything that is related to them, HJPC is currently exploring different options for improving this mechanism further and improving its legal status. This daunting task is done in cooperation with Panel courts and with the assistance of the European Union and their IPA funds. One of the first priorities of this process, related to recognising judges' involvement in the work of the Panels through the quota system, was completed beginning of this year.

The challenge remains on how to ensure continuous and systematic identification of topics to be discussed at panel meetings, as well as to ensure that this mechanism is used regularly, that is, quarterly. In cooperation with panel courts, we are currently developing procedures on how to use the data from „Case-law Portal (E-sentence)“, that has been launched in February last year, for cross-referencing of the case law discrepancies between the panel courts. To this end, the contributions and the work of Case-law departments of the panel courts is proving to be of great importance.

The second mechanism I would like to present in more detail is **an online IT information tool**, as allowing judges to be well-informed about the ECHR standards is a precondition for applying these standards when adjudicating cases on a national level. This tool is developed by HJPC, but it very much relies on ECtHR case-law information that is regularly prepared either by the Court's press service or the office of the Jurisconsult.

What is this mechanism about? It is about using the specialized website maintained by the department I am working for to regularly provide information about ECtHR case law. The information provided is truly different from any other information available online.

First, it is in local languages, crossing the language barrier that still prevents many judges, prosecutors and other professionals from Bosnia and Herzegovina to use directly the vast information and knowledge prepared by the ECtHR itself. Second, the information is provided in a systematic and timely manner and by official institutions.

We are lucky to collaborate with the Constitutional Court of BiH on the preparation of weekly updates of ECtHR judgements, thanks to which we can identify the cases that are the most relevant for the BiH setting and provide short information about them, including the legal reasoning of the Court, just a few days after the case has been resolved in Strasbourg. We are also using the information circulated by the Office of Jurisconsult within the Superior Courts Network, translating the information provided on ECtHR case-law development and adjusting it to the wider public before publishing it online.

We are proud to say that this website is used not only by people from Bosnia and Herzegovina looking for this type of information for their professional or other needs but also by professionals from neighbouring countries as they understand our language.

What we see lately, from the decision in the case *Bimal vs Bosnia and Herzegovina*, is that this platform is also used by institutions who want to pass some important information to the BiH judiciary about a certain ECHR standard. In this sense, the Office of BiH representative before Strasbourg court lately regularly provides information to HJPC on the latest ECtHR judgements that require the change in how courts tackle certain issues and applies certain legal provisions.

These are clearly communicated online and delivered by e-mail to each judge and prosecutor in the country through monthly electronic newsletters.

CoE has also helped us to introduce some other tools related to strengthening the national application of ECHR, including the development of a specialized three-year training program for judicial official holders regarding the application of ECHR standards. Due to time limitations, I won't go into details. What I would especially like to thank CoE is for their support and organization of study visits to Strasbourg, especially the organization of month-long work at Strasbourg court for BiH judges and relevant staff, as it really provides our country with first-hand insight to really impressive mechanisms you are using here, helping us not only to learn new things but to change our mindset and evolve our practices.

Because the mechanisms explained to you today are a true reflection of a collective effort of both BiH courts and HJPC, I would like to use this opportunity to thank everyone who has been working on the implementation of these important reform activities, both in panel courts and in HJPC.

Last, I would like to invite you all to visit our department's website, where you can find much relevant information to explore these mechanisms further and to get access to a database of national courts' judgements, as well as reports from the Case-law portal. It is csd.pravosudje.ba, or just follow the fourth link provided for Bosnia and Herzegovina, on the ECtHR website, under case-law translations or HUDOC database.

Thank you for your attention. I trust you found it useful, and I'm happy to take any questions you may have.