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› PROTECTION OF THE MINORITIES AND CONSTITUTIONAL COURTS

Dear Mr. President, esteemed colleagues, ladies and gentlemen,

In congratulating you on the 10th anniversary of the establishment and work of the Constitutional Court of the Principality of Andorra, I wish to thank you, on behalf of my colleagues, the judges of the Constitutional Court and on my own behalf for your invitation. I also wish to thank you for the selection of the topic for this discussion. For us, those coming from transitional countries – former socialist countries, this is a topic of utmost importance and relevance.

Until now, the issue of minorities, at least in the region I come from, has not been completely neglected, but it has not been adequately resolved either. The constitutions and some other decrees, however, contain general provisions, but in practice, minority rights and their protection are far from the adequate standards prescribed by the generally accepted principles of the international community. True, the international community itself is not united in this aspect, so much so that we do not have a single definition of the concept of “minority” to present.

It should be emphasized that pursuant to the General Framework Agreement for Bosnia and Herzegovina, Annex I to the Constitution of Bosnia and Herzegovina, Bosnia and Herzegovina is obligated by certain agreements that pertain to human rights, regardless of whether they were accepted and ratified by the government in regular procedure. Such documents include, inter alia, the European Charter for Regional or Minority Languages from 1992 and the Framework Convention for the Protection of National Minorities from 1994.

Regardless of this constitutional obligation and the direct application of the aforementioned documents, the Parliament of Bosnia and Herzegovina adopted the Law on the Rights of National Minorities in Bosnia and Herzegovina as late as 1 April 2003, seven years after the adoption of the Constitution. The definition of “minorities”: is as follows: “A national minority, in the sense of this Law, is a part of the population of Bosnia and Herzegovina that does not belong to one of three constituent peoples of Bosnia and Herzegovina, and it consists of the people of the same or similar ethnic origin, same or similar tradition, customs, religion, culture, and spirituality and close or related history or other features”.

According to this Law “Bosnia and Herzegovina shall protect the position and the equality of members of the national minorities Albanians, Montenegrins, Czechs, Italians, Jews, Hungarians, Macedonians, Germans, Poles, Romani, Romanians, Russians, Ruthenians, Slovaks, Slovenians, Turks,

and Ukrainians and others that fulfil the conditions as set forth in paragraph 1 of this Article”, thus protecting a total of 17 minorities.

According to this concept of “minority”, it is evident that it is very broad and that it encompasses a very wide range of possible minority groups.

This law has set up very high standards in all areas of rights and protection of minorities including issues of language, culture, information, education, insignia and symbols, economic and social rights, and the participation in the bodies of the authorities. It remains to be seen how these standards will be met in practice. It needs to be noted that some constitutional provisions exclude minorities from governmental authorities. For example, the House of People is exclusively composed of five representatives from the three constitutional peoples.

With respect to the treatment of minorities, the Law combines several methods which include separate development, elimination of all forms of discrimination, and in some cases positive discrimination (e.g. the Law on Regular Courts provides that a certain number of judges shall be from the so called group of “others”, i.e. minorities).

The Governmental Department for the issue of minorities and their return is founded for the purpose of supervising the implementation of this Law. The increased participation of minorities in public life is evident.

In the jurisprudence of the Constitutional Court to date, there has been no case which pertains to a direct violation of protected minority rights. However, the Constitutional Court has, through its second instance jurisdiction established by the Constitution in the process of examining cases involving discrimination of the right to property as set forth in Article 1 of the Protocol No. 1 and the right to home as set forth in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, encountered several cases of violation of these rights, and thus significantly contributed to a decrease in the violation of minority rights and better protection for minorities and the return to their property and home.

We believe, considering the finality and compulsory character of the constitutional decisions, that the role of constitutional courts in the protection of the minority rights and the construction of individual areas of the uniform standards is something we all have to strive for and therefore, this discussion certainly makes an important contribution to that progress.

Thank you.
