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***The Balkan Forum of Constitutional Courts***  
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**Standardization of Human Rights and the Role of Constitutional Justice**

Distinguished colleagues,

It is my great pleasure to extend warm greetings to all of you and to express my sincere gratitude to the Constitutional Court of the Republic of Turkey for hosting the third annual session of the Balkan Forum of Constitutional Courts. This gathering offers an excellent opportunity for us to meet, exchange perspectives, and share experiences on current challenges and developments in upholding the rule of law and protecting human rights.

Democracy is a necessary—though not by itself sufficient—prerequisite for preserving the rule of law. It therefore must be supported by a protective mechanism capable of assessing and safeguarding the essence of fundamental rights and freedoms. In this context, the role of constitutional justice and the decisions of international judicial bodies—especially the European Court of Human Rights (ECtHR)—are of exceptional importance, since they provide a framework for the standardization of human rights across jurisdictions.

Our constitutional legislator has placed great trust in the institution of constitutional justice, assigning it the role of the “guardian of democracy.” The Constitutional Court thus stands as a protector of democracy against abuses of power and as an efficient safeguard for the unity of the legal order and the rule of law.

The Constitutional Court of Montenegro has continuously worked to strengthen constitutional democracy and to develop its own institutional capacity, particularly through the refinement of constitutional reasoning in its judgments. Based on the concept of legal monism, the “quasi-constitutional” status of ratified and published international treaties in the Montenegrin legal system, and the constitutional requirement of their direct application, the Court follows the jurisprudence of the ECtHR. In doing so, it fulfills two objectives simultaneously: the first one being the application of constitutional reasoning in adjudication and the second, harmonization of the Montenegrin constitutional law with European legal standards. Adapting to these requirements naturally takes

time and calls for constant refinement in the use of constitutional-judicial techniques and interpretative methods.

In its day-to-day interpretation of constitutional principles, through decisions made across all nine areas of its constitutional jurisdiction, the Constitutional Court has gradually developed a set of guiding principles for interpreting the Constitution. These include the principles of teleological interpretation, effective protection of constitutional rights, democracy, the rule of law, legal certainty, legality, procedural fairness, fair balance, proportionality and necessity, the state's margin of appreciation, evolutionary and dynamic interpretation of the Constitution, autonomous interpretation of constitutional concepts, and non-discrimination. Similarly, the Court has also begun to adopt various judicial techniques for identifying the constitutionally relevant aspects of specific cases and for resolving them. Moreover, similar to the European Court of Human Rights, the Constitutional Court of Montenegro applies in its constitutional adjudication the tests of justification, proportionality, necessity in a democratic society, and the "very essence of the right" test.

The Constitutional Court of Montenegro directly accepts and applies the so-called "interpretative authority" of the judgments of the European Court of Human Rights, regardless of which state the judgment was delivered against. Through this approach, the Constitutional Court has anticipated the now-established view that the contracting states are obliged to respect and implement the judgments of the European Court not only in cases brought against them, but also in those concerning other contracting states. By accepting the "interpretative authority," or judicial activism, arising from the European Court's interpretation of the Convention, understood as "a constitutional instrument within the framework of European public law." By adopting and applying the European Court's positions, the Constitutional Court of Montenegro further informs and educates its own judges, as well as all other recipients of its decisions and rulings, in the same way it does through its own evolutionary interpretations and the activist positions derived from them.

Let me emphasize the importance of the Court's ongoing commitment—not only to procedural efficiency but also to the quality and consistency of its decisions—through the direct application of ECtHR and EU Court standards.

In this regard, the Constitutional Court of Montenegro, for the first time, examined possible violations through the procedural aspects of fundamental rights, such as the right to life, in a case involving the death of a patient in a hospital. It annulled court decisions due to violations arising from inadequate sentencing policy in a case of torture, and also annulled decisions where the courts, in civil proceedings, failed to properly investigate allegations of workplace harassment (mobbing). By correctly applying the standards of the European Court of Human Rights, the Constitutional Court—being the sole body empowered to examine and protect human rights violations in the same manner

as the European Court—has thereby activated the fundamental principle of the Convention: the principle of subsidiarity.

The Court's constitutional role allows it to interpret provisions in a way that advances human rights, particularly in defining the relationship between the individual and the State. Through its interpretation and protection of constitutional values, the Court fulfills its calling as their guardian and as a contributor to the realization of a modern constitutional state. In ensuring the legality and coherence of the legal order, its task is both demanding and responsible, requiring it to connect the constitutional text, underlying principles, and international instruments. In societies where even minimal mistrust toward public institutions exist, the Constitutional Court must remain steadfast—fully aware of its “transformative role, and firm in its commitment to upholding constitutional principles in harmony with European legal standards.

It is worth noting that, in its constitutional legal analysis, the Court carefully and consistently applies Article 53 of the European Convention, which guarantees that the lower threshold of protection established by the Convention does not prevent the application of higher standards already secured by national law. This subsidiary and protective function of this provision allows for the cumulative application of national and Convention-based rights without creating a conflict between state and international norms, thereby ensuring *in favorem* more effective protection for human rights and fundamental freedoms at the national level. For instance, Article 23 of Montenegro's Constitution guarantees the right to a healthy environment as a fundamental right to everyone, offering broader protection than that provided by the European Convention in this area.

The Constitutional Court of Montenegro frequently faces complex cases and high public expectations. It cannot avoid addressing matters of significant political relevance that require expert constitutional interpretation. In resolving such cases, its role is to ensure an authentic reading of the Constitution and, to the extent possible, to guide and align constitutional reality toward constitutional norms. As the distinguished German scholar Peter Häberle once said, “*there can be no abstract judgments detached from time and place—each country's political culture exerts a strong influence.*” Accordingly, the Court is expected to bring constitutional principles into a rational and balanced relationship with the democratic constitutional order, particularly when constitutional norms and political realities diverge. Consequently, today more than ever, the Constitutional Court of Montenegro is committed to interpreting the Constitution's so-called basic principles, i.e. fundamental principles, in light of international standards, giving it both the breadth and authority to fulfill its role as guardian of the Constitution and arbiter of constitutionality.

For example, in two recent cases, the Court held that national courts cannot impose additional conditions for the state liability for damage caused by unlawful or improper actions of public

authorities beyond those prescribed by law. Such practice, in this particular case, unduly restricts the right of individuals and legal entities to compensation.

The Court found that requiring proof of “intent or negligence”, is not consistent with the Law on Obligations and Torts, while emphasizing that the state itself is to be deemed accountable for any damage inflicted through illegal or improper acts of public authorities. Such an interpretation, in this particular case, would shift an unfair burden onto citizens, while allowing the State to avoid accountability for its own wrongdoing. The Constitutional Court further determined that the reasoning of the courts, stating that the State of Montenegro cannot be held liable because there is no wrongful or unlawful conduct by its organs, nor intent or negligence, is constitutionally unacceptable. By interpreting the law in this manner, the courts effectively “added” conditions—intent and negligence—that the legislature did not prescribe.

These and many other decisions clearly show that the realization of human rights is inseparable from the proper functioning of constitutional justice. The noblest mission of any legal order—and of the institutions that sustain it—is the protection of the vulnerable and minorities. This responsibility rests especially with the Constitutional Court, which must act decisively to sanction constitutional violations by any branch of power—legislative, executive, or judicial—and must not shy away from judicial activism when fundamental values are at stake or when disregard for its judgments undermines those values.

If we consider that today we simultaneously enjoy the social benefits of the civilizational achievements upon which modern constitutional states have been built, and that we are concerned with ensuring these achievements are not jeopardized, the Constitutional Court faces a constant demand to work professionally and persistently toward their preservation. In this way, the purpose of constitutional adjudication is most effectively confirmed in practice. Accordingly, by combining constitutional provisions with constitutional practice, as well as theoretical knowledge in this field, the Constitutional Court of Montenegro today strives to establish the highest standards in exercising constitutional review.

The rule of law requires strong and stable institutions capable of guaranteeing democracy, human rights, and fundamental freedoms. I believe that the Constitutional Court of Montenegro is precisely such an institution, which for six decades, has been building its integrity on the authority of its well-founded and well-reasoned decisions, guiding Montenegro’s legal development toward achieving European legal standards and the rule of law in general. Associations such as the Balkan Forum of Constitutional Courts further strengthen us and serve as confirmation of our commitment to the continuous improvement of the principles on which the rule of law is founded. For this reason,

on behalf of the Constitutional Court of Montenegro, I would like to once again thank you for organizing this meeting and providing me with the opportunity to address you.