

**20.03.2002, E.2000/48, K.2002/36**

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**Headnotes:**

The right of access to the courts as either plaintiff or defendant is guaranteed by the Constitution. Indictments submitted before all courts, without differentiation between the various types of courts, must indicate the nature and cause of the accusation against the accused. In such matters, differentiation between courts is unconstitutional.

**Summary:**

The Bolvadin Magistrates' Court referred to the Constitutional Court the question whether Article 163.4 of the Code of Criminal Procedure was unconstitutional. This provision stipulates that, in indictments prepared by the public prosecutor for cases within the competence of the Magistrates' Court, it is sufficient to indicate the identity of the accused, the law to be applied and the basic evidence in the case.

According to Article 36.1 of the Constitution, everyone has the right of access to the courts either as plaintiff or defendant and the right to a fair trial before the courts through lawful means and procedures. The concepts of justice and of the determination of a criminal charge are realised in practice by means of an indictment, defence and judgment. These three elements cannot be separated from each other. During the process of determining a criminal charge, it is beyond question that an accused must have an effective right of defence. In order for an accused to have a possibility of eliminating the suspicions raised against him, the right of defence must be able to be fully used. When the accused does not know the accusations against him, he is unable to defend himself sufficiently.

Article 6.3 ECHR provides that everyone charged with a criminal offence has the right to be informed promptly of the nature and cause of the accusation against him. Under the challenged provision, it is not necessary, in indictments submitted to the Magistrates' Court, to indicate the precise allegation against the accused and its

legal nature, whereas indictments submitted to other criminal courts must include the precise accusation against accused, the legal elements of the alleged offence and the evidence. According to Article 13 of the Constitution, however, "fundamental rights and freedoms may be restricted only by law and in conformity with the reasons mentioned in the relevant without infringing upon their essence". The relevant article, Article 36 of the Constitution, does not contain any restrictions on the rights of the defence. For those reasons, the provision subject to review in the present case was annulled.