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The Constitutional Court of the Republic of Macedonia
Уставен Суд на Република Македонија

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CONSTITUTIONAL COURT OF THE REPUBLIC OF MACEDONIA

**ANSWERS
to the Questionnaire for the XVIth Congress of the
Conference of European Constitutional Courts (2014)
(Summary)**

**“Cooperation of Constitutional Courts in Europe –
Current Situation and Perspectives”**

Skopje, September 2013

The Constitutional Court of the Republic of Macedonia is a body of the Republic protecting constitutionality and legality. (Article 108 of the Constitution of the Republic of Macedonia. Its competence is determined in Article 110 of the Constitution, according to which the Constitutional Court of the Republic of Macedonia: decides on the conformity of laws with the Constitution; decides on the conformity of collective agreements and other regulations with the Constitution and laws; protects the freedoms and rights of the individual and citizen relating to the freedom of conviction, conscience, thought and public expression of thought, political association and activity as well as to the prohibition of discrimination among citizens on the ground of sex, race, religion or national, social or political affiliation; decides on conflicts of competency among holders of legislative, executive and judicial offices; decides on conflicts of competency among Republic bodies and units of local self-government; decides on the answerability of the President of the Republic; decides on the constitutionality of the programmes and statutes of political parties and associations of citizens; and decides on other issues determined by the Constitution.

Republic of Macedonia has been the member of the Council of Europe since 9 November 1995 and it has, so far, acceded to 89 Conventions of the Council of Europe. On 10 April 1997 the European Convention on the Protection of Human Rights and Fundamental Freedoms entered into force with regard to the Republic of Macedonia, whereby the Republic of Macedonia committed itself to guarantee its own citizens the highest European standards for the protection of human freedoms and rights.

The constitutional legal ground for the implementation of the Council of Europe Conventions including the European Convention on Human Freedoms and Rights by the courts in the Republic of Macedonia are the following provisions in the Constitution of the Republic of Macedonia¹: Article 8 which defines the fundamental values of the constitutional order of the Republic of Macedonia, and which, *inter alia*, defines as fundamental values the *basic freedoms and rights of the individual and citizen recognised in international law and defined in the Constitution* (Article 8 paragraph 1 line 1) and the *respect for the generally*

¹ The Constitution of the Republic of Macedonia was adopted on 17 November 1991, on the basis of the results from the referendum held on 8 September 1991. with which the Republic of Macedonia became an independent state.

accepted norms of international law (Article 8 paragraph 1 line 11); Amendment XXV to the Constitution which refers to the judiciary and which stipulates that: *“The courts shall be autonomous and independent. The courts shall adjudicate on the basis of the Constitution and laws and international treaties ratified in accordance with the Constitution“*; and Article 118 of the Constitution envisaging that: *“International treaties ratified in accordance with the Constitution shall be part of the internal legal order and may not be changed by law“*.

From the above provisions it arises that the international treaties are an integral part of the internal legal order, that is, a source of law and in accordance with the constitutional provision in Amendment XXV the courts implement them in the performance of their function. International treaties as part of the internal order are automatically incorporated into the internal legal order of the Republic of Macedonia and are directly applicable by the Macedonian courts. International treaties are hierarchically higher than the domestic laws, but lower than the Constitution of the Republic of Macedonia.

Due to the absence, in Article 110 of the Constitution, of an express competence of the Constitutional Court regarding the international treaties, in the jurisprudence of the Constitutional Court so far, prevails a stance that international treaties, neither may be subject of assessment before the Constitutional Court, nor a criterion for assessment of the conformity of laws.

As regards international treaties on human rights, in particular the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Constitutional Court uses them and regularly cites them in its decisions or resolutions dealing with issues connected with human freedoms and rights as an additional argument for the constitutionality or legality of the act that is the subject-matter of appraisal. The Constitutional Court has invoked the case-law of the European Court for Human Rights in a number of cases.

In addition to the European Convention on Human Rights, in its work the Constitutional Court also invokes and makes references to provisions from the universal instruments on human rights, adopted under the UN (Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the conventions of the International Labour Organisation, international conventions on regional that is European level adopted by

the Council of Europe, but also other international instruments adopted within the frameworks of the Council of Europe (resolutions and recommendations), although they are not formal sources of law pursuant to the constitutional provisions.

The Republic of Macedonia is not a member of the European Union and therefore the general principles of the EU law for direct effect and supremacy of that law in the internal order do not apply. The EU law does not have a direct binding effect on the legal order of the Republic of Macedonia, except for the provisions contained in the agreements related to the relations between the Republic of Macedonia and the European Union (the Stabilisation and Association Agreement).² Although the Constitutional Court is not formally obliged to apply the EU law, the Constitutional Court in its case-law increasingly refers to regulations that are part of the *acquis communautaire* of the European Union (EU directives and regulations).

The jurisprudence of the courts is not a source of law in the Republic of Macedonia, so there is no constitutional provision imposing an obligation on the Constitutional Court of the Republic of Macedonia to consider the decisions by European courts of justice. However, under the influence of international law, in particular international law on human rights and in particular the European Convention on Human Rights, in its work in both abstract control on the constitutionality of laws and in the procedures on direct protection of human rights and freedoms, the Constitutional Court increasingly implements the jurisprudence of the European Court for Human Rights. The Constitutional Court of the Republic of Macedonia has not referred to the jurisprudence of the Court of Justice of the European Union.

Unlike the Constitutional Court in view of which there are no express constitutional and legal provisions obliging it to compulsory application of the jurisprudence of the European Court of Human Rights, such an obligation has been established for the other national courts by a number of laws³.

² The Stabilization and Association Agreement was concluded in 2001, and entered into force in 2004.

³ For example, the Law on Courts, defines competence of the Supreme Court to decide on request from parties and other participants in the procedure for violation of the right to a trial within a reasonable time, whereby the Law in Article 35 paragraph 1 item 6, envisages an obligation for the Supreme Court to do that: "in accordance with the rules and principles defined in the European Convention on Human Rights and Fundamental Freedoms and starting from the case-law of the European Court of Human Rights".

In its work, the Constitutional Court of the Republic of Macedonia, pays attention to the case law of other European and non-European constitutional courts. While in the final text of its decisions the Constitutional Court does not refer to foreign case-law, in the preparation of the case, in the report submitted to the session of the Court, the Constitutional Court quite often gives a comparative overview of the legislation of the other countries with regard to the concrete, disputable matter that is raised with the case, and presentation of the case-law of the other constitutional courts on the same or similar matter.

In this sense the Constitutional Court uses as a source of information the extensive database of constitutional court case-law of the Venice Commission – the CODICES and the Forum of the Venice Commission – Venice Forum.

The Constitutional Court of the Republic of Macedonia cooperates with a number of constitutional courts from the European countries. Within the frameworks of multilateral cooperation, the Constitutional Court has been a full member of the European Conference of Constitutional Courts since 1997 and has been actively taking part in the congresses of this conference. Since 2008 the Constitutional Court has been a member of ACCPUF (Association of Constitutional Courts Sharing the Use of the French Language), and in 2011 the Constitutional Court acceded to the World Conference of Constitutional Justice. Within the frameworks of regional cooperation, the Constitutional Court of the Republic of Macedonia takes an active part in the round tables organised every two years by the constitutional courts from the countries of former Yugoslavia.

The Constitutional Court has closer bilateral cooperation with the constitutional courts of Slovenia, Serbia, Croatia, Montenegro, Bosnia and Herzegovina, Kosovo, Albania, Bulgaria, Turkey, and with the Constitutional Court of the Russian Federation.