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Synthèse / Summary / Kurzfassung / резюме

**RÉPUBLIQUE PORTUGAISE / PORTUGUESE REPUBLIC /
PORTUGIESISCHE REPUBLIK / ПОРТУГАЛЬСКАЯ РЕСПУБЛИКА**

**The Portuguese Constitutional Court
Tribunal Constitucional Portugal**

Anglais / English / Englisch / английский

**XVIth Congress of the Conference of European Constitutional Courts
2014**

**Portuguese Constitutional Court
November 2013**

English Summary

**Cooperation of Constitutional Courts in Europe-
Current Situation and Perspectives**

**I. Constitutional Courts within the framework of Constitutional Law and
European Law**

The Portuguese Constitutional Court is the court with the specific competence to administer justice in matters of a constitutional-law nature. It is entrusted with the responsibility of guaranteeing and defending the Constitution. It reviews the constitutionality of legal norms: it controls whether the norms are in conformity to the principles and rules laid down in the Constitution. Unlike other sister Courts, the Portuguese Constitutional Court doesn't control whether there has been a direct violation of a fundamental right. It only evaluates if norms breach any constitutional rule or principle. Since Portugal is a State member of the European Union, the Constitutional Court is constitutionally obliged to consider and respect European (and International) law when exercising its powers.

According to article 8 of the Portuguese Constitution, when analyzing a case, the Court must take into account not only the rights directly protected by the Constitution, but also those established in International law, including the European

Convention on Human Rights. This means that this “open clause” gives way to the creation of an open catalogue of fundamental rights, enlarging the rights constitutionally granted. However, it is important to remark that the catalogue of the envisaged fundamental rights in the Portuguese Constitution is more extensive and more detailed than the catalogue of rights of the European Convention on Human Rights or of the Universal Declaration of Human Rights, and for this reason the Portuguese Constitutional Court has never granted the norms of the ECHR, the ECFR or the Universal Declaration of Human Rights autonomous constitutional value. In spite of this fact, the Court often relays on the European Convention on Human Rights (as well as in other International Human Rights catalogues) to substantiate its options, to reinforce the reasoning of the decision, or to identify and explain some constitutional rights content. Nevertheless, none of those catalogues has ever been used as an autonomous parameter of control.

Regarding the use of the Charter of Fundamental Rights of the European Union, although they are relatively scarce, there are also examples of its use even before it has entered into force. It has been used to guide the constitutional interpreter to precise constitutional rights’ content, as well as to reinforce the reasoning of the Courts options. A reason to a less frequent use of the Charter may be found in the boundaries of its own application. Even so, the general justification also applies: being so large, the catalogue of fundamental rights of the Portuguese Constitution has been enough to offer sufficient and direct protection.

There is no obligation established in the Constitution forcing the Portuguese Constitutional Court to consider or to follow the jurisprudence of European courts. Regardless this absence, the Court often looks for *ratio decidendi* inspiration on European decisions. European Courts jurisprudence is also taken into account as an element that reinforces the reasoning of a national decision. Most frequently, European Courts jurisprudence gives guidance on fundamental rights’ interpretation: it constitutes a source of interpretation, which helps to define the content of rights.

In what concerns the relation between the Constitutional Court and the European Court of Justice it must be stated that there has never been a question to the European Court of Justice on the bases of the preliminary reference system yet.

Despite this fact, the Portuguese Constitutional Court has already recognized that referring a question to the European Court of Justice is one of its duties and it recognizes the importance of the system. The preliminary reference procedure has never been used in the decisions in which the applicant has invoked the need of interpretation of a rule by the European Court of Justice, only because such rule was not considered relevant to the decision of the case. The absence of the use of the preliminary reference procedure did not avoid the use of European Court of Justice jurisprudence. In fact, these mentions to European Court of Justice case law are not made in the context of a preliminary question but they are considered relevant. Most of the times, they are used like mere *obiter dicta*, to highlight a way of thinking or a logical reasoning of a decision. Being scarce, the allusion to European Court of Justice case law made by the Portuguese Constitutional Court already reveals the willingness for a cooperation relationship between courts.

All things considered, one could say that the increasing use of European Courts jurisprudence made by Constitutional Courts across Europe, and the increase of references to several International and European sources of law have been contributing to strengthen a European common ground, namely concerning fundamental rights and principles.

II. Interactions between Constitutional Courts

The Portuguese Constitutional Court often considers the decisions of other European and non-European Courts, especially in the field of Criminal Law and guarantees of criminal proceedings. The Constitutional Court tends to use comparative law as well. The citation of foreign legal solutions increases, as the globalization of problems tends to develop. The identification of common topics makes way to the search for some common trends. The most quoted countries are France, Spain, Germany, Belgium, and Italy, and unlike other sister Courts, the Portuguese Constitutional Court does not primarily tend to refer the jurisprudence of countries of the same language area.

There are also some examples of Portuguese Constitutional Court decisions that have influenced foreign jurisprudence, particularly in Brazil.

The Court believes that international dialogue and cooperation are of the most significant importance and, as a result, it participates in a series of international conferences and is a member of the European Commission for Democracy Through Law, of the Council of Europe, known as “Venice Commission”.

III. Interactions between European Courts in the jurisprudence of Constitutional Courts

We cannot find any case-law of the Portuguese Constitutional Court where references to European Union Law or to decisions by the Court of Justice of the European Union in the jurisprudence of the European Court of Human Rights have had an impact. We are also not aware of any situation where the jurisprudence of the Portuguese Constitutional Court might have influenced the relationship between the European Court of Human Rights and the Court of Justice of the European Union.