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Synthèse / Summary / Kurzfassung / резюме

**RÉPUBLIQUE DE SERBIE / REPUBLIC OF SERBIA /
REPUBLIK SERBIEN / РЕСПУБЛИКА СЕРБИЯ**

**The Constitutional Court of the Republic of Serbia
Ustavni sud Srbije**

Anglais / English / Englisch / английский

ANSWERS TO THE QUESTIONNAIRE FOR THE XVIth CONGRESS OF THE CONFERENCE OF EUROPEAN CONSTITUTIONAL COURTS

“Cooperation of Constitutional Courts in Europe – Current Situation and Perspectives” (Summary)¹

The Constitution of the Republic of Serbia lays down that the generally accepted rules of international law and ratified international treaties shall be an integral part of the legal order in the Republic of Serbia and be enforced directly, provided that the ratified international treaties are in compliance with the Constitution.

Within its remit to protect the unity of the legal order within the abstract constitutionality review procedure, the Constitutional Court of Serbia has been reviewing the compliance of laws and other general legal enactments with the generally accepted rules of international law and ratified international treaties. Ratified international treaties are subject to a review of their compliance with the Constitution.

The Constitution guarantees human and minority rights enshrined in the generally accepted rules of international law, ratified international treaties and laws, which shall, as such, be exercised directly. Under the Constitution, “[P]rovisions on human and minority rights shall be interpreted to the benefit of promoting values of a democratic society, pursuant to the valid international human and minority rights standards and the practices of international institutions supervising their implementation.”

On the normative plane, the Republic of Serbia has accepted the highest standards regarding the respect, protection and promotion of human rights at the national, European and international levels alike. It has assumed all the obligations in that respect as a member of the United Nations and other international organisations, as well as a member of the Council of Europe (since 2003), wherefore the case law of the European Court of Human Rights (hereinafter: ECtHR) and other international institutions monitoring the realisation of human rights is of utmost relevance to the Constitutional Court and its fulfilment of its duty to directly protect human rights and freedoms in the constitutional appeal review procedure. Indeed, constitutional appeals account for most of the Constitutional Court’s caseload (90%).

In its decisions on a wide variety of cases within its remit, the Constitutional Court has often referred to the legal views of the ECtHR, wherefore its references to the ECHR are not purely declarative; they reflect the Court’s perception of the ECHR as a “living instrument” providing increasingly broad and comprehensive protection of the guaranteed human rights and freedoms.

The Constitutional Court has been referring to other sources of international law in its jurisprudence as well. They include, notably, the Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Vienna Convention on Contract Law, the CoE Framework Convention on the Protection of National Minorities, a large number of International Labor Organization conventions, etc.

Various international instruments (resolutions, recommendations, charters, etc) adopted by individual bodies of universal and regional organisations also include rules relevant in terms of human rights protection. Although these enactments are not international treaties in the true sense of the word and are not formal sources of law in terms of the Constitution of the Republic of Serbia, the

¹ This Summary was prepared by Dr. Bosa Nenadić, in cooperation with Ljiljana Lazić and Verica Jakovljević.

authority of the bodies that adopted them has led to their general acceptance as rules of international law. For these reasons, the Constitutional Court has in its reviews of individual disputed legal issues referred also to the individual recommendations of the CoE Committee of Ministers and the documents of the CoE Venice Commission and of other bodies. The Constitutional Court has in some cases also referred to the *acquis communautaire*, although it does not have a formal and legal obligation to enforce it given that the Republic of Serbia is not a member of the European Union (it was granted the status of candidate country on 1 March 2012).

It needs to be underlined that the Constitutional Court has been relying on the above-mentioned and other sources of international law and on other international documents both in its reviews of the constitutionality of laws and other general enactments and in its adjudication of other matters within its jurisdiction (appeals of the non-reappointed judges and public prosecutors in the general election/reappointment procedure conducted within the general judicial reform in the Republic of Serbia; motions to prohibit civil associations; and, notably, in its reviews of numerous constitutional appeal cases). Notably, particularly since 2008, the Court has rendered a number of decisions revoking legal provisions in which it cited not only the Constitution but Convention as well. The development of the Constitutional Court's case law is characterised by increasing reliance on views expressed in the ECtHR's case law on outstanding constitutional law issues of exceptional relevance (such as the character of the mandates of the National Assembly deputies and councillors in the local self-government assemblies, the assignment of mandates to deputies and councillors, the so-called „blank resignation“ institute, the judicial appointment and dismissal procedures, the right to institute administrative disputes in specific areas, the inviolability of means of communication, the founding and registration of media outlets, prevention of conflicts of interests of officials, protection of the right to property, etc). The Constitutional Court has also invoked the provisions of the International Covenant on Civil and Political Rights (e.g. regarding the founding and registration of media outlets) and the International Labor Organization conventions (e.g. with respect to the right to work and free choice of occupation, the organisation of trade unions and specific legal protection accorded workers' representatives, the right to maternity leave and right to benefits, et al).

The alignment of the Constitutional Court's jurisprudence with that of the ECtHR has particularly come to the fore in its reviews of constitutional appeals, that is, in the procedure of protecting the individual human rights and freedoms guaranteed by the Constitution and the ECHR. The Constitutional Court particularly took into account the ECtHR's developed case law on the protection of the right to life, the right to liberty and security, the inviolability of physical and psychological integrity, the right to a fair trial, particularly a trial within a reasonable time, the respect for private and family life and other rights violated in civil, criminal and administrative proceedings. The effectiveness of constitutional appeals is illustrated by the fact that the Constitutional Court has upheld 2982 constitutional appeals finding violations of individual rights and freedoms from 2006, when this institute was introduced, to 2012.

The Constitution lays down that Constitutional Court decisions shall be final, enforceable and generally binding, which means that the national courts must abide by and enforce them as well. The Constitutional Court cites ECtHR case law the most often and attaches the utmost relevance to familiarising the other national courts with its judgments. On the other hand, the national courts most often refer to the Constitutional Court decisions citing the ECtHR judgments that are relevant to the cases ruled on by other national courts.

The Constitutional Court has been following the jurisprudence of other European and non-European constitutional courts as well. Language is not the primary consideration of the Constitutional Court when it refers to the jurisprudence of other constitutional courts. However, the fact that the legislations of the former member-republics of the erstwhile Socialist Federal Republic of Yugoslavia originated from the same legal order and have retained numerous common legal institutes has been relevant given that the same constitutional legal issues have been arising with respect to specific contested legislative solutions, wherefore the jurisprudence of the constitutional courts in the region is more similar. Given that the Constitutional Court of the Republic of Serbia has borne in mind the legal views expressed in the jurisprudence of other constitutional courts in its reviews of a large number of cases within its remit, it may be concluded that the decisions of the foreign constitutional courts have had specific impact on the jurisprudence of the Constitutional Court of the Republic of Serbia as well.

The Constitutional Court has been cooperating with other constitutional courts within the following international bodies and professional associations: members of the Conference of European Constitutional Courts, the Association of Francophone Constitutional Courts (ACCPUF), and the World Conference on Constitutional Justice and other organisations and its representatives have been taking part in the conferences and other events organised by these bodies and organisations. On the bilateral plane, the Constitutional Court has been directly cooperating with over twenty constitutional courts. The Court has been attaching particular importance to its regional cooperation with the constitutional courts of states created in the territory of the former Yugoslavia, which recognise regional cooperation as an important mechanism for harmonising the practices of protecting human rights and freedoms in the region.

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