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The Constitutional Court of the Republic of Latvia
Latvijas Republikas Satversmes tiesa

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XVith Congress of the Conference of European Constitutional Courts in 2014

Cooperation of Constitutional Courts in Europe – Current Situation and Perspectives

Questionnaire for the national reports

I. Constitutional courts between constitutional law and European law

1. Is the constitutional court obliged by law to consider European law in the performance of its tasks?

The Constitutional Court, as any other institution, is obliged to consider European law in the performance of its tasks, even though the law does not envisage it *expressis verbis*.

All institutions applying the law abide by all regulatory enactments that are in force in the Republic of Latvia. In addition, it must be noted that the Civil Procedure Law, the Criminal Procedure Law, as well as the Administrative Procedure Law contain direct references to the European Union law: Section 5(1) of the Civil Procedure Law provides that “[c]ourts shall adjudge civil matters in accordance with laws and other regulatory enactments, international agreements binding upon the Republic of Latvia and the legal norms of the European Union”.

Section 2(2) of the Criminal Procedure Law provides that “[i]n the application of the legal norms of the European Union, the case law of the Court of Justice of the European Union shall be taken into account [..]”.

Section 15(1) of the Administrative Procedure Law provides that “[i]n administrative proceedings, institutions and courts shall apply external regulatory enactments, the legal norms of international law and the European Union (Community), as well as the general principles of law”. Section 15(4) establishes that “[t]he legal norms of the European Union shall be applied in accordance with their place in the hierarchy of legal force of external regulatory enactments. In applying the legal norms of the European Union, institutions and courts shall take into account the European Court of Justice case law.”

The Constitutional Court applies international norms, *inter alia*, the norms of the European Union Law, in clarifying the content of the fundamental rights set out in the Constitution. The obligation of the State to consider the international commitments in the field of human rights follows from Article 89 of the Constitution, which provides that the State shall recognise and protect fundamental human rights in accordance with the Constitution, laws and international agreements binding upon Latvia. This Article shows that the legislator’s purpose had been to achieve harmony between the human

rights included in the Constitution and international legal norms¹.

The international norms of human rights and the practice of their application on the level of constitutional law serves as a means of interpretation, to establish the content and scope of the fundamental rights and the principles of a judicial state, to the extent this does not lead to decreasing or restricting of the fundamental rights included in the Constitution².

2. Are there any examples of references to international sources of law, such as

- a) the European Convention on Human Rights,
- b) the Charter of Fundamental Rights of the European Union,
- c) other instruments of international law at European level,
- d) other instruments of international law at international level?

Article 89 of the Constitution provides that “[t]he State shall recognise and protect fundamental human rights in accordance with this Constitution, laws and international agreements binding upon Latvia.” Hence, the Constitutional Court, in construing the norms of human rights, rather frequently refers to international sources of law.

The Constitutional Court, in accordance with its jurisdiction defined by law, may have to adjudicate cases, which directly pertain to the European Convention on Human Rights, the Charter of Fundamental Rights of the European Union or other instruments of international law at European and international level³.

- 1) The Constitutional Court has examined the compliance of the contested norms with the Convention (European Convention on Human Rights) in a number of cases (for example, in the case No. 2010-55-0106, 2010-20-0106, 2009-13-0106, 2008-09-0106, 2005-03-0306, etc.). Simultaneously, the Constitutional Court, in revealing the content of the human rights, frequently refers to the Convention (European Convention on Human Rights) and the case law of the European Court of Human Rights.

¹ Judgement by the Constitutional Court in Case No. 2004-18-0106 (13.05.2005), Para 5 of the Findings; Judgement in Case No. 2007-11-03 (17.01.2008.) Para 10.

² Judgement by the Constitutional Court in Case No. 2004-18-0106 (13.05.2005), Para 5 of the Findings, and Judgement by the Constitutional Court in Case No. 2007-03-01 (18.10.2007), Para 11.

³ The Constitutional Court, *inter alia*, adjudicates cases on:

- 1) compliance of international agreements signed or entered into by Latvia (also until the confirmation of the relevant agreements in the Saeima) with the Constitution [Constitutional Court Law, Section 16(2)];
- 2) compliance of other regulatory enactments or parts thereof with the norms (acts) of higher legal force [Constitutional Court Law, Section 16(3); the Constitutional Court also adjudicates cases on the compliance of the contested norms with the norms of the Convention];
- 3) compliance of Latvian national legal norms with those international agreements entered into by Latvia that is not in conflict with the Constitution. [Constitutional Court Law, Section 16(6)].

For example, in 2009 the Constitutional Court referred to Article 2 of the Convention in one judgement, to Article 3 – in two judgements, to Article 6 – in four judgements, and Article 8 – in three judgements, etc. (the total number of judgements made by the Constitutional Court in 2009 was 24). During the same year, the Constitutional Court in its judgements referred to 56 rulings by the ECHR.

- 2) References by the Constitutional Court to the Charter of Fundamental Rights of the European Union have been comparatively less frequent. For example, in 2010 the Constitutional Court made references to the Charter of Fundamental Rights of the EU in three judgements⁴, interpreting the right to own property (Article 17 of the Charter), the right to social security (Article 35 of the Charter) and the right to the protection of personal data (Article 8 of the Charter), in 2009 – in two judgements, and in 2008 – also in two judgements.
- 3) In a number of cases the Constitutional Court has examined the compatibility of the contested norms with European-level international documents, for example, compliance with European Charter of Local Self-Government (2009-04-06), European Convention on the Legal Status of Children Born Out of Wedlock (2008-32-0106, 2004-02-0106).

The rulings by the Constitutional Court contain references to various European-level international documents. For example:

- a) European Convention on Nationality (adopted on 14.05.1997),
 - b) European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (adopted on 26.11.1987, in force in Latvia from 01.06.1998),
 - c) European Charter of Local Self Government (adopted 15.10.1985, in force in Latvia from 01.04.1997), etc.
- 4) In a number of cases the Constitutional Court has examined the compliance of the contested norms with international-level international documents, for example, compliance with International Covenant of Civil and Political Rights (2005-13-0106), Vienna Convention on the Law of Treaties (2004-18-0106), Convention on Facilitation of International Maritime Traffic (2004-01-06), Convention Concerning Forced Labour and Convention Concerning the Abolition of Forced Labour (2003-13-0106), International Convention on the Simplification and Harmonization of Customs Procedures (2002-05-010306).

⁴ In 2010 75 cases were initiated by the Constitutional Court, 33 judgements were passed.

The rulings by the Constitutional Court contain references to various international-level international documents.

For example, to the following UN documents:

- a) Convention on the Rights of the Child (adopted on 20.11.1989, in force in Latvia from 14.05.1992.),
- b) International Covenant on Economic, Social and Cultural Rights (adopted 16.12.1966, in force in Latvia from 14.07.1992.),
- c) International Covenant on Civil and Political Rights (adopted on 16.12.1966, in force in Latvia from 14.07.1992),
- d) Universal Declaration of Human Rights (10.12.1948, in force in Latvia from 24.03.1992.),
- e) Convention on the Rights of Persons with Disabilities (adopted on 13.12.2006.),
- f) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) (adopted on 25.06.1998),
- g) The Convention on Biodiversity (adopted on 05.06.1992),
- h) Framework Convention on Climate Change (adopted on 09.05.1992),
- i) Vienna Convention on the Law of Treaties (adopted on 23.05.1969), etc.

3. Are there any specific provisions of constitutional law imposing a **legal** obligation on the constitutional court to consider decisions by European courts of justice?

The law does not *expressis verbis* set out the obligation of the Constitutional Court to consider the rulings by the European court.

As noted in the answer to the 1st question, the Criminal Procedure Law contains the following direct reference: Section 2(2) of the Criminal Procedure Law provides that “[i]n the application of the legal norms of the European Union, the case law of the Court of Justice of the European Union shall be taken into account [..]”.

Also Section 15(4) of the Administrative Procedure Law establishes: “[..] In applying the legal norms of the European Union, institutions and courts shall take into account European Court of Justice case law.”

Article 89 of the Constitution provides: “The State shall recognise and protect fundamental human rights in accordance with this Constitution, laws and international agreements binding upon Latvia.”

The Constitutional Court has noted in a number of its rulings that the obligation of the State to abide

by the international commitments in the field of human rights follows from this Article.

It has been concluded in case law of the Constitutional Court that when establishing the content of the fundamental rights included in the Constitution, it is necessary to take into account international commitments of Latvia in the field of human rights. International norms of human rights and practice of their application serve as means of interpretation on the level of constitutional law to determine the contents and scope of fundamental rights and the principle of a state governed by the rule of law, as far as it does not lead to decrease or limitation of fundamental rights included in the Constitution (2004-18-0106). Consequently, if it follows from provisions of the European Convention on Human Rights and their interpretation in the ECHR case law that the human rights enshrined in the Convention apply to the particular situation, then such a situation usually pertains to the scope of the respective human rights enshrined in the Constitution.

4. Is the jurisprudence of the constitutional court influenced **in practice** by the jurisprudence of European courts of justice?

As seen in the answer to the previous question, the case law of European courts does not directly influence the practice of the Constitutional Court. However, as noted above, the Constitutional Court has directly defined a higher level of protection of fundamental rights in the Constitution than in the international documents, *inter alia*, the European Convention on Human Rights.

The Constitution cannot envisage ensuring or protection of fundamental rights on a smaller scope than envisaged by any of international human rights acts. A different conclusion would be incompatible with the idea of a state governed by the rule of law, included in Article 1 of the Constitution, since the recognition of human rights and fundamental freedoms as the highest value of the State is one of the main manifestations of a state governed by the rule of law⁵.

The Constitutional Court has noted that the European Convention on Human Rights and the Constitution are founded upon similar values and principles⁶.

5. Does the constitutional court in its decisions regularly refer to the jurisprudence of the Court of Justice of the European Union and/or the European Court of Human Rights? Which are the most

⁵ Judgement of 14 September 2005 by the Constitutional Court in Case No. 2005-02-0106 (14.09.2005) Para 10.

See <http://www.satv.tiesa.gov.lv/?lang=2&mid=19>

⁶ Judgement by the Constitutional Court in Case No. 2008-35-01 (07.04.2009) Para 18.8.

See <http://www.satv.tiesa.gov.lv/?lang=2&mid=19>

significant examples?

No, it is not a regular practice. The Constitutional Court refers to the case law of European courts, if it is necessary for the adjudication of a case, interpretation of a norm, revealing the content of a particular right.

It is not possible to point out the most significant example in connection with the use of the ECHR or EC case law. For example, in 2010 the Constitutional Court in its judgements made 64 references to the rulings by the ECHR and 14 rulings by the EC.

6. Are there any examples of divergences in decisions taken by the constitutional court and the European courts of justice?

The only cases, when the case law of the Constitutional Court and the European courts differs is, when the Constitution envisages a higher level of protection compared to international documents, *inter alia*, the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The Constitution, by its nature, cannot envisage lesser provision of fundamental rights or their protection compared to any other international act of human rights. A conclusion to the contrary would collide with the idea of a judicial state, included in Article 1 of the Constitution, since one of the main manifestations of a judicial state is the recognition of human rights and fundamental freedoms as the highest value for the state⁷.

For example, the constitutional guarantees with regard to the right to fair court are broader and more favourable for a private persons compared to the guarantees of the Convention.⁸

Likewise, the Constitution also ensures more extensive protection of social rights than the Convention.

⁷ Judgement of 14 September 2005 by the Constitutional Court in Case No. 2005-02-0106 (14.09.2005), Para 10.

⁸ Article 92 of the Constitution envisages that everyone may defend his or her rights and lawful interests. Thus, the norm of the Constitution has been defined more broadly than the norms of the Convention, which emphasize that the right to fair trial applies to cases of civil law or criminal law nature. The article of the Constitution imposes upon the State the obligation to ensure fair court not only in civil and criminal cases, but also in all cases, the dispute of which pertains to individual rights and lawful interests that a person has and which follow from external legal norms, *inter alia*, also in relations that follow from implementing the functions of public administration, as well as constitutional issues.

Article 92 of the Constitution envisages a broader scope of the right to appeal compared to the Convention. i.e., this Article envisages the right to appeal a court's judgement in all cases of criminal law nature and also in cases on administrative violations (not only in severe criminal cases, as envisaged by the Convention).

European Court of Human Rights has established in its case law that, for example, tax disputes fall outside the scope of Article 6(1) of the Convention, unless the dispute concerns binding tax surcharges or other sanctions, likewise, cases on the arrival, expulsion or extradition of foreigners, election cases, etc. Article 92 of the Constitution does not limit the right to judicial proceedings to certain fields of law. It pertains not only to "criminal cases" and "civil cases", but also to any "rights and lawful interests" of a person.

The Constitutional Court has concluded that the right to live in benevolent environment, like other fundamental rights included in Chapter 8 of the Constitution, directly and immediately applicable⁹. The principle of equality included in constitution is seen as a norm, which acts directly¹⁰. Thus, the aforementioned norm of the Constitution contains the prohibition of discrimination included in the 12th Additional Protocol to the Convention (even though Latvia has not yet ratified this Protocol). The experience gained thus far shows that there could be cases, when a Constitutional Court, examining the compliance of restrictions to fundamental rights with the Constitution, arrives at results, which differ from the conclusions made by the European Court of Human Rights regarding the same case (for example, *Paksas Case*¹¹, also language issues). This result does not mean that the national court, invoking the requirements of its normative regulation, would try to justify failure to meet international commitments. A situation like that is objectively possible, because the European court and the constitutional courts have different jurisdictions. The Constitutional Court assesses the compliance with not only the norms of human rights, but also with the constitutional order and fundamental principles envisaged by the Constitution. The Court has to strive for balance between the interests of an individual and the interests of a society (even a whole nation). In order that the concrete normative regulation would not violate the Constitution, there can be cases when, on the national level, a broader evaluation of circumstances (also – historical) is necessary and also possible. The circle of constitutional values to be protected is broader.

7. Do other national courts also consider the jurisprudence of European courts of justice as a result of the constitutional court taking it into consideration in its decisions?

Other national courts consider the case law of European courts, independently from the extent to which it is considered and used by the Constitutional Court.

Moreover, the answer to the 1st question already notes that the Civil Procedure Law, the Criminal Procedure Law, as well as the Administrative procedure Law contain direct reference to the obligation to consider the law of the European Union.

The Senate Department of Civil Cases of the Supreme Court in Case No. SKC-67/2007 has confirmed the obligation of courts to take as the basis the double nature of the judicature of the European Court of Justice: this obligation follows both from the primary EU law [Article 220 of the Treaty Establishing the European Community (former 164)], an additionally this has been confirmed in Latvian national legal norms.

⁹ Judgement by the Constitutional Court in Case No 2006-09-03 (08.02.2007) , Para 11.

¹⁰ Judgement by the Constitutional Court in Case No. 2001-06-03 (22.02.2002), Para 3 of the Findings.

¹¹ *Paksas v. Lithuania* [GC], no. [34932/04](#), § 108, ECHR 2011

The Constitutional Court, in its turn, in its Judgement of 17 January 2007 in Case No. 2007-11-03 has noted that “upon ratification of the Treaty on Accession of Latvia to the European Union, the European Union law has become integral part of the Latvian legal system. Therefore, legal acts of the European Union and interpretation of these enshrined in the case law of the European Court of Justice should be taken into account when applying national regulatory enactments.”

8. Are there any examples of decisions by European courts of justice influenced by the jurisprudence of national constitutional courts?

Looking from the vantage point of the constitutional courts, it is impossible to say, whether any judgement by the Constitutional Court has influenced a judgement by a European court, however, European courts have used the judgements by constitutional courts to substantiate their reasoning.

Thus, for example, in the Case *Paksas v. Lithuania*¹² ECHR, in substantiating the inadmissibility of such a restriction, which is not subject to any time-limit, referred to the Constitutional Court of Latvia, which, as the ECHR holds, under similar conditions had noted that “the Constitutional Court had observed that a time-limit should be set on the restriction”.

There are also cases, in which the ECHR refers to the judgements by the Constitutional Courts, noting that the Constitutional Court has already examined the issue.

As regards the exhaustion of national legal remedies, the ECHR considers the Constitutional Court as an effective remedy and a mandatory stage to be passed through before examination by the ECHR.

II. Interactions between constitutional courts

1. Does the constitutional court in its decisions refer to the jurisprudence of other European or non-European constitutional courts?

Yes, the Constitutional Court refers to the rulings made by the constitutional courts and supreme courts of other states.

The most frequent references made in the rulings by the Constitutional Court are to the rulings made by the Lithuanian Constitutional Court and the German Federal Constitutional Court. This can be

¹² *Paksas v. Lithuania* [GC], no. [34932/04](#), § 108, ECHR 2011

108. The Court also notes that, in finding no violation in the *Ždanoka* case, it attached considerable weight to the fact that, firstly, the Latvian parliament periodically reviewed the provision in issue and, secondly, the Constitutional Court had observed that a time-limit should be set on the restriction. It further concluded that the Latvian Parliament should keep the restriction under constant review, with a view to bringing it to an early end, and added that such a conclusion was all the more justified in view of the greater stability which Latvia now enjoyed, *inter alia* by reason of its full European integration, indicating that any failure by the Latvian legislature to take active steps to that end might result in a different finding by the Court (see *Ždanoka*, *loc.cit.*).

explained not only by the availability of information, but also by the similarities in the judicial system (Germany) or similar legal issues (Lithuania).

For example, in 34 judgement made by the Constitutional Court in 2010, it has referred to the following rulings made by the constitutional courts of other countries:

- 1) The Constitutional Court of Austria – once,
- 2) The Constitutional Court of Belgium - four times,
- 3) The Constitutional Court of Lithuania – twice;
- 4) The Constitutional Tribunal of the Republic of Spain – once;
- 5) The German Federal Constitutional Court – twice.

In 20 judgements made in 2008:

- 1) The Constitutional Court of Lithuania – once,
- 2) The State Court of Lichtenstein– once,
- 3) The Supreme Court of Switzerland – once,
- 4) The German Federal Constitutional Court – four times.

2. If so, does the constitutional court tend to refer primarily to jurisprudence from the same language area?

The Latvian language is spoken only in Latvia, hence, the indicated criterion is inapplicable. Undoubtedly, there are more possibilities to use the case law of those states, which prepare judgements in one of the languages, used or understood by the justices and the employees of the Constitutional Court. Therefore the practice to translate all or at least the most significant rulings and publish them on the home page of the court is very positive. The judgements, which are accessible in English, Russian or German are predominantly used, the judgements, which are available in French, are also used, though less frequently. Convenient accessibility and codification of rulings is also of great importance. In this regard the most extensively used database is CODICES, provided by the Venice Commission.

3. In which fields of law (civil law, criminal law, public law) does the constitutional court refer to the jurisprudence of other European or non-European constitutional courts?

The fact, whether the Constitutional Court refers to the jurisprudence of other European or non-European constitutional courts, and the frequency of such references does not depend upon the

specific field of law, to which the ruling pertains.

If during the preparation of the case it is found that the constitutional courts of other states have dealt with a similar problem and that the reasoning included in their rulings can be used to substantiate and strengthen the position of the Constitutional Court, then the Constitutional Court includes in the judgement a reference to the jurisprudence of other European or non-European constitutional courts.

4. Have decisions of the constitutional court noticeably influenced the jurisprudence of foreign constitutional courts?

The Constitutional Court does not record and, due to objective reasons, cannot record, whether its rulings influence the jurisprudence of other constitutional courts.

It is impossible to establish, if and to what extent a court judgement has influenced a judgement by the court of another state, however, for example, the Judgement by the Czech Constitutional Court in *Lisbon Treaty Case* (case “Treaty of Lisbon II”, 03-11-2009, Pl. US 29/9) contains a similar substantiation to the one included in a similar case, examined by the Constitutional Court¹³. Moreover, the Judgement by the Czech Constitutional Court also contains a reference to the judgement by the Constitutional Court.

Only the judges of the Czech Constitutional Court can comment, whether in the particular case the judgement by the Constitutional Court of Latvia influenced the Czech judgement in any way or if the Czech Constitutional Court used the reference to the judgement by Latvian Constitutional Court to reinforce its reasoning, moreover, only to the extent that would not disclose the secret of court deliberations.

5. Are there any forms of cooperation going beyond the mutual acknowledgement of court decisions?

The use of the jurisdiction of other countries is possible to the extent allowed by the publicly accessible information and the proficiency of the respective language, or availability of the rulings in translation.

Information about the jurisdiction of the courts of other states, reasoning used in rulings is frequently obtained in meetings with the judges and employees of the constitutional courts of other states, during bilateral visits and at international conferences. Moreover, quite frequently information is gained in informal communication, not from formal presentations.

¹³ Judgement of 7 April 2009 by the Constitutional Court in Case No. 2008-35-01

III. Interactions between European courts in the jurisprudence of constitutional courts
1. Do 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 an impact on the jurisprudence of the constitutional court?
Thus far the aforementioned has not had an impact upon the jurisprudence of the Constitutional Court.
2. How does the jurisprudence of constitutional courts influence the relationship between the European Court of Human Rights and the Court of Justice of the European Union?
Thus far we have had no possibility to establish that the jurisdiction of the constitutional courts had influenced the relationship between the European Court of Human Rights and the Court of Justice of the European Union?
3. Do differences between the jurisprudence of the European Court of Human Rights, on the one hand, and the Court of Justice of the European Union, on the other hand, have an impact on the jurisprudence of the constitutional court?
Until now the Constitutional Court has not heard a case, which had been influenced by the differences between the jurisprudence of the European Court of Human Rights, on the one hand, and the Court of Justice of the European Union, on the other hand.