



XVI^e Congrès de la Conférence des Cours constitutionnelles européennes
XVIth Congress of the Conference of European Constitutional Courts
XVI. Kongress der Konferenz der Europäischen Verfassungsgerichte
XVI Конгресс Конференции европейских конституционных судов

**Rapport national / National report / Landesbericht /
национальный доклад**

RÉPUBLIQUE DE MACÉDOINE / REPUBLIC OF MACEDONIA /
REPUBLIK MAZEDONIEN / РЕСПУБЛИКА МАКЕДОНИЈА

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

Anglais / English / Englisch / английский



CONSTITUTIONAL COURT OF THE REPUBLIC OF MACEDONIA

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

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

Skopje, September 2013

CONTENT

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?	4
2. Are there any examples of references to international sources of law?	8
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?	13
4. Is the jurisprudence of the constitutional court influenced in practice by the jurisprudence of European courts of justice?	13
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 significant examples?	16
6. Are there any examples of divergences in decisions taken by the constitutional court and the European courts of justice?	16
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?	16
8. Are there any examples of decisions by European courts of justice influenced by the jurisprudence of national constitutional courts?	19

<p>II. INTERACTIONS BETWEEN CONSTITUTIONAL COURTS</p>	
<p>1. Does the constitutional court in its decisions refer to the jurisprudence of other European or non-European constitutional courts?</p>	19
<p>2. If so, does the constitutional court tend to refer primarily to the jurisprudence from the same language area?</p>	20
<p>3. In which fields of law (civil law, criminal law, public law) does the constitutional court most often refer to the jurisprudence of other European or non-European constitutional courts?</p>	20
<p>4. Have decisions of the constitutional court noticeably influenced the jurisprudence of foreign constitutional courts?</p>	20
<p>5. Are there any forms of cooperation going beyond the mutual acknowledgement of court decisions?</p>	20
<p>III. INTERACTIONS BETWEEN EUROPEAN COURTS IN THE JURISPRUDENCE OF CONSTITUTIONAL COURTS</p>	
<p>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?</p>	21
<p>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?</p>	
<p>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?</p>	

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?

1. 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 citizen the highest European standards for the protection of human freedoms and rights. The Republic of Macedonia has been actively cooperating with all organs and bodies of the Council of Europe and fulfilling its commitments arising from the conventions it has acceded.

The constitutional legal ground for the implementation of the Council of Europe Conventions including the European Convention on Human Rights and Freedoms 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 accepted norms of international law* (Article 8 paragraph 1 line 11); then 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 in addition to the Constitution and laws, the international treaties are also an integral part of the internal legal order, that is, a source of law and in accordance with the

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 independent state.

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.

From the two cited provisions of the Constitution also arises the hierarchical position of international treaties with regard to the Constitution of the Republic of Macedonia and laws. Given that under the provision of Article 118 of the Constitution international treaties may not be changed by law, it arises that they are hierarchically higher than the domestic laws, but lower than the Constitution of the Republic of Macedonia.

As to the competence of the Constitutional Court in view of international treaties, Article 110 of the Constitution should be mentioned under which the *Constitutional Court of the Republic of Macedonia decides, intern alia, on the conformity of laws with the Constitution and on the conformity of other regulations and collective agreements with the Constitution and laws*. In the so-far constitutional court case-law there has been a domination of the stance that given that the said provision does not envisage an express competence of the Court in view of international treaties, neither may they be the subject-matter of assessment before the Constitutional Court, nor a criterion for assessment of the conformity of laws with international treaties. For these reasons, in the so far constitutional court case-law the Constitutional Court has not engaged itself at all in their meritorious appraisal and the initiatives filed in this sense have been dismissed on grounds of incompetence. The Constitutional Court considers that given that under the Constitution it is the Assembly of RM that is the competent authority to conclude international treaties, it also appraises the conformity of international treaties with the Constitution, in the procedure for ratification of international treaties.

2. 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 (for instance, the Law on Interception of Communications, Law on Life Sentence, Law on Public Rallies, Law on Freedom of Expression of Lawyers, etc.). See in detail on this question in the answer to question no.2.

The answer to the question whether the Constitutional Court may base its decision contained only in the European Convention for the Protection of Human Rights and Fundamental Freedoms must be sought in the sense of the principle of constitutionality and legality. In this context, it is important to

underline that under the Constitution of the Republic of Macedonia, the sense and meaning of the principle of constitutionality and legality, the protection of which falls within the competence of the Constitutional Court of the Republic of Macedonia, is *inter alia* to ensure agreement of the laws with the Constitution and agreement of the other regulations and general acts with the Constitution and laws, but not with the European Convention or the other international acts that the Republic of Macedonia has ratified or acceded to.

Accordingly, the only framework and limits of the Constitutional Court in its appraisal of the conformity of the laws with the Constitution and the conformity of the other regulations and acts with the Constitution and laws are the Constitution and laws of the Republic of Macedonia. Thus, the Constitutional Court is normatively-legally limited to base its decisions on constitutionality and legality only and exclusively on the provisions of the European Convention. However, given that most of the rights under the Convention are guaranteed by the Constitution, the Constitutional Court has a practice to establish, that is, declare in the reasoning of its decisions that the contested law, other regulation or general act is in conformity or not also with the provisions of the Convention, in addition to the Constitution or laws of the Republic of Macedonia. Thus, the provisions concerned from the Convention is used as an additional and stronger argument for the constitutionality, that is, legality of the act that is the subject-matter of appraisal before the Court, and not as the only basis and argument for the decision-making.

An important step forward in the implementation of the European Convention by the Constitutional Court was made with its Decision U.br.31/2006 of 1 November 2006, which repealed a provision of the Law on Public Rallies restricting the holding of a public rally. In this Decision the Court indicated that the constitutional rights should be interpreted in the context of the European Convention on Human Rights, and that the European Convention and the case-law of the European Court for Human Rights should not only be an additional argument, but also a criterion for interpretation of the Constitution:

"Starting from Article 8 paragraph 1 line 1 of the Constitution, under which basic freedoms and rights of the individual and citizen recognised in international law and defined by the Constitution are one of the fundamental values of the constitutional order, taking into consideration the meaning of the European Convention for the Protection of Human Rights and Fundamental Freedoms not only as part of the internal legal order of the Republic of Macedonia but also because of the general principles it rests upon and promotes, the Court found that the interpretation of Article 21 of the Constitution should rest upon these general legal principles".

In this case, in the building of the argumentation the proportionality test was used which is used by the Court in Strasbourg,

whereby the Court found that the contested provision: *“is not in conformity with the Constitution, and in conjunction with the European Convention for the Protection of Human Rights and Fundamental Freedoms.”*

3. In view of the law of the European Union, it should be pointed out that the Republic of Macedonia is not a member of the European Union, and in this pre-accession period the general principles of the European Union law for direct effect and supremacy of that law in the internal order do not apply. That means that 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. Such an agreement, that is, instrument governing the relations between the Republic of Macedonia and the European Union is the Stabilisation and Association Agreement².

However, even in connection with this Agreement, the dominating stance in the Constitutional Court is that the Constitutional Court is not competent to appraise the conformity of the laws and bylaws with the SAA.

With its **Resolution U.br.132/2005** of 16 November 2005, the Constitutional Court dismissed an application for consideration of the conformity of provisions from the Law on Excise Duties with the Stabilisation and Association Agreement (“Official Gazette of the Republic of Macedonia” no.28/2001). The applicant believed that the contested provisions of the Law on Excise Duties were in contradiction with the Stabilisation and Association Agreement which expressly prohibited introducing new customs duties and measures having the same effect on the products being imported from the European Union. The Court dismissed the application with reasoning that it was not competent to appraise the conformity of the laws with international agreements.

Similarly, in view of the appraisal of the accordance of the bylaws with the SAA, with its **Resolution U.br.5/2005** of 16 November 2005 the Constitutional Court dismissed the application requesting appraisal of the conformity of a bylaw with the Stabilisation and Association Agreement and in connection with the quantitative restrictions on the import and the measures having the same effect on the import of the Republic of Macedonia for products originating from the Community.

The Court indicated that: *“Given that the application requests from the Constitutional Court to appraise the conformity of the contested bylaw with provisions of an international agreement, that is, the Stabilisation and Association Agreement between the Republic of Macedonia and the European Union and its members, ratified by Law, the Constitutional Court is*

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

not competent to appraise the conformity of the bylaw with the content of the international agreement. According to the Court, the Constitutional Court is not competent to appraise the content of international agreements, and thereby the conformity of the bylaw with international agreements for a reason that the appraisal of the conformity of international agreements with the Constitution is made by the Assembly of the Republic of Macedonia in the procedure for ratification of the international agreement, which following its ratification becomes an integral part of the internal legal order, and thereby directly enforceable.”

As regards the secondary legislation of the Union (directives, regulations), in its decisions the Constitutional Court increasingly invokes different directives and regulations, that is, there is a tendency in the Constitutional Court of the Republic of Macedonia of so-called “Euro-friendly” interpretation of domestic legislation, that is, interpretation of domestic harmonised legislation in accordance with the European rules transposed into the domestic law.

For instance, in its **Resolution U.br.13/2009** of 18 November 2009 it pointed out that: *“The Republic of Macedonia as a candidate country for European membership and signatory to the Stabilisation and Association Agreement between the Republic of Macedonia and the European Community and its member states (“Official Gazette of the Republic of Macedonia” no.28/2001), pursuant to Article 68 of the Agreement, is obliged to harmonise the legislation of the Republic of Macedonia with that of the European Union. In this direction, for the purposes of accomplishing a satisfactory level of harmonization with the European legislation, the Directive 2004/18/EC of 31 March 2004 has been accordingly implemented in the content of the text of the Law on Concessions and Other Public Private Partnerships.”*

- 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?**

As noted in the answer to the previous question, in the performance of its functions, that is, competences for abstract constitutional court control and in the direct constitutional protection of certain rights of the citizens the Constitutional Court of the Republic of Macedonia applies international sources of law, most often the European Convention for the Protection of Human Rights and Fundamental Freedoms (*for more concrete examples see the answer to the question no.4*).

In its work the Constitutional Court also invokes and makes references to provisions from the **universal instruments** on human rights, such as the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights³, the International Pact on Economic, Social and Cultural Rights⁴, the Convention on the Rights of the Child⁵, the conventions of the International Labour Organisation, Geneva Conventions of 1949, the statutes of the Tribunal in the Hague⁶ and the International Criminal Court⁷, the United Nations Convention against Transnational Organised Crime⁸ and others.

From the international instruments at **regional that is European level** in its so-far work the Constitutional Court has applied the following conventions in addition to the European Convention on Human Rights: the European Convention on the Rights of the Child⁹, the European Convention on Citizenship¹⁰, the European Charter for Regional and Minority

³ In its Decision **U.br.37/2002** of 12 September 2002 the Constitutional Court found that the provision in the Law on Defence envisaging a possibility for alternative military service on grounds of conscientious objections which was supposed to be established in a special procedure before a special body and within certain term, was unconstitutional. In this case the Constitutional Court invoked the provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the European Convention on Human Rights.

⁴ In its case **U.br.139/2005** of 21 December 2005 the Constitutional Court found that the provisions for damage compensation in case of unlawful termination of employment were not in conformity with the Constitution and referred to the provisions of the International Covenant on Economic and Social Rights and the European Social Charter regarding the right of employees to a wage.

⁵ In its Resolution **U.br.28/2008** of 23 April 2008, regarding the constitutionality of life imprisonment sentence, in view of the international regulation on life imprisonment sentence the Constitutional Court referred to the provisions in Article 37 of the Convention on the Rights of the Child prohibiting pronouncement of a life sentence as a punishment for minor offenders. In the case **U.br.134/2010** of 18 May 2011, the Constitutional Court referred to Article 15 paragraph 1 of the Convention on the Rights of the Child in connection with the right of the child to freedom of association and freedom of peaceful assembly. In its case **U.br.132/2007** of 12 December 2007, in connection with the right of compulsory secondary education of the children, and in **U.br.192/2011** of 30 January 2002 in connection with the right to education of children with developmental problems.

⁶ The Constitutional Court referred to the provisions of the Geneva Conventions, Statute of the International Criminal Court for former Yugoslavia and the Statute of this Court in the case **U.br.169/2002** of 19 February 2003 in the appraisal of the constitutionality of the Law on Amnesty in connection with the competence to prosecute serious violations of international humanitarian law. (Later, in **U.br.155/2007** of 19 December 2007 and **U.br.158/2011** of 31 October 2012).

⁷ In its Resolution **U.br.28/2008** of 23 April 2008 the Constitutional Court referred to the provisions of the Roman Statute of the International Criminal Court in connection with the punishment life imprisonment envisaged for serious violations of international humanitarian law.

⁸ In its case **U.br.191/2004** of 4 May 2005, the Constitutional Court referred to the provisions of the United Nations Convention against Transnational Organised Crime in connection with the application of special investigating measures.

⁹ In its Resolution **U.br.133/2004** of 9 February 2005, appraising the constitutionality of a larger number of provisions from the Law on the Family, the Constitutional Court referred to the European Convention on the Rights of the Child regarding the authorisation of the Centre for Social Work for the development and special protection of the children.

¹⁰ In its Resolution **U.br.76/2004** of 29 September 2004, the Constitutional Court referred to the provisions in the European Convention on Citizenship regarding the loss of citizenship *ex lege* due to fraud, false data or cover-up.

Languages¹¹, the Framework Convention for the Protection of National Minorities, the European Social Charter¹², the European Charter for Local Self-Government, the European Convention on Child Adoption¹³, Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and Financing Terrorism¹⁴, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse¹⁵, and others.

In a number of cases of the abstract control the Constitutional Court has also made reference to 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. For instance, Recommendation (2004) 6 on the improvement of domestic remedies¹⁶, Recommendation (2000) 2 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights¹⁷, Recommendation 2007/14 regarding the legal status of non-governmental organisations in Europe¹⁸, and others.

¹¹ In its case **U.br.23/1997** the Constitutional Court referred to the provisions of a number of international instruments for the protection of national minorities regarding the right to instruction and education in the mother-tongue of the nationalities at the Faculty of Pedagogy. In this case the Court took into consideration the international instruments related to the rights of the members of nationalities to education and the prohibition of discrimination in education, such as: the UNESCO Convention against Discrimination in Education; the European Charter on Regional and Minority Languages; the Framework Convention on the Protection of National Minorities, and the CSCE Document on Human Dimension in Copenhagen, of 12 June 1990.

¹² In the case **U.br.139/2005**, the Court referred to the provisions of the European Social Charter regarding the right to fair remuneration.

¹³ In the said case **U.br.133/2004**, the Constitutional Court referred to the provisions of the European Convention on Child Adoption regarding the collection of data on the adoptive parent and regarding the so-called period of adaptation in adoption, and to the European Convention on Citizenship regarding the inter-state adoption and repercussions on the child's citizenship in this type of adoption.

¹⁴ In the case **U.br.26/2011** of 27 June 2012 the Constitutional Court referred to this Convention in the appraisal of several provisions from the Criminal Procedure Code related to the interim freezing, seizure of property advantage and withholding funds and bank accounts.

¹⁵ In its Resolution **U.br.86/2012** of 9 May 2013, with which the Constitutional Court initiated proceedings for appraisal of the constitutionality of some of the provisions in the Law on Special registry for Persons Sentenced with a Final Judgment for Criminal Offences of Sexual Abuse of Minors and paedophilia.

¹⁶ In its case **U.br.104/2008** of 20 November 2008 the Constitutional Court found that the introduction of the remedy for the protection of the right to a trial within a reasonable time within the competence of the Supreme Court is in conformity with the Constitution, whereby the Court took into consideration also the **Recommendation (2004) 6 on the improvement of domestic remedies**.

¹⁷ In its case **U.br.35/2006** of 13 September 2006 the Constitutional Court found that the introduction of a new extraordinary remedy – repetition of the procedure following a final judgment of the European Court of Human Rights in Strasbourg – was in conformity with the Constitution. Thereby it took into consideration also **Recommendation (2000) 2 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights**.

¹⁸ In its case **U.br.134/2010** of 18 May 2011 in the appraisal of the constitutionality of provisions from the Law on Associations and Foundations related to the right of minors to establish and be members of associations the Constitutional Court took into consideration **Recommendation 2007/14 regarding the legal status of non-governmental organisations in Europe**.

In the abstract control of the constitutionality of laws, in particular those in the field of elections and electoral right, the Constitutional Court of the Republic of Macedonia also refers to documents adopted by the Council of Europe **Venice Commission**, such as for instance the “Code of Good Practice in Electoral Matters¹⁹”.

While the Republic of Macedonia is not a member of the European Union and therefore the Constitutional Court is not formally-legally 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**).

In the case **U.br.26/2009** of 15 April 2009, the Court appraised the provision in the Law on Electronic Communications, which relates to the right to legal protection against the resolution of the Director of the Agency for Electronic Communications. The Court indicated to the following:

“Although the directives of the European Union as a supranational law are not part of the legal order, that is are not a source of law in the Republic of Macedonia, and as such are not the subject-matter of appraisal before the Constitutional Court, the Court, nevertheless, in support of its legal standing took into consideration Directive 2002/21/EC of the European Parliament and of the Council of Europe of 7 March 2002 regarding a common regulatory framework for electronic communication networks and services (Framework Directive)...”

In its **Resolution U.br.13/2009** of 18 November 2009, it noted that: *“The Republic of Macedonia as a candidate country for European membership and Signatory to the Stabilisation and Association Agreement between the Republic of Macedonia and the European Community and its member states (“Official Gazette of the Republic of Macedonia” no.28/2001), pursuant to Article 68 of the Agreement is obliged to harmonise the legislation of the Republic of Macedonia with that of the European Union. In this direction, for the purposes of accomplishing a satisfactory level of harmonisation with the European law, the Directive 2004/18/EC of 31 March 2004 has been accordingly implemented in the content of the text of the Law on Concessions and Other Public Private Partnerships.”*

¹⁹ In the case **U.br.48/2012** of 20 November 2012, the Constitutional Court analysed the issue of equality of the electoral right in the context of the voting of the Diaspora. Thereby it referred to the **Code of Good Practice in Electoral Matters of the Venice Commission**, as well as in the case **U.br.61/2011** of 18 May 2011, in the appraisal of the constitutionality of the provision from the Electoral Code regarding the size of the constituencies and the allowed difference in the number of voters.

Other examples in which the Constitutional Court has referred to certain EU directives and regulations are the following:²⁰

-
- ²⁰ - In the case **U.br.162/2009** of 15 September 2010, in the appraisal of the constitutionality and legality of a bylaw on the prices of electricity the Constitutional Court referred to the **Treaty of the Establishment of the Energy Community**, ratified by the Assembly of the Republic of Macedonia with the Law on Ratification of the Treaty for the Establishment of the Energy Community ("Official Gazette of the Republic of Macedonia", no.28/2001), and thereby to the European Parliament and Council of Europe Directive 2003/54/EC of 26 June 2003, the provisions of which relate to the establishment, competences and manner of work of the regulatory body in the energy field.
- In the case **U.br.130/2012** of 26 December 2012, in the appraisal of the constitutionality of provisions in the Law on Transportation in Road Traffic, it referred to the **European Union Directive regulating the transport of passengers and goods in road traffic**.
- In its case **U.br.30/2012** of 27 June 2012, in the appraisal of the constitutionality of certain provisions in the Law on Public Procurements, the Constitutional Court noted that the Republic of Macedonia, being a candidate country for membership in the European Union and signatory to the Stabilisation and Association Agreement between the European Union and the Republic of Macedonia pursuant to Article 68 is obliged to harmonise that is adjust its national legislation with the European law, among other things with the corresponding regulations governing the field of public procurements, that is with **Directive 2004/18/EC** of 31 March 2004.
- In the case **U.br.207/2010** of 21 December 2011, in the appraisal of the constitutionality of the provisions in the Law on Weapons the Constitutional Court referred to **Directive on control of the acquisition and possession of weapons 91/477/EEC**, adopted by the European Council on 18.06.1991, with regard to the conditions that the individual should meet to procure weapons.
- In its case **U.br.48/2011** of 2 November 2011, in the appraisal of the constitutionality of provisions in the Law on Energy, the Constitutional Court referred to international regulation on the market for natural gas – **EU Directive on internal market in natural gas no.2003/55**, which the Republic of Macedonia is obliged to implement in its national legislation based on the Treaty for the establishment of the Energy Community ("Official Gazette of the Republic of Macedonia" no.59/2006, and the **Directive on internal market in natural gas 2009/73 of "the third energy package"**.
- In its case **U.br.174/2010** of 14 September 2011 and **U.br.148/2011** of 19 October 2011, appraising the constitutionality of the provisions on mediation in the Law on Working Relations it referred to the European Union legislation regarding mediation, that is to **European Parliament and Council Directive (2004/0251)**.
- In the case **U.br.100/2011** of 6 July 2011, in the appraisal of the constitutionality of provisions in the Law on Insurance Supervision, the Constitutional Court referred to **Council of Europe Directive 2002/92 EC on insurance mediation** (9 December 2002).
- In the case **U.br.160/2010** of 29 June 2011, in which provisions from the Law on Labour Safety and Health were appraised related to maids, the Constitutional Court referred to **Council Directive 89/391/EEC** adopted on 12 June 1989 regarding the introduction of measures to stimulate the improvement of labour safety and health of workers in their jobs which was adopted pursuant to Article 118-a of the Treaty on establishing the European Economic Community.
- In the case **U.br.187/2009** of 24 February 2010, in the appraisal of the constitutionality of the provisions in the Law on Compulsory Insurance in Traffic relating to international insurance, that is, the introduction of the so-called green card, the Constitutional Court also referred to provisions from the **Directive 72/166/EEC** of 24 April 1972 (updated with the **Directives 84/5/EEC**, 90/232/EEC and 2000/26/EEC), and **Recommendation no.5** adopted on 25 January 1949 by the Road Transport Subcommittee of the Europe Economic Committee of the United Nations.
- In the case **U.br.212/2009** of 27 January 2010, in the appraisal of the constitutionality of provisions in the Law on Transportation in Road Traffic, it referred to **European Union Directive regulating the transportation of passenger and goods in road traffic**.
- In the case **U.br.13/2009** of 18 November 2009, in the appraisal of the constitutionality of provisions in the Law on Concessions and other Public-Private Partnerships, the Court referred to **Directive 2004/18/EC** of 31 March 2004, regarding the provisions related to the documentation and conditions required for bidders or candidates to meet in the conduct of the procedure for concession/public-private partnership.
- In the case **U.br.38/2009** of 9 September 2009, the Constitutional Court appraised the constitutionality of provisions in the Law on Value-Added Tax and in view of the measures for

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?

As noted above, pursuant to the provision in Amendment XXV to the Constitution of the Republic of Macedonia, courts adjudicate on the basis of the Constitution and laws and international treaties ratified in accordance with the Constitution. Accordingly, the case-law that is precedent law is not a source of law in the Republic of Macedonia. For these reasons 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.

4. Is the jurisprudence of the constitutional court influenced in practice by the jurisprudence of 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. This case-law of the Constitutional has evolved gradually.

suppression of tax frauds, that is, prevention of evasion of the tax system, it referred to **Directive 2006(112) EC** of the Council of Europe of 28 November 2006.

- In the case **U.br.236/2008** of 17 June 2009, appraising the constitutionality of provisions in the Law on Energy it referred to the **Treaty on the establishment of the Energy Community** and to the **EC Directives nos.2003/54 and 2003/55** and to **Regulation no.1228/2003** of the EC of 26 June 2003, **regarding the status and competences of regulatory bodies in this sphere.**

- In the case **U.br.97/2008** of 8 October 2008, appraising provisions in the Law on Excise Duties the Constitutional Court referred to **Structural Directive of the European Union on Excise Duties on alcohol**, regarding the possibility for exemption from excise duties for the producers of wine and beer for domestic use and non-commercial purposes.

- In the case **U.br.180/2007** of 16 January 2008, appraising the constitutionality of several provisions in the Law on Building Products the Constitutional Court found that they implemented **Directive 89/106 EEC** related to the building products in domestic legislation and that the contested law harmonized for the first time after the Republic of Macedonia had become independent the matter in the field of construction with the European Union law, and created conditions for the placement of domestic building products on European market.

- In the case **U.br.190/2004** of 19 October, appraising provisions in the **Law on Public Procurements the Court referred to Directive 2002/17/EC** of 31 March 2004).

- In the case **U.br.30/2005** of 9 November 2005, the Constitutional Court appraised the constitutionality of several provisions in the Law on Personal Data Protection and found that the status of the Directorate for Personal Data Protection was regulated in a way that was compatible with **Directive 94/EC and 95/EC** of the European parliament and the Council of Ministers of the European Community regarding the protection of data in view of processing personal data and free flow of such data.

The Constitutional Court has directly referred to the case-law of the European Court of Human Rights (*Leger v. France*, Judgment of 11 April 2006, *Kafkaris v. Cyprus*, judgment of the Grand Chamber of 12 February 2008) in its **Resolution U.br.28/2008** of 23 April 2008, with which it did not initiate a procedure for the appraisal of the constitutionality of the provisions in the Criminal Code related to life sentence. In this case, in its appraisal on the conformity of the life sentence with the constitutional guarantees on the right to life, prohibition of torture and other cruel and degrading treatment and punishment and the right to freedom and safety of personality the Constitutional Court applied the same criteria that had been applied by the European Court for Human Rights in Strasbourg, and those were the criterion on sentence reductability, that is whether the person sentenced to this penalty had prospects to be on parole or not. The Constitutional Court of the Republic of Macedonia found that: *“With the very fact that the person sentenced to this penalty may apply for release on parole, under the conditions specifically envisaged in the Criminal Code, that is after serving 15 years of the prison term, it arises that the person sentenced to this penalty is not upfront deprived of any possibility whatsoever, that is a chance, to be released from further serving of the sentence“*. Consequently, it found that life sentence was in accordance with the Constitution.

In the said resolution, in addition to the European Convention on Human Rights and the case-law of the European Court of Human Rights the Constitutional Court also referred to and analysed a number of other international instruments, such as: the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights, Roman Statute of the International Criminal Court, Standard Minimum Rights for Treatment of Sentenced Persons, Council of Europe’s Committee of Ministers Recommendation (76) 2 adopted in 1976 on the treatment of prisoners sentenced to long-term prison sentences, Committee of Ministers Recommendation 2003(22) to member states on release on parole and Recommendation 2003 (23) on management by prison administrations of life sentence and persons sentenced to long-term sentences. The resolution also contained an analysis of comparative solutions in a number of European countries in which there is life sentence.

In its case **U.br.194/2008** of 25 March 2009 the Constitutional Court appraised the constitutionality of the provision in the Civil Proceedings Code which stipulated a possibility to punish parties and their lawyers for misuse of process rights. The Constitutional Court referred to the cases of *Kiprianou v. Cyprus* and *Nikula v. Finland* and to the general principles of freedom of expression of lawyers and the possibilities for its restriction. The Court indicated that:

“From the analysis of the case-law of the European Court of Human Rights it arises that this Court, pursuant to Article 10 paragraph 2 of

the Convention, allows the existence of legitimate grounds to restrict freedom of expression, among other things also for the purposes of maintaining the authority and impartiality of the judiciary. The legitimacy of the restrictions was assessed by the Court through the appraisal, in this concrete case, whether they are necessary in a democratic society, that is, whether they met a necessary social need and whether the measures were proportionate.”

In the case **U.br.139/2010** of 15 December 2010 the Court annulled several provisions of the Law on Electronic Communications relating to secret interception of communications, applying the case-law of the European Court of Human Rights in view of the criteria for the assessment of the violation of privacy (Article 8 of the Convention) through interception of communications. In the reasoning of the Decision the Court indicated:

“Starting from Article 8 paragraph 1 line 1 of the Constitution, and taking into consideration the meaning of the European Convention for the Protection of Human Rights and Fundamental Freedoms not only as part of the internal legal order of the Republic of Macedonia but also because of the general principles on which it is based and it promotes, the Court indicates that the interpretation of the relevant constitutional provisions should be based on these general legal principles contained in the Convention and interpreted in the case-law of the Court for Human Rights in Strasbourg, which is actually a stance of the Court already expressed in the decision U.br.31/2006 of 1 November 2006 and the resolution U.br.28/2008 of 23 April 2008.

In this concrete case, with regard to the violation of privacy committed through the interception of communications, the Court in Strasbourg already has a rich case-law which is summarised in the case 25198/02, Iordachi and Others v. Moldova. In the said case, the Court in Strasbourg confirmed its stance previously expressed in the decision on the admissibility in the case of Weber and Saravia v. Germany and once again summarised its case-law about the requirement for a legal predictability in this field as follows :“In its case-law about secret measures for interception, the Court established the following minimum protection measures that should be envisaged in the legislation in order to avoid misuses of the power: the nature of the offences for which an order for interception may be issued; definition of the categories of persons that are subject to telephone wiretapping; restriction of the time period for telephone wiretapping; the procedure that should be followed for examination, use and storage of the data obtained; the measures of caution that should be taken when submitting the data to other parties; and the circumstances in which the recordings may or must be erased or the tapes be destroyed”.

Hence, the contested provisions of the Law, owing to the imprecision of the expressions used, the lack of further regulation with regard to the conditions and procedure in which there may be an exception to the

guaranteed constitutional right of privacy, according to the assessment of the Court pose a real threat for a self-willed and arbitrary interference of the state bodies with the private life and correspondence of the citizens which may have a negative impact on the honour and repute of the citizens without thereby having a real ground in the Constitution and laws. As a result of such situation, the contested provisions may not be interpreted as provisions guaranteeing the fundamental freedoms and rights of the individual and citizen recognised in international law and defined by the Constitution as a fundamental value of the constitutional order of the Republic of Macedonia.”

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 significant examples?

In view of the jurisprudence of the European Court of Human Rights see the answer to the previous question.

In view of the Court of Justice of the European Union, the Constitutional Court of the Republic of Macedonia in its decisions has not still referred to its jurisprudence.

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

There is no such an example.

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?

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 laws.

Namely, the Law on Courts, within the frameworks of the competence of the Supreme Court of the Republic of Macedonia, 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".

The said provision (Article 35 paragraph 1 item 6 of the Law on Courts) was the subject-matter of appraisal before the Constitutional Court. With its Resolution **U.br.104/2008** of 20 November 2008 the Court found it to be in conformity with the Constitution of the Republic of Macedonia.

The applicant considered that under the Constitution in the Republic of Macedonia the precedent law that is the case-law as a source of law was not accepted, that the courts adjudicated on the basis of the Constitution, laws and international treaties ratified in accordance with the Constitution, and that contrary to the Constitution the contested provision gave competence to the Supreme Court to decide on applications for violation of the right to a trial within a reasonable time based on the case-law of the European Court of Human Rights.

Starting from the subsidiarity of the European system for the protection of human rights established with the European Convention on Human Rights the Constitutional Court assessed that: *"the said legal regulation does not negate the Convention but on the contrary, it meets the positive obligation of the state defined in Article 13 of the Convention... Furthermore, the Court found that from the aspect of the competence of the Supreme Court of the Republic of Macedonia in the contested Article 35 paragraph 1 item 6 of the Law to decide in accordance with the rules and principles established by the European Convention on Human Rights and Fundamental Freedoms and starting from the case-law of the European Court of Human Rights, it is not disputed that the Convention is part of the internal legal order of the Republic of Macedonia, but the text of the Convention is inseparably connected with the interpretation by the European Court of Human Rights. In the application of the Convention the Supreme Court will certainly not reach its real implementation if it keeps to the textual context and its interpretation beyond the jurisprudence of the Court in Strasbourg. That practically means that if the domestic court interprets the provision of the Convention as written down without taking care of and considering the case-law of the Court in Strasbourg and its principled interpretative stands, it will not be able to ensure the protection of the right"*.

With this indication the Constitutional Court practically gave a clear direction to the courts that the application of the European Convention on Human Rights presupposed the use of the case-law of the Court in Strasbourg, and all with a view to efficient protection of the rights, guaranteed under the Convention, by the domestic courts.

Furthermore, in addition to the other extraordinary remedies the Civil Proceedings Act (regulating the procedure before the court in civil

matters) envisages also the remedy of Repetition of the proceedings based on a final judgment by the European Court of Human Rights in Strasbourg (Article 400).

The provision stipulates that: “When the European Court of Human Rights finds a violation of a human right or the fundamental freedoms envisaged in the European Convention on the Protection of Human Rights and Fundamental Freedoms and in the Additional Protocols thereto, which have been ratified by the Republic of Macedonia, the party may, within 30 days, from the date the judgment of the European Court of Human Rights became final file an application to the court in the Republic of Macedonia that tried in the first instance in the procedure in which the decision violating some human right or fundamental freedom had been made, for modification of the decision that had violated that right or fundamental freedom”.

The obligation of the courts to apply the jurisprudence of the Court in Strasbourg in the decision-making on this remedy arises from paragraph 3 of Article 400 which defines that: “In the repetition of the procedure the courts shall be obliged to respect the legal stances expressed in the final judgment of the European Court of Human Rights finding a violation of the human rights and fundamental freedoms.”

A similar obligation for the courts is also formulated in one of the more recent laws (adopted towards the close of 2012, which decriminalised defamation and insult) – the Law on Civil Liability for Defamation and Insult. This Law guarantees freedom of expression and information, whereby Article 2 paragraph 2 stipulates that restrictions of the freedom of expression and information shall be regulated legally with the determination of express conditions for civil liability for insult and defamation, in accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms and the case-law of the European Court of Human Rights. The said Law also defines an obligation for the court to apply the European Convention and case-law of the European Court of Human Rights. Namely, Article 3 of the Law prescribes that if with the application of the provisions of this Law the court cannot decide on certain issue connected with the establishment of a liability for defamation or insult, or if it considers that there is a legal gap or conflict of the provisions of this Law with the European Convention for the Protection of Human Rights and Fundamental Freedoms, on the basis of the principle of its supremacy over the domestic law, it shall apply the provisions of the European Convention for the Protection of Human Rights and the stances of the European Court of Human Rights contained in its judgments.

The said legal provisions enable direct application of the rules and case-law of the European Court of Human Rights by the regular courts in the Republic of Macedonia and they are a pioneering step for more free entry of the case-law as a source of law also in the Republic of Macedonia. Given

the current cases against the state before the European Court, and its case-law, it is quite certain that in the near future a need will be imposed before the legislative branch for a major step forward in the direction of establishing case-law (domestic and international) as a source of law in RM, which will normatively confirm the legal reality and case-law in which the circle of international sources of law has been significantly expanded.

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

Such an example is not known.

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?

In the final text of its decisions the Constitutional Court of the Republic of Macedonia does not refer to foreign case-law, that is, to the jurisprudence of the other constitutional courts in Europe and the world. However, in the preparation of the case, in the paper submitted to the session of the Court, the Constitutional Court quite often gives a comparative presentation 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 base of constitutional court case-law of the Venice Commission – the **CODICES** base in which the Constitutional Court of the Republic of Macedonia also participates, and from time to time the Constitutional Court also addresses, through the liaison officer of the Venice Commission, requests to the **Forum** of the Venice Commission, through which answers are obtained on the legislation and constitutional court case-law of the other constitutional courts in Europe and wider. In case when the Constitutional Court requests data and information through the Forum of the Venice Commission, enclosed with the paper for the session upon the concrete case is also a presentation and analysis of the information obtained on the foreign legislation and foreign case-law.

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

The language is not a decisive criterion as to the foreign constitutional court case-law that the Constitutional Court will consider in the clarification of certain disputable matters. An exception when the Constitutional Court refers to the jurisprudence from the countries of former Yugoslavia (Slovenia, Croatia, Serbia, Montenegro, etc.) but not because of the similarity of languages but due to the fact that these states share common legal traditions and have very similar legislation in a number of fields (in particular in criminal and civil matters).

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

In all fields of law, and especially in the field of human rights law.

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

There is no such information.

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

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. In 2010 the Constitutional Court of the Republic of Macedonia was the host of the round table on the theme "Independence of Constitutional Courts" which was held in Ohrid.

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. A memorandum of Cooperation was signed with the Constitutional Court of the Republic of Turkey within which there is a closer cooperation through mutual study visits of judges and expert associates from the two courts.

III. INTERACTIONS BETWEEN EUROPEAN COURTS IN THE JURISPRUDENCE OF CONSTITUTIONAL COURTS

4. 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?

5. 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?

6. 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?

Given that the Republic of Macedonia is still not a member of the European Union and the fact that the Constitutional Court does not still refer to the jurisprudence of the European Court of Justice, no answer may be given to the above questions.