



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 D'ALBANIE / REPUBLIC OF ALBANIA /
REPUBLIK ALBANIEN / РЕСПУБЛИКА АЛБАНИЯ

The Constitutional Court of the Republic of Albania
Gjykata Kushtetuese e Republikës së Shqipërisë

Anglais / English / Englisch / английский

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?

Republic of Albania is not yet a member of the European Union. But, Albanian Parliament has ratified the Stabilization and Association Agreement, which has entered into force on April 1st, 2009 (after having been ratified by 25 countries that were EU members at the moment of signature of SAA).

Constitutional Court is not obliged by law to consider European law, but it respects the general standards and principles, as well as the obligations deriving from this agreement.

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?*

a. In its decisions, Constitutional Court of the Republic of Albania has often been referred to the European Convention on Human Rights, particularly with regard to adjudication of individual complains alleging the breach of article 6 of the Convention related to the right to fair trial. Since 2005, Constitutional Court has been referred to the European Convention on Human Rights for more than 150 cases.

b. Constitutional Court of the Republic of Albania has been referred to the Charter of Fundamental Rights of the European Union only in one case (decision no.47, dated 07.11.2011, regarding *ne bis in idem* principle).

c. In its decisions, Constitutional Court of the Republic of Albania has been referred to the following instruments of international law at international and European level:

1. Convention of the Council of Europe “On mutual assistance in criminal matters”
 - D. no.41, dated 29.12.2005
 - D. no.14, dated 17.04.2007
 - D. no. 23, dated 23.07.2009
2. Code of Good Practice in Electoral Matters of the Venice Commission
 - D. no.1, dated 07.01.2005
 - D. no.32, dated 21.06.2010
3. European Charter of Local Self-Government
 - D. no.29, dated 21.12.2006
 - D. no.3, dated 02.02.2009

- D. no.22, dated 05.05.2010
- D. no.48, dated 08.10.2011
- 4. European Charter on the statute for judges
 - D. no.25, dated 05.12.2008
 - D. no.20, dated 09.07.2009
 - D. no.26, dated 24.07.2009
 - D. no.31, dated 02.12.2009
 - D. no.11, dated 06.04.2010
- 5. European Convention on the Transfer of Proceedings in Criminal Matters
 - D. no.23, dated 23.07.2009
- 6. Stabilization and Association Agreement with the European Community
 - D. no.24, dated 24.07.2009
- 7. Directive 2006/43/EC of the European Parliament and of the Council “On statutory audits of annual accounts and consolidated accounts”
 - D. no.3, dated 05.02.2010
- 8. Recommendation nr. R (2000) 21, of the Committee of Ministers of the Council of Europe
 - D. no.7, dated 12.03.2010
- 9. Recommendation nr. R (94) of the Committee of Ministers of the Council of Europe “On independence, efficiency and role of judges”
 - D. no.11, dated 06.04.2010
- 10. Charter of core principles of the European legal profession – the Council of Bars and Law Societies of Europe (CCBE)
 - D. no.7, dated 12.03.2010
- 11. Second Additional Protocol to the European Convention on Extradition dated 17.03.1978
 - D. no.21, dated 29.04.2010
- 12. European Convention on the Rights of the Child
 - D. nr.12, dated 15.04.2011
 - D. nr.35, dated 25.07.2011
- 13. Resolution (75) 11 of the Committee of Ministers of the Council of Europe “On the criteria governing proceedings held in the absence of the accused”
 - D. no.45, dated 10.10.2011
- 14. Resolution of the Parliamentary Assembly of the Council of Europe no.1335 (2003)
 - D. no.52, dated 01.12.2011
- 15. Resolution of the Parliamentary Assembly of the Council of Europe no.1735 (26.1.2006)
 - D. no.52, dated 01.12.2011
- 16. Framework Convention for the Protection of National Minorities of the Council of Europe
 - D. no.52, dated 01.12.2011

d. With regard to the other instruments of the international law at international level, the Constitutional Court of the Republic of Albania has been referred to:

- 1. International Covenant on Civil and Political Rights
 - D. no.35, dated 20.12.2005
 - D. no.14, dated 17.04.2007
 - D. no.11, dated 02.04.2008
 - D. no.4, dated 25.02.2009
 - D. no.20, dated 09.07.2009
 - D. no.1, dated 25.01.2010

- D. no.9, dated 23.03.2010
- 2. Convention relating to the status of refugees, Geneva
D. no.4, dated 28.02.2006
- 3. International Covenant on Economic, Social and Cultural Rights
D. no.9, dated 23.03.2010
- 4. The Universal Declaration of Human Rights
D. no.11, dated 02.04.2008
D. no.20, dated 09.07.2009
D. no.9, dated 23.03.2010
- 5. United Nations Convention on the Law of the Sea
D. no.15, dated 15.04.2010
- 6. Vienna Convention on the Law of Treaties, dated 23.05.1969
D. no.15, dated 15.04.2010
- 7. Basic Principles on the Role of Lawyers – Congress of United Nations, 1990
D. no.7, dated 12.03.2010
- 8. Convention against Torture and other Inhuman and Degrading TreatmentS
D. no.14, dated 03.05.2011

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?

For the time being, there are no specific rules sanctioning the obligation of the Constitutional Court to consider decisions by the European Court of Justice, due to the fact that Albania is not yet a member of the European Union. Irrespective of this, Constitutional Court can make part of its decision-making principles and standards elaborated by the European courts of Justice, as long as they are related to specific cases under consideration by the Court.

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

Constitutional Court of the Republic of Albania has been rarely referred to the jurisprudence of European courts of justice. In practice, the Constitutional Court jurisprudence has been referred only by its decision no.10, dated 19.03.2008 regarding the principle of free economic activity.

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 its jurisprudence, Constitutional Court has been regularly referred to the jurisprudence of the European Court of Human Rights. Since 2000, it has been referred to this jurisprudence in approximately 80 cases. The most important examples are as follows:

- Decision 41 dated 19.07.2012 refers to decisions Gurov v. Moldova, Posokhov v. Russia, Fedotova v. Russia; DMD GROUP, A.S. v. Slovakia
- Decision 52 dated 5.12.2012 refers to decisions Marper v. United Kingdom, Coster v. United Kingdom, Faber v. Hungary, Nada v. Switzerland

- Decision 52 dated 1.12.2011 refers to decisions Burghartz v. Switzerland, Christine Goodwin v. United Kingdom, Niemietz v. Germany, Rotaru v. Rumania, S. and Marper v. United Kingdom, Ciubotaru v. Moldavia
- Decision 47, dated 7.11.2011 refers to decisions Von Hoffen v. Lichtenstein, Hozee v. Netherlands, Ferrantelli and Santangelo, Wettstein v. Switzerland
- Decision 20, dated 01.06.2011 refers to Xheraj v. Albania
- Decision 4, dated 23.02.2011 refers to Raimonondo v. Italy, Agosi v. United Kingdom, Arcuri and other v. Italy
- Decision 9, dated 23.03.2010 refers to Ždanoka v. Latvia, Adamson v. Latvia, Turek v. Slovakia, Matyjek v. Poland, Luboch v. Poland, Bobek v. Poland and Žičkus v. Lithuania
- Decision 30, dated 17.06.2010 refers to Somogyi v. Italy, Sejdovic v. Italy
- Decision 27, dated 26.05.2010 refers to Driza v. Albania
- Decision 18, dated 23.04.2010 refers to Albert and Le Compte v. Belgium, Kreuz v. Poland
- Decision 17, dated 23.04.2010 refers to Sporrang & Lönnroth v. Sweden (1982), and Lithgow v. United Kingdom (1986)
- Decision 12, dated 14.04.2010 refers to Gurepka v. Ukraine, Bendenoun v. France, Engel v. Netherlands and Janosevic v. Sweden

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

As previously mentioned, Albania is not yet a member of the European Union and there are no specific rules sanctioning the obligation of the Constitutional Court to consider decisions by the European Court of Justice. That is the reason why Constitutional Court of the Republic of Albania has been very rarely referred to it. Until now, it has been referred only once to the jurisprudence of the European courts of justice, namely in its decision no.10, dated 19.03.2008, and in this case no divergences were observed. Moreover, there do not exist any specific researches or studies relating to any examples of divergences in decisions taken by the constitutional court and the European courts of justice.

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?

National courts refer mainly to domestic legislation and very rarely to the European Court of Human Rights, but in no case to the European courts of Justice.

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

In Albania, there are no examples of decisions by European courts of justice influenced by the jurisprudence of the Constitutional Court of the Republic of Albania.

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 its jurisprudence, the Constitutional Court of the Republic of Albania has been referred also to the jurisprudence of other European or non-European constitutional courts. The most prominent cases are as follows:

D. no.14, dated 05.07.2005
D. no.30, dated 01.12.2005
D. no.32, dated 02.12.2005
D. no.34, dated 20.12.2005
D. no.20, dated 11.07.2006
D. no.22, dated 26.07.2006
D. no.24, dated 10.11.2006
D. no.23, dated 08.06.2007
D. no.26, dated 13.04.2007
D. no.35, dated 10.10.2007
D. no.40, dated 16.11.2007
D. no.10, dated 19.03.2008
D. no.4, dated 25.02.2009
D. no.1, dated 25.01.2010
D. no.9, dated 23.03.2010
D. no.15, dated 15.04.2010
D. no.21, dated 29.04.2010
D. no.32, dated 21.06.2010
D. no.4, dated 23.02.2011
D. no.19, dated 01.06.2011
D. no.20, dated 01.06.2011
D. no.44, dated 07.10.2011
D. no.48, dated 08.10.2011

Constitutional Court of the Republic of Albania has been referred primarily to decisions by the Constitutional Court of Italy, Federal Constitutional Court of Germany, Constitutional Council of France, constitutional courts of eastern European countries etc.

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

The only Constitutional Court which drafts its decision in the same language as the Constitutional Court of Albania is the Constitutional Court of the Republic of Kosovo. Until now, the jurisprudence of the Constitutional Court of Albania has not yet been referred to decisions by the Constitutional Court of Kosovo.

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?

Constitutional Court of Albania has been referred to the jurisprudence of other European or non-European constitutional courts in the fields of civil law, criminal law and public law.

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

Decisions by the Constitutional Court of Albania has not noticeably influenced the jurisprudence of other constitutional courts, while the vice versa is true. Constitutional Court of the Republic of Albania has been referred to decisions by the Constitutional Court of Italy, Federal Constitutional Court of Germany, Constitutional Council of France, constitutional courts of eastern European countries.

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

The forms of cooperation between the Constitutional Court of Albania and the other constitutional courts are of different kinds: conferences, workshops, bilateral meetings and activities, round tables etc. Our court has signed bilateral cooperation agreements in fields of common interest with the Constitutional Courts of Italy and Kosovo.

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?

The jurisprudence of European Court of Human Rights has an impact on the jurisprudence of the Albanian Constitutional Court, with the view to establish and preserve the constitutional standards.

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?

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?

European Court of Human Rights has a significant impact on the jurisprudence of the Albanian Constitutional Court, and in some cases it has led to changes in its usual practice.

For example, with regard to non-compliance with a final court decisions. Until 2006, Constitutional Court did not consider the non-compliance with a final court decisions as part of the fair trial. Consequently, these types of complaints were considered as inadmissible, as they did not fall under the jurisdiction this court. This category of cases appears to have been involved only recently in the practice of the Constitutional Court, namely after the judgment of ECHR in the case *Qufaj v. Albania (judgment dated 18.09.2004)*, in which the appellant alleged the breach of article 6 of the European Convention on Human Rights due to the failure of Albanian state to comply with a final court decision. In this case, the Court has reiterated that *“the fair trial rules in Albania should have been interpreted in a way that guaranteed an effective remedy for an alleged breach of the requirement under Article 6 § 1 of the Convention.”* In the Court’s opinion, therefore, the Constitutional Court was competent to deal with the applicant’s complaint relating to non-compliance with a final decision as part of its jurisdiction to secure the right to a fair trial.”

Given this attitude of ECHR, the Constitutional Court changed its practice, accepting to review such complaints, and considering the compliance with a final court decision as part

of requirements to fair trial, i.e. as part of its jurisdiction. The first decision that marked this change in the constitutional court jurisprudence was D. no.6, dated 31.03.2006.