The Co-operation of Constitutional Courts in Europe – Current Situation and Perspectives

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General report and Outline of Main Issues

Introduction

The General Report is based on a three-part questionnaire, which 41 courts responded to in their national reports. For a variety of reasons, the responses to the individual questions differ in their degrees of detail; by way of introduction, three of these reasons are briefly referred to below.

First of all, differences in the scope of jurisdiction account for differences in the format and intensity of co-operation. Second, answers to the third group of questions are bound to be less extensive, as these questions are of marginal relevance to the jurisprudence of the constitutional courts. The third reason to be mentioned in this context is that only 28 Member States of the Council of Europe and Contracting Parties to the European Convention on Human Rights are also Member States of the European Union, which means that the question of the relationship between the jurisprudence of the European Court of Human Rights and the Court of Justice of the European Union raised under the heading of the third sub-theme only arises for courts of this group of states.

This brief outline, which follows the structure of the national reports, summarises the most important results presented in much greater detail in the extensive version of the General Report to be published in the Congress Proceedings together with the national reports.

1. Interactions between constitutional law and European law

a) Constitutional framework

All national reports converge in stating that today constitutional courts are no longer limited to the interpretation of national constitutional law in isolation. For a variety of reasons, the impact of European law on national constitutional law, as well as the interactions between European law and national law, has increased in recent years. This holds, above all, for the area of fundamental rights, but it also applies to other aspects of constitutional law determined or influenced by international conventions at regional level, particularly conventions concluded within the framework of the Council of Europe.

For the constitutional courts of the Member States of the European Union, Union law is the primary factor of influence. In a number of states, the primacy of Union law and its direct applicability constitute the decisive factors in the description of the legal obligation of constitutional courts to follow European law in their jurisprudence.

The protection of fundamental rights, above all, is an area in which constitutional courts are confronted not only with fundamental rights enshrined in the national constitution, but also with guarantees deriving from documents of different origin and quality, the impact of which depends on the legal system concerned. First and foremost among these documents is the European Convention on Human Rights. Several courts refer to the ECHR as the source of international law cited most frequently in their decisions. Almost all other courts regularly refer to the guarantees of the ECHR as well.

In a number of states, international law is not part of the standard applied by the constitutional court in the exercise of its judicial review function. For other courts, European law and international law do not form part of the standard applied by the constitutional court, but national law is interpreted in conformity with European law and international law. Numerous courts favour an interpretation that is open to international law and European law, i.e. they refer to European law (regional international law and/or Union law) to support their interpretation of national legal provisions.

The German Federal Constitutional Court refers to so-called “hinge provisions” (*Scharniernormen*) in the German Basic Law, deriving from them an indirect obligation to take European and international law into account to the extent that it supersedes, re-shapes or influences the provisions of national law. On that basis, the Federal Constitutional Court interprets the Basic Law as being open to European law and to international law. This, in turn, implies a self-imposed obligation of the court to give wide-ranging regard to Union law and international law and to the decisions handed down by the supranational and international courts called upon to interpret such law. Thus, conflicts between international law and national law are avoided.

Other courts refer to the fact that the national constitution contains a commitment to the generally recognized rules of international law, thus declaring them to be an integral part of the national legal system. Moreover, treaties under international law have been incorporated into the national legal system of many states. In some states, international law is part of the standard applied by the constitutional courts in their judicial review function, which puts it on the same level as constitutional law. For a number of constitutional courts in Member States of the European Union, this applies to both international law and Union law. There are numerous states in which international treaties rank between ordinary laws and constitutional law. In several states international treaties are directly applicable. Some constitutions treat international and European instruments for the protection of human

rights as special cases; the special position allowed to such instruments varies from country to country.

There are several states in which the judicial review of Union law or international law is explicitly excluded from the jurisdiction of the constitutional court and/or the standards of Union law and international law are not subject to review in proceedings before the constitutional court.

In legal systems that allow individuals to lodge a petition with a constitutional court, courts may refer to provisions in international treaties. There are individual states in which it is generally taken for granted that all fundamental rights can be invoked before the constitutional court, including those that have been implemented in the legal system on the basis of international treaties.

b) International law and constitutional jurisdiction

Certain sources of international law are frequently referred to in the national reports. In formal terms, the ECHR plays an outstanding role; in several jurisdictions it enjoys constitutional or at least quasi-constitutional rank, or it differs from ordinary laws on account of its elevated position. The European Social Charter is referred to by some constitutional courts. As stated in numerous national reports, soft law, such as recommendations or resolutions of Council of Europe bodies, is sometimes referred to in the reasoning of constitutional court decisions.

The International Covenant on Civil and Political Rights (CCPR) is frequently referred to by constitutional courts as a source of international law, mostly in combination with other human rights guarantees. Moreover, the ILO Conventions, the Geneva Convention on Refugees and the UN Convention on the Rights of the Child should be mentioned in this context. The ECtHR also refers to the above sources of law in its jurisprudence when pronouncing on the interpretation of a right guaranteed under the Convention that corresponds to or, at least, resembles the rights enshrined in these treaties.

c) Bases for consideration of European case law by constitutional courts

In some states, the legally binding effect of the case law of the European Courts derives from an explicit provision of constitutional law or ordinary law. However, in the majority of states, there is no explicit constitutional provision obliging national courts to take the case law of the European Courts into account; nevertheless, in some of these states the constitutional courts consider themselves under an obligation (of a constitutional nature in most instances) to take European case law into account. In both cases, the constitutional courts regularly refer to European case law. The influence of the latter is substantial, even though such obligation has never been stated explicitly. The majority of these courts opt for what can be

qualified as “conformity interpretation”, i.e. it is their understanding that when interpreting national constitutional law and, possibly, ordinary law in a spirit that is open to European law and/or open to international law, they have to take the jurisprudence of the European court into account.

Besides the influence based on a legal obligation, other influences of a merely factual nature can be observed. To start with, the influence of European case law on constitutional court decisions is favoured by the fact that parties to the proceedings cite the case law of the European Courts in their reasoning. Moreover, this influence is strengthened by constitutional court judges who previously served as judges or legal staff members at one of the two European Courts.

Examples of factual influences can be found in direct mutual reactions of courts to one another, such as responses to judgments of the CJEU or the ECtHR in decisions taken by a constitutional court, even though such judgments may have concerned other states.

d) Union law and the EU Charter of Fundamental Rights

The Member States of the European Union share a number of specific features. Union law in general and the Fundamental Rights Charter, in particular, are gaining in importance for constitutional court practice in these states, even though the way in which Union law is taken into account varies greatly.

These differences can be seen most clearly in the context of the Fundamental Rights Charter. Taking their national constitutional order as a basis, some constitutional courts do not cumulatively apply fundamental rights enshrined in national and European law, but hold that either constitutional law or the Fundamental Rights Charter is to be applied, based on the understanding that cases that can be strictly separated; others, however, take a cumulative approach in applying provisions of constitutional law, international law and Union law in fundamental rights cases.

e) Mutual influences observed in jurisprudence

In many states, the jurisprudence of the constitutional courts illustrates the extent to which European case law impacts on the legal systems of the Member States. However, influence is also exercised in the opposite direction and provided for in the legal instruments constituting the basis of European jurisprudence.

The influence of the case law of the ECtHR is strongest in areas relating to procedural guarantees and the right to privacy and family life. Numerous courts frequently refer to the case law of the ECtHR on Articles 5 and 6 of the ECHR, which guarantee the right to liberty

and security and the right to a fair trial. In particular, many courts mention their reference to the criteria applied by the ECtHR in its assessment of the independence of judges and courts.

Individual questions relating to the guarantees under Article 8 ECHR are also frequent subjects of decisions rendered by constitutional courts in the Member States.

Constitutional courts of EU Member States frequently refer to and cite the case law of the CJEU in their decisions, especially in connection with the recognition of the fundamental principles of Union law, such as its direct applicability and the primacy of application.

However, many courts refer much more often to the case law of the ECtHR than to that of the CJEU. This holds, in particular, for constitutional courts in Central and Eastern Europe, which tend to attribute special importance to the case law of the ECtHR.

Another possible impact may be due to the fact that the case law of the European Courts is first cited by the constitutional courts and subsequently referred to by civil-law and criminal-law courts and administrative tribunals (in the following: ordinary courts of law) of the same state in their jurisprudence. Constitutional jurisprudence serves as a means of transmitting the decisions handed down by the European Courts to the courts of law in the country. Ordinary courts of law are under a legal obligation to follow the jurisprudence of the constitutional court and, more importantly because of the wider repercussions, tend to adopt the lines of jurisprudence of the constitutional court in their own jurisprudence.

In this context, constitutional court jurisprudence has the effect of spreading awareness of the case law of the European Courts among legal experts and in the public at large, a function not to be underestimated.

It is frequently assumed that all courts of the states concerned are under a constitutional obligation to consider the provisions of European law and therefore follow European case law in their own decisions. Moreover, in recent years a trend has been observed toward the creation of legal rules providing for a case that has already been closed to be re-opened, if a decision by the European Court of Human Rights has the potential to change the outcome of that case. In many countries, judgments by the ECtHR establishing a violation of the ECHR constitute sufficient grounds for reopening a case. Such provisions oblige the national civil and criminal courts and administrative tribunals, rather than the constitutional court, to include the decisions handed down by the Strasbourg court in their own considerations. In respect of EU law, these courts are obliged to take the jurisprudence of the CJEU into account.

At the same time, there are examples of decisions of European Courts being influenced by national constitutional courts. Some courts explicitly underline such influence within the

framework of a dialogue among courts. Above all, an increasing number of references to the jurisprudence of constitutional courts can be found in the jurisprudence of the ECtHR. Whereas references to constitutional court decisions in the past merely served to describe the relevant legal situation, a number of recent decisions by the ECtHR show that such references are now used as a supportive – and sometimes decisive – argument. Some constitutional courts report that originally diverging decisions finally converged in a common solution, which was reached not through unilateral acceptance but through mutual influence.

As regards EU law, the relevant treaties imply the possibility of such influence. Article 52 (4) and Article 53 of the Fundamental Rights Charter as well as Article 6 (3) of the Treaty on European Union refer to the constitutions of the Member States and/or shared constitutional traditions. Through references to national solutions and the constitutional traditions common to the Member States as a source to be drawn on in comparisons of law and in the interpretation of Union law, national arguments and approaches inform the case law of the CJEU and, thus, influence European case law. In this process, decisions rendered by the constitutional courts play an important role, as they facilitate the understanding of trends and developments in constitutional law and shape constitutional traditions.

At the same time, the preliminary ruling procedure strengthens the influence of the case law of the CJEU. By requesting a preliminary ruling from the CJEU pursuant to Article 267 TFEU, constitutional courts have the possibility of submitting the results of their interpretation, based on a constitutional order that gives due consideration to European law, to the CJEU. Questions put to the CJEU, outlining the court's own positions and proposed solutions, are a way of engaging in a dialogue with CJEU case law. This applies, in particular, to novel issues, such as competition and conflicts between the individual fundamental rights strata, where the preliminary ruling procedure helps to coordinate national and European approaches. Recent examples include the request for a preliminary ruling submitted by the German Federal Constitutional Court in the ECB case and the preliminary rulings requested by the Irish Supreme Court and the Austrian Constitutional Court on the Data Retention Directive.

f) Divergences in jurisprudence

Despite mutual influences and adaptations, divergences in jurisprudence of a short-term, medium-term or – in individual cases – even long-term nature are bound to occur, which, under certain circumstances, is considered to be not only acceptable, but desirable. It is incumbent on the constitutional courts to arrive at adequate solutions in cases of conflict. A process of mutual acknowledgement and adaptation between national and European Courts may provide valuable input in this context. For an evaluation of mutual reception and mutual relationships between constitutional courts and European Courts, it is necessary to examine constitutional court decisions, especially those that diverge from European

jurisprudence in their reasoning or in the results achieved, as well as those that converge with European jurisprudence, but nevertheless reflect a critical distance.

In the majority of cases, divergences are resolved after some time and tend to result in a higher level of protection, promoted by the favourability principle of Article 53 of the ECHR and Article 53 of the Fundamental Rights Charter.

Divergences occasionally occur with regard to general definitions or the scope of individual guarantees. Some national reports identify divergences that are due to different starting points and differences in the division of tasks between constitutional courts and European Courts. These are understood to account for different results reached by constitutional courts and European Courts in their weighing up of interests and circumstances. As pointed out in these reports, constitutional courts have different interests and values to consider than European Courts, which may result in divergences in jurisprudence. Such divergences are not due to different interpretations of the law, but to differences in approach in certain constellations. They are attributed to the fact that constitutional courts have to respect the national constitution and protect national interests, which may lead to differences in assessment in certain constellations. The absence of a national perspective of the ECtHR may result in visible divergences.

Therefore, divergences primarily occur in cases in which European case law cannot be taken into consideration for reasons of constitutional law. The constitutional courts of EU Member States report individual instances of divergence in jurisprudence, especially with regard to the primacy of Union law over the national constitution. The CJEU holds that Union law supersedes the constitutions of the Member States, while the constitutional courts accept the primacy of Union law over ordinary, national law, but not over the constitution. Unlike the CJEU, these constitutional courts do not accept the comprehensive primacy of Union law over national constitutional law.

g) Limits to reception

Limits to the reception of European jurisprudence are reached when decisions by European Courts cannot be followed for reasons of constitutional law and when, for instance, interpretation in accordance with international law is no longer justifiable on the basis of the recognized methods of interpretation of the constitution.

Such limits also become visible when in certain constellations constitutional courts, possibly on the basis of considerations of constitutional law, arrive at the same or similar results as European courts applying Union law or international law.

When constitutional courts meet the limits of their readiness to follow European jurisprudence, they tend to refer to insurmountable fundamental principles of the constitution, to the supremacy of the constitution or to their own authority to exercise so-called “reserved powers”.

Examples of reserved powers, which some constitutional courts reserve for themselves, while acknowledging the ultimate authority of the CJEU to rule on questions of interpretation and application of Union law, are a constituent feature of the European network of cooperating constitutional courts. In recent years, the influence of ultra-vires reservations, reservations based on national identity and a differentiated judicial review of the respect of fundamental rights on the relationship between European Courts and constitutional courts has been an issue in the debate on competence limits.

2. Interactions between constitutional courts

Interactions in the jurisprudence of individual constitutional courts are more difficult to identify and less extensive. Moreover, a number of special, regional factors come into play. Whereas constitutional court decisions did not have a significant mutual influence until the 1980s, their mutual impact has become noticeably stronger since the early 1990s. Before entering into an analysis of case law, influences at the level of constitution building should be mentioned here, especially in the implementation of different models of constitutional jurisdiction. The decision to adopt a certain model of constitutional jurisdiction favours the process of reception at the inter-governmental level.

The direct mutual impact of constitutional court decisions was limited in the past, but a trend towards greater permeability has appeared. In recent years, the elimination of language barriers, the institutionalized exchange of landmark decisions and regular bilateral meetings between constitutional courts have considerably heightened mutual awareness of the emergence of different solutions to common problems. In matters relating to guarantees of fundamental rights within the framework of criminal proceedings, constitutional courts in their decisions frequently engage in comparisons of different legal systems. References to decisions rendered by other national constitutional courts in individual cases enable the courts to develop a common European standard and to apply it to back up their own decisions. A comparison with the solutions found by other national constitutional courts in the European legal area could result in increased acceptance of constitutional court decisions.

Numerous courts confirm their reference to decisions rendered by foreign constitutional courts. According to the report of the German Federal Constitutional Court, references to international judgments, not only through direct citation but also through the incorporation

of international concepts into the court's own reasoning, are an expression of judicial independence.

In many cases, the influence of the jurisprudence of foreign constitutional courts can be derived from the number of citations of foreign judgments. However, foreign constitutional case law is referred to even more often in the preparation of court decisions. Thus, the frequency of mutual references is on the increase, even though this is not visible in the wording of the decisions. Referring to foreign decisions may even be regarded as superfluous, if they date from the period immediately prior to the court's own decision.

A reference to or the mere consultation of foreign jurisprudence in the court's own decision-making process serves to illustrate different problem-solving strategies and, thus, facilitates decision-making.

Moreover, dissenting opinions on constitutional court decisions frequently contain a reference to foreign constitutional jurisprudence. Some constitutional courts consider decisions rendered by other constitutional courts in Europe from a comparative point of view. Based on such descriptions, usually not more than a rough outline of the overall situation, they derive a "European standard" of converging jurisprudence in support of their own arguments. Foreign constitutional case law is not used as an argument in its own right or as a relevant source for the court's decision, but to reaffirm results achieved on the basis of a different set of arguments. As a prerequisite for any reference to foreign case law, the substance and the methodological approach must be comparable.

Individual national reports refer to the main areas of co-operation and to conditions facilitating exchanges between constitutional courts. A common language is not necessarily an essential prerequisite. As a matter of fact, language does not matter at all if there is no other country with the same official language. Many constitutional courts do not regard a common language as an essential criterion. Numerous national reports refer to the linguistic area as one of several criteria in their choice of foreign jurisprudence to be taken into account. In some instances, a common language is referred to as a criterion secondary in importance to shared legal traditions – two criteria which frequently overlap.

The comparability of constitutional systems, the circumstances of the case and the issues of law raised are much more important than linguistic proximity. These are the parameters on the basis of which courts decide which foreign jurisprudence to refer to.

Many national reports mention the German Federal Constitutional Court as the most frequently cited foreign constitutional court, regardless of regional or linguistic factors, especially in cases relating to fundamental rights.

Apart from this concentration on fundamental rights issues, it is hardly possible to identify specific areas of law in which constitutional courts tend to refer to the jurisprudence of other European constitutional courts. Constitutional courts from other continents are only cited in exceptional cases; if at all, references are made to decisions by the US Supreme Court.

Beyond direct forms of co-operation between constitutional courts, indirect mutual influences can be observed. To a considerable extent, the decisions of constitutional courts also inform court judgments at European level. National solutions in the field of public law doctrine, particularly as regards fundamental rights, may have a model character for European solutions. Whenever national solutions are acknowledged in European case law, which then in turn has an impact on decisions taken by national courts in other states, this can be taken as an interaction between constitutional courts, with European Courts acting as intermediaries and catalysts. Thus, co-operation between constitutional courts is mediated by the case law of the European Courts.

Co-operation between constitutional courts is not limited to the mutual reception of the decisions rendered. Other forms of co-operation need to be taken into consideration as well. Multilateral and bilateral conferences promote an exchange of information and experience, as does the translation and communication of national court decisions via Internet databases, which simplifies access to other national constitutional courts. Specific mutual influences can hardly ever be detected in a particular decision, but international contacts promote a continuous mutual exchange.

Most of the national reports mention different forms of co-operation between constitutional courts. International conferences, bilateral talks as well as conferences on a smaller scale and meetings of two or more foreign courts are mentioned most frequently. Other forms of co-operation include bilateral exchanges, traineeships and visits by scientific staff to foreign constitutional courts or to one of the two European Courts, informal exchanges of information and experience (including at scientific conferences), membership in the Venice Commission, membership in associations of constitutional courts, joint publications, comparative analyses and expert opinions, visits on official occasions, and translations of decisions available for online access.

3. Interactions between European Courts

a) Current situation

Interactions between the jurisprudence of the ECtHR and that of the CJEU only have a marginal and indirect impact on constitutional courts. For those Member States of the

Council of Europe and the ECHR that are not members of the European Union, the issue of supremacy of CJEU jurisprudence does not arise or, if so, presents itself from an entirely different perspective. For these states, the relevant question concerns the legitimacy of referring to Union law in the interpretation of the ECHR.

However, in view of the fact that the two European Courts are represented at this conference of constitutional courts, it seems appropriate to discuss the interactions between the two courts and their impact on the jurisprudence of the constitutional courts.

b) Current and increasing interactions between the ECtHR and the CJEU

Against the background of the evolution of the legal basis constituted by the treaties, especially in the field of fundamental and human rights, the Fundamental Rights Charter and its legal association with the Lisbon Treaty generates strong momentum for interactions between the ECtHR and the CJEU. The CJEU and the ECtHR cite each other on a regular basis. The ECtHR refers to the Fundamental Rights Charter in its evolutionary interpretation of the rights secured by the Human Rights Convention, while the CJEU invokes the case law of the ECtHR for determining the substance of general principles of law as well as, in the recent past, for its interpretation of fundamental rights secured by the Charter. The recent jurisprudence of the European Court of Human Rights and the Court of Justice of the European Union shows that early signs of mutual reception are continuously gaining in strength.

At the same time, it has been observed that constitutional courts have an impact on the CJEU via the decisions handed down by the ECtHR. The ECtHR frequently uses the instrument of "*consensus interprétative*" in its interpretation of the Convention and refers to the jurisprudence of the national constitutional courts. Thus, ECtHR jurisprudence is being influenced by the jurisprudence of the constitutional courts. When the CJEU, in turn, refers to ECtHR case law, there is a significant element of influence from national constitutional courts on the jurisprudence of the CJEU. The further development of the treaties as the legal basis for both the ECHR and the European Union is expected to reinforce this trend.

c) Status quo: no impact on constitutional courts

Almost all national reports converge in stating that a direct impact of the interaction between the European Courts is practically non-existent. The majority of courts have not identified any impact of constitutional court jurisprudence on the interactions between the European Courts to date, nor do they see any possibility of such influence. Numerous courts state that divergences in jurisprudence between the European Courts may in future have an influence on constitutional courts.

Some constitutional courts hold the opinion that CJEU jurisprudence influences the jurisprudence of national constitutional courts, regardless of whether CJEU decisions are cited by the ECtHR or not; they do not consider acknowledgement of CJEU judgments by the ECtHR as a necessary prerequisite, as the constitutional court independently considers the jurisprudence of the CJEU in its own decisions.

Forthcoming changes in the treaties are expected to have an impact on the relationship between constitutional courts and the European Courts. It is generally held that references by the ECtHR to the CJEU do not have an impact on the jurisprudence of the constitutional court, unless the constellation of the case is comparable to that before the national constitutional court.

d) Examples of effects on the constitutional courts

Several courts refer to the *Bosphorus* decision of the ECtHR to determine the scope of review of Union law by the constitutional court. Citing the decision of the ECtHR, the Polish constitutional court refutably assumes the equivalence of the fundamental rights standards of the European Union and the Polish constitution, while reserving the right to an "*ultra vires*" decision. The constitutional court of the Czech Republic refers to the *Bosphorus* decisions to describe and reaffirm the currently admissible assumption of equivalence of protection of fundamental rights at EU level and the fundamental rights standard of the Czech Constitutional Court.

Examples of references to CJEU case law or rights enshrined in the Fundamental Rights Charter in the interpretation of the ECHR influencing proceedings before constitutional courts can be found, above all, in the area of judicial guarantees.

e) EU accession to the ECHR and constitutional jurisdiction

Several national reports mention the envisaged accession of the European Union to the European Convention on Human Rights as an essential development contributing towards strengthening interactions at all levels of jurisprudence. Some national reports take it for granted that constitutional jurisprudence will influence the relationship between the CJEU and the ECtHR after the accession of the European Union to the ECHR.

A crucial question concerns the impact of the procedural design of the judicial review mechanism at European level after the EU's accession to the ECHR. In particular, it will be interesting to observe the consequences for constitutional courts when CJEU decisions are subject to review by the Strasbourg court.

Questions arise with regard to the national effect of the "co-respondent mechanism". Moreover, it is still unclear how prior assessment by the Court of Justice of the European

Union pursuant to Article 3 (6) of the draft accession treaty can be made in conformity with Union law.

f) Divergences and convergences

Another point to be examined within the framework of the Congress theme concerns the effects of divergences between decisions rendered by the European Courts on the jurisprudence of the constitutional courts. Numerous courts do not see any influence of divergences between the jurisprudence of the CJEU and that of the ECtHR, given the fact that the EU has not yet acceded to the ECHR. Others assume that impacts on constitutional courts, if any, will be extremely limited.

g) Preliminary ruling procedure

The strongest normative element conducive to co-operation is Article 267 TFEU, which – under certain prerequisites – demands that national courts accept a division of labour with the CJEU. The preliminary ruling procedure offers a possibility for constitutional courts to cooperate with the CJEU in a spirit of dialogue. Requesting a preliminary ruling from the CJEU is in no way contradictory to the role of constitutional courts.

Regardless of the above, all other courts of a state have the right to put questions concerning the interpretation of the treaties and the validity and interpretation of actions by the bodies, institutions or other units of the Union to the Court of Justice of the European Union and request a preliminary ruling pursuant to Article 267 TFEU, if the court considers such ruling necessary for its own judgment. This is not in conflict with the division of competences between administrative jurisdiction and constitutional jurisdiction in the review of the legality of administrative and court decisions, nor with the concentration of the power to review legal standards in the hands of the constitutional court.

The review of legal standards by the constitutional court and requests for preliminary rulings of the CJEU can co-exist. As the CJEU stated in connection with the constitutional review of a law transposing a Directive in the French Republic within the framework of a "*question préliminaire de constitutionanalité*", Article 267 TFEU does not exclude an interlocutory procedure to review the constitutionality of laws, provided the other courts in the proceedings are free to request a preliminary ruling on any question deemed to be necessary at any point in time (even after conclusion of the interlocutory procedure), to take any measure necessary for the provisional guarantee of rights, and to refrain from applying a measure considered to be in violation of Union law after conclusion of the interlocutory procedure. The Court of Justice of the European Union must not be deprived of the possibility of reviewing secondary law against the standard of primary law and the Fundamental Rights Charter, which is equivalent in rank to the treaties.

As pointed out in some of the national reports, individual courts regard the dialogue between the CJEU and the ECtHR as a possibility of obtaining greater legal certainty through harmonized solutions. In their opinion, frequent contacts between courts result in mutual influences, which in turn will bring about a convergence in the protection of fundamental rights in Europe; ultimately, they expect a harmonization of jurisprudence in core issues of fundamental rights. The fact that former national judges hold positions at the European Courts can be taken as an indirect influence of national constitutional courts at the European level, which results in national positions being reflected in the jurisprudence of the European Courts. Hence, as a direct consequence of constitutional courts following the jurisprudence of the ECtHR, the CJEU might be inclined to follow the line of argumentation of the ECtHR.