

SERBIA/SERBIE

The Republic of Serbia has been a member of the Council of Europe (CoE) since 3 April 2003. The Serbian authorities have since been formally and legally obligated to apply the CoE conventions, including, notably, the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR).

Article 16 paragraph 2 and Article 194 paragraph 3 of the Constitution of the Republic of Serbia (hereinafter: the Constitution), which was adopted in 2006, lay down that generally accepted rules of international law and ratified international agreements shall be an integral part of the legal order in the Republic of Serbia and be enforced directly. This practically means that the decisions of all state authorities may be based on generally accepted rules of international law and ratified international treaties, including ECHR.

Under Article 18 paragraph 2 of the Constitution “[H]uman and minority rights enshrined in the generally accepted rules of international law, ratified international treaties and laws shall be guaranteed by the Constitution and, as such, be exercised directly.” Paragraph 3 of this Article stipulates that “[P]rovisions on human and minority rights shall be interpreted to the benefit of promoting values of a democratic society, pursuant to the valid international human and minority rights standards and the practices of international institutions supervising their implementation.”

The Constitutional Court of Serbia, within its duty to protect the unity of the legal order within the abstract constitutionality review procedure, has been reviewing the compliance of laws and other general legal enactments with generally accepted rules of international law and ratified international treaties, including ECHR (Article 167 paragraph 1 of the Constitution).

In other words, the Constitutional Court has a jurisdiction to review the compatibility of laws and other general legal enactments with the ECHR. Procedure in which the Constitutional Court performs this duty is an abstract procedure.

a) Assessment of constitutionality of law and compatibility of legislation with ratified international treaties, including ECHR (Article 168 of the Constitution)

Assessment of constitutionality of law and compatibility of legislation with ratified international treaties, including ECHR may be instituted by state bodies, bodies of territorial autonomy or local self-government, as well as by at least 25 deputies of National Assembly. The procedure may also be instituted by the Constitutional Court. Also, any legal or natural person shall have the right to an initiative to institute assessment proceedings of constitutionality and legality.

The law or other general acts, which are not in compliance with the Constitution and/or ratified international treaties, including ECHR, shall cease to be effective on the day of publication of the Constitutional Court decision in the Official Gazette.

b) Assessment of constitutionality of law and compatibility of legislation with ratified international treaties, including ECHR prior to its coming into force

At the request of at least one third of deputies of the National Assembly, the Constitutional Court shall be obliged within seven days to assess constitutionality and compatibility with ratified international treaties, including ECHR, of the law which has been passed, but has still not been promulgated by a decree of the President.

If a law is promulgated prior to adoption of the decision on constitutionality and compatibility with ratified international treaties, including ECHR, the Constitutional Court shall proceed with the proceedings as requested, according to the regular assessment proceedings of the constitutionality of a law and compatibility with ratified international treaties, including ECHR.

If the Constitutional Court passes a decision on non-constitutionality of a law prior to its promulgation, that decision shall come into force on the day of promulgation of the law.

The assessment proceedings of constitutionality may not be instituted against the law whose compliance with the Constitution was established prior to its coming into force.

Therefore, the Serbian national mechanism for the assessment of compatibility of legislation, both draft legislation and a law in force, with the ECHR, is an abstract review procedure before the Constitutional Court.

The advantages of this mechanism are that, according to Article 166 of the Constitution, decisions of the Constitutional Court delivered in this procedure are final, enforceable and generally binding.

As regards questions nos. 2 and 3, there are no obstacles in the implementation of this mechanism.