Judicial Application of International Law in Serbia

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1 An Overview of Constitutional Provisions Related to the Status of International and EU Law

1.1 International Law in the Hierarchy of Legal Sources in Serbia

In the Constitution of the Republic of Serbia, international relations are regulated in Article 16. According to the Serbian Constitution, foreign policy rests on generally recognised principles and rules of international law. Ratified international treaties, as well as generally recognised principles and rules of international law, form an integral part of the legal order of the Republic of Serbia and are directly applicable.[1] In order to be a part of the legal order, a ratified international agreement must be in accordance with the Constitution of the Republic of Serbia.[2] The Constitution also stipulates the hierarchy of domestic and international general legal acts. Emphasising the unity of the Serbian legal order, Article 194 also regulates that the Constitution is the supreme legal act. To this effect, all laws and other general legal acts promulgated in the Republic of Serbia must comply with the Constitution and may not contradict ratified international treaties and generally recognised rules of international law. We may conclude that ratified international treaties and generally accepted rules have precedence in relation to domestic legislation, and only the Constitution stands above them in terms of hierarchy.

[1] Constitution of the Republic of Serbia, Art. 16(2).

[2] Constitution of the Republic of Serbia, Art. 16(3).

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In accordance with the Constitution of the Republic of Serbia, human and minority rights guaranteed by the Constitution are directly applicable.[3] A special law may prescribe a method of exercising these rights only if it is explicitly stipulated by the Constitution or if it is necessary to exercise a specific right. If this is the case, the special law may not influence the substance of the relevant guaranteed right. Provisions on human and minority rights are to be interpreted in favour of the improvement of democratic values, pursuant to existing international standards on human and minority rights, as well as the practice of international institutions supervising their implementation.[4] In Sect. 4, we will analyse how the meaning of 'existing international standards' and 'the practice of international institutions' is understood in the Serbian legal system and jurisprudence.

1.2 The Position of the Stabilisation and Association Agreement and the Interim Agreement on Trade and Trade-Related Matters

The Stabilisation and Association Agreement between the European Communities and their Member States and the Republic of Serbia (SAA) is an international treaty signed on 29 April 2008. It was ratified by the European Parliament on 19 January 2011 and by some EU Member States, but has not yet come into force. The SAA shall enter into force after the Parties have notified each other that the approval procedures have been completed. Nevertheless, the SAA has an influence on the Serbian legal system.

The SAA foresees the commitment of the Republic of Serbia to harmonising domestic legislation with the *acquis communautaire* within the agreed schedule. As the Parties recognised the importance of the approximation of Serbian legislation to that of the Community and of its effective implementation, Serbia should not only endeavour to ensure that existing and future legislation is compatible with the *acquis communautaire*, but also proper implementation and enforcement of existing and future legislation.[5] The process of harmonisation was due to begin on the date of the signing of the SAA.[6]

The question that remains open is: what does the obligation to ensure 'that existing and future legislation will be properly implemented and enforced' mean? In the process of harmonisation, domestic legislation can be approximated to international conventions by enacting amendments to legislation. In certain cases, given the complexity and importance of addressing a certain issue, specific areas

[3] Constitution of the Republic of Serbia, Art. 18(1).

[4] Constitution of the Republic of Serbia, Art. 18(3).

[5] Stabilisation and Association Agreement between the European Communities and their Member States and the Republic of Serbia, Art. 72(1).

[6] Stabilisation and Association Agreement between the European Communities and their Member States and the Republic of Serbia, Art. 72(2).

are regulated by special laws. Under the Rules of Procedure of the National Assembly, a proposer of a bill should attach a Statement of Compliance of the Bill with the *acquis communautaire*, including a Table of Compliance of the Bill with EU regulations.[7] In some cases, the proposer may attach a statement confirming that there is no obligation for such compliance and must emphasise the impossibility of harmonisation of the bill with EU regulations. A more complex question is whether existing and future legislation is being properly enforced. In comparative theory, we find two basic approaches to this issue. One group of authors considers that, according to the SAA, domestic legislation should be interpreted in the context of EU law. Addressing the identical issue in respect of Croatia, Siniša Rodin provides three arguments for this point of view: firstly, because the Croatian Constitution, in its basic preferences, accepts a monistic view of the relationship between national and international law, and *a fortiori* between national and EU law; secondly, because the SAA stipulates the obligation to harmonise Croatian and EU law, whereby existing law must be interpreted in accordance with the principle of *favor conventionis*; and thirdly, because such interpretations, implying the Croatian public interest, are expressed in resolutions of the legislative and executive branches of government, as well as by having submitted the application for full membership of the European Union.[8] The second group of authors argues that the duty to interpret existing and future rights becomes effective only after the SAA enters into force. In this sense, Maja Stanivuković believes that the absence of a procedural and institutional mechanism for the proper interpretation of the law in 'the spirit of EU law' may lead to irregular practice by domestic courts. She further argues that the existing law does not contain the prerequisites for judges to be informed that a norm of domestic law originates from EU law.[9]

1.3 The Position of the Interim Agreement on Trade and Trade-Related Matters

When compared to the SAA, the Interim Agreement on Trade and Trade-related Matters between the European Community and the Republic of Serbia (IAT) has a different position. The Interim Agreement on Trade and Trade-related Matters came into force on 1 February 2010. The most important difference between the SAA and IAT is that the rules and interpretative instruments stipulated by the IAT are equal to the rules and instruments adopted by Community institutions. They must be enforced. An illustrative example is Article 38 of the IAT. Article 38 (1) stipulates the activities that are incompatible with the proper functioning of the IAT insofar as they may affect trade between the Community and Serbia.

[7] Rules of Procedure of the National Assembly, Official Gazette No. 31/11, Art. 151(4).

[8] Rodin (2003), pp. 591–613.

[9] Stanivuković (2012), pp. 203–221.

Incompatible activities include agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings if those activities affect the prevention, restriction or distortion of competition. The abuse of a dominant position by one or more undertakings or a distortion or a threat of distortion of competition by any State aid are also incompatible with the proper functioning of the IAT.

> Any practice contrary to this Article shall be assessed on the basis of criteria arising from the application of the competition rules applicable in the Community, in particular from Articles 81, 82, 86 and 87 of the Treaty establishing the European Community and interpretative instruments adopted by the Community institutions.[10]

This means that national courts have an obligation to enforce and interpret competition rules as they are enforced and interpreted by Community institutions. In addition, it means that national courts and the Commission for Protection of Competition[11] should directly apply interpretative instruments adopted by the Community institutions. In order to ensure full implementation of Article 38, the Commission for Protection of Competition applies criteria resulting from the application of competition rules applicable in the EU, 'which includes primary and secondary EU legislation, the practice of EU institutions, and the judgments of the Court of Justice and the Court of General Jurisdiction'.[12]

An analysis of legal texts reveals examples of direct transposition of EU law into national laws. The Customs Tariff Act in Article 3a(1) defines the classification of goods by virtue of the Customs Tariff.[13] In this regard, the Customs Tariff consists of the tariff position for goods, determined in accordance with the Customs Tariff Act and provisions laid down on the basis of this law. The application of the Commission regulations which are concerned with the classification of goods and published in the Official Journal of the European Union is obligatory.[14]

2 The Judicial System in Serbia

The basic elements of the judicial system in Serbia are established by the Constitution and the Organisation of Courts Act.[15] Judicial authority on the territory of the Republic of Serbia is unified and belongs to courts with general and special jurisdiction.[16] The specific forms of the organisation, jurisdiction and structure of

[10] IAT, Art. 38(2).

[11] http://www.kzk.org.rs/en. Accessed 3 February 2013.

[12] Republic of Serbia (2012), p. 3. http://www.kzk.org.rs/kzk/wp-content/uploads/2012/08/Annual-Report_2011.pdf. Accessed 6 February 2013.

[13] Customs Tariff Act, Official Gazette of the Republic of Serbia, No. 61 /2007, 5/2009, 33/2009.

[14] Customs Tariff Act, Art. 3a(3).

[15] Organisation of Courts Act, Official Gazette of the Republic of Serbia No. 116/08 of 27 December 2008.

[16] See: Constitution of the Republic of Serbia, Arts. 142(1), 143(1), 143(2).

courts are defined by law. The Organisation of Courts Act established the following courts of general jurisdiction: basic, high and appellate courts and the Supreme Court of Cassation,[17] and the following courts of specialised jurisdiction: the Administrative Court, misdemeanour courts, the High Misdemeanour Court, commercial courts and the Commercial Appellate Court.

Basic courts are established for the territory of a town, while higher courts are established for the territory of one or several basic courts. A comparison of the competences indicates that the Appellate Court is the immediately higher instance court for higher courts and basic courts. The Commercial Appellate Court is the immediately higher instance court for commercial courts, and the Higher Misdemeanour Court is the immediately higher instance court for misdemeanour courts. The Supreme Court of Cassation is the court of the highest instance. It is the immediately higher instance court for the Commercial Appellate Court, the Higher Misdemeanour Court, the Administrative Court and the Appellate Court.[18]

The Constitutional Court is established by the Serbian Constitution to protect constitutionality, legality, and human and minority rights and freedoms as an independent body.[19] Any legal or natural person has the right to institute proceedings for a review of constitutionality or assessment of legality. In addition, any person who believes that his or her human or minority rights and freedoms, as stipulated by the Constitution, have been violated or denied as a result of an action or act of the state authorities or an organisation with public authority may lodge a Constitutional appeal with this court.[20]

3 The Authority to Apply International and EU Law

The possible application of international and EU law raises many questions. Can courts in Serbia directly apply the generally accepted rules of international law and how should this concept be understood? Can courts in Serbia directly apply human and minority rights guaranteed by generally accepted rules of international law? Is there a duty for courts in Serbia to interpret provisions on human and minority rights in accordance with the practice of an international institution? Can courts in Serbia apply EU law directly? Can courts in Serbia refer to the legal principles applicable in the EU? Are courts in Serbia obliged to apply the law of the EU Court of Justice? The answers to these questions are presented below under three subheadings: general principles of international law, international treaties and human rights treaties.

[17] http://www.vk.sud.rs/. Accessed 12 February 2013.

[18] Organisation of Courts Act, Art. 14.

[19] See: Constitution of the Republic of Serbia, Art. 166(1).

[20] See: Constitution of the Republic of Serbia, Art. 170 and the Constitutional Court Act, Official Gazette of the Republic of Serbia, No. 109 /2007, Art. 83(1).

3.1 General Principles of International Law

Generally accepted rules of international law and recognised international treaties are an integral part of the legal system in accordance with the Constitution of the Republic of Serbia. Constitutional decisions stipulate that court decisions have to be based not only on the Constitution and the law, but also ratified international treaties and regulations passed on the basis of the law.[21] The question that arises is whether court decisions should be based on generally accepted rules of international law. In a decision of July 2009, the Constitutional Court indicated that generally accepted rules are an integral part of the Serbian legal order. Moreover, the Constitutional Court explained what should be regarded as generally accepted rules of international law: a source that either contains the rules of behaviour regarding subjects of international law which have emerged as an international custom and relate to the constant and uniform practice of countries in relation to general values (such as the absolute protection of one's bodily integrity, and the prohibition of genocide, slavery and racial discrimination), or a source that contains principles that should be applied if there are no detailed rules or if other standards should be interpreted on the basis of it. These rules are derived from the principles common to all or most modern democratic legal systems. In the human rights domain, the application of these principles is of particular importance due to the need to explain standards and terms included in the norms of international law without specific definitions.[22]

Therefore, it may be concluded that the courts in Serbia interpret the Constitution in such a way that an obligation for them to apply generally accepted rules of international law exists.

3.2 International Treaties

Ratified international treaties, as an integral part of the legal system in Serbia, can be directly applied by the courts. A special procedure is followed for the ratification of an international treaty. The National Assembly adopts, by a majority vote of all deputies, laws which regulate the ratification of international treaties.[23] After this, the President of the Republic of Serbia promulgates the laws in accordance with the Constitution.[24] The law on a ratified international treaty should be published in the Official Gazette of the Republic of Serbia.

[21] Constitution of the Republic of Serbia, Art. 145(2).

[22] Constitutional Court, Decision IUz-43/2009 of 09.07.2009, Official Gazette of the Republic of Serbia, No. 65/2009. The Decision is available at http://www.ustavni.sud.rs/page/jurisprudence/35/. Accessed 19 February 2013.

[23] Constitution of the Republic of Serbia, Art. 105 paragraph 2(6).

[24] Constitution of the Republic of Serbia, Art. 112 paragraph 1(2).

> The Convention on the Elimination of All Forms of Racial Discrimination (the Ratification of the Convention Act was published in the Official Gazette of SFRY-International Treaties, No. 6/67) obliges all Member States to use all appropriate means and implement, without delay, a policy that aims at eliminating all forms of discrimination and promoting understanding between races and, to that end, by all appropriate means, prohibit racial discrimination by any person, group or organisation (Article 2, item d)), and establishes that States Parties must condemn all propaganda and organisations which are guided by ideas or theories based on the superiority of one race or group of persons of one colour or ethnic origin, or who want to justify or support any form of racial hatred or discrimination, and undertake to adopt immediate and positive measures that aim to eradicate all incitement to such discrimination, or any act of discrimination, ... and to declare that participation in such organisations or activities is an offence punishable by law (Article 4, paragraph 1, item b)). The prohibition of incitement to national, racial or religious hatred encompassing calls to discrimination, hostility or violence, or the prohibition of all forms of discrimination, are contained in the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms, which, as ratified international treaties, also form a part of the legal order of the Republic of Serbia.[25]

Does that mean that Serbian courts can directly apply any ratified international treaty? The Constitution of the Republic of Serbia does not stipulate any requirement that could be compared with the 'self-executing provisions' of an international agreement in public international law[26] or the concept of 'direct effect' of a provision developed by the EU Court of Justice.[27] Without it, the application of a ratified international treaty relies on its direct applicability. This could lead to a situation where national provisions are insufficient. When it comes to implementation of an international treaty by means of ratification, it is important to focus not only on the formal transposition, but also on the institutional capacity for identifying and applying certain standards.

3.3 Human Rights Treaties

The Constitution of the Republic of Serbia provides for the direct implementation of human and minority rights. In other words, human and minority rights, guaranteed by the generally accepted rules of international law, ratified international treaties and laws, should be directly implemented.[28] Contrary to the implementation of other international treaties, when it comes to the direct implementation of human and minority rights, the Constitution stipulates that the manner of exercising these rights may be prescribed by law if such prescription is necessary for the exercise of a specific right. It can also be stipulated by the

[25] Decision of the Constitutional Court of the Republic of Serbia, VIIУ-171/2008 of 6 June 2011.

[26] Riesenfeld (1973), pp. 504–508. Vázquez (1995), pp. 695–723. Scloss (2002), pp. 1–84.

[27] See: Joined Cases 21 to 24–72 *International Fruit Company N.V. v. Produktschap voor Groenten en Fruit* [1972] ECR 1219.

[28] Constitution of the Republic of Serbia, Art. 18.

Constitution. The law prescribing the manner of exercising human and minority rights guaranteed by the Constitution may not influence the substance of guaranteed rights.

The courts are obliged to interpret provisions on human and minority rights for 'the benefit of promoting values of a democratic society, pursuant to valid international standards in human and minority rights, as well as the practice of international institutions which supervise their implementation'.[29] The meaning of 'the practice of international institutions' is not further elaborated. The examples that follow will indicate its meaning in the practice of the Constitutional Court of the Republic of Serbia. It is also evident from the presented examples that the Constitutional Court of Serbia relies on the interpretation of the European Convention for the Protection of Human Rights by the ECtHR much more than on any other international instrument, i.e. than on any other international organisation's interpretation.

In the case law of the Constitutional Court, we find the following explanation which points to the role of the case law of international courts in interpreting the provisions of the Serbian Constitution relating to human rights protection:

> Since on 8 November 2006 the new Constitution of the Republic of Serbia entered into force, in the course of proceedings before the Constitutional Court, the sponsor amended a proposal on 24 February 2009 for assessing the constitutionality of the challenged provisions of Article 4 paragraph 1 of the Family Act. The proposed amendment states that the disputed provision was not in accordance with Article 21 of the Constitution of the Republic of Serbia of 2006, and also that, according to Article 18 paragraph 4-3 of the Constitution, the practice of international organisations must be followed in interpreting the provisions of the Constitution relating to the protection of human rights, and in assessing the constitutionality of the disputed provisions of the Constitutional Court, so that proper account should be taken of the law of the European Court of Human Rights (ECtHR), in particular the judgment in the case of *Karner v. Austria* (Application no. 40016/98, judgment of 24 July 2003), where the European Court found that unmarried partners of the same sex cannot be denied the rights provided for unmarried different-sex partners, as well as the practice of the Human Rights Committee of the United Nations.[30]

An illustrative example can be found in the reasoning of the Constitutional Court in a decision of 2009:

> In the case of the applicant's statement that the provision of Article 28 of the Act is contrary to certain statements of the Committee on Freedom of Association of the International Labour Office, and to the practice of certain international institutions that oversee the implementation of conventions and recommendations of the International Labour Organisation, the Constitutional Court has concluded that these attitudes and practices of international institutions are not formal sources of law, i.e. are not considered confirmed international agreements, in terms of Article 167 of the Constitution, and therefore there is no constitutional basis to form a consent assessment of the disputed provision of the Act on their basis. However, the Constitutional Court took into consideration that various international instruments, resolutions, recommendations, views of international organisations, charters, and other instruments that are adopted by individual authorities of universal

[29] Constitution of the Republic of Serbia, Art. 18 paragraph 3.

[30] Decision of the Constitutional Court of the Republic of Serbia, ИУ-347/2005 of 22 July 2010.

> or regional organisations include rules that may be of importance for the protection of human rights. Therefore, the Constitutional Court considered the provisions of the instruments identified in the initiatives, but did not find them to contain special rules different from the provisions of the Constitution in respect to which the Court evaluated the challenged provisions of the Act.[31]

The following example demonstrates the meaning of various international instruments in the practice of the Constitutional Court:

> The Constitutional Court considered that the various international instruments (resolutions, recommendations, charters, etc.) adopted by some organs of universal or regional organisations, include rules that may be important for the protection of human rights. Those are not international agreements in the true sense of the word, and therefore are not subject to ratification, but their moral and political value is significant. Therefore, the Member States and international organisations recognise and respect them without any legal obligation to do so. For these reasons, the Constitutional Court considered the provisions of these instruments indicated by applicants, but has not found any special or specific rules different from the provisions of the Constitution in respect of which the disputed norms of the Judges Act have been previously evaluated.[32]

The reasoning of the decision of the Constitutional Court in the 2009 case provides the following opinion:

> In assessing claims and making decisions in this constitutional case, the Constitutional Court took into account the jurisprudence of the European Court of Human Rights in Strasbourg . . . The constitutional evaluation of conducted proceedings in this legal matter, based on the practice and criteria of international institutions for the protection of human rights, confirms that, in this particular case, the right of the complainant to a trial within a reasonable time has not been infringed.[33]

Explicit reference to the case law of the European Court for Human Rights was made in a relatively recent decision of the Constitutional Court that both attracted considerable public attention and influenced the guiding principle of a law of major importance for the completion of the transition process in Serbia. The case was opened by virtue of an initiative that a law providing for the restitution in kind of property of churches and religious communities, enacted in 2006, be proclaimed unconstitutional, due to its alleged discriminatory effect towards all other natural and legal persons in Serbia which at the time had still not been granted restitution of property appropriated after World War II. Public attention was largely drawn to the case because certain officials of the Government of Serbia publicly advocated these initiatives, calling for the Constitutional Court to abrogate the law in question. These opinions alleged that had the law remained in force, and due to the fact that it provided restitution in kind to a certain category of legal persons in Serbia, the forthcoming general restitution law would need to follow the same principle, as

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[31] Decision of the Constitutional Court of the Republic of Serbia, ИУз-26/2009 of 3 December 2009.

[32] Constitutional Court, Decision IUz-43/2009 of 9 July 2009, Official Gazette of the Republic of Serbia, No. 65/2009.

[33] Decision of the Constitutional Court of the Republic of Serbia, Уж-408/2008 of 9 July 2009.

well as to grant compensation of the full market value of appropriated property in all cases in which restitution in kind was not possible. This argument was based on the interpretation of the non-discrimination standards and rules of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Constitutional Court rendered its judgment in 2011, when it decided to uphold the disputed law in its entirety. In its reasoning, the Court found that Serbia adopted an approach of 'crawling restitution', which encompassed gradual enactment of specific laws for different categories of natural and legal persons as beneficiaries of the restitution process. In doing so, the Court explicitly invoked:

> the case law of the European Court of Human Rights, [according to which] the Member States in principle dispose of a wide margin of appreciation in respect of the choice of means and methods for attaining a legitimate purpose, particularly in respect of substantial social and economic transformations, which in the case of denationalisation in Serbia has been done by regulating the field by virtue of several laws which were enacted in the course of a longer period of time.[34]

In line with the endorsement of the possibility of adhering to the principle of the priority of restitution in kind over compensation, a general law on restitution of property appropriated after WWII, based on this principle, was enacted in September 2011.[35]

The Constitutional Court of Serbia, according to M. Kuzman, also largely follows the ECtHR in respect of the concrete criteria for establishing the violation of the right to a trial within a reasonable time: the complexity of the case; the importance of the ruling for the applicant; the conduct of the applicant; and the actions of the competent authorities.[36]

4 Judicial Application of International Law

If we were to ask who customarily raises the issue of the application of international law in Serbia, there would be a few answers. Firstly, parties in their submissions to the court often refer to the practice of the ECtHR, the European Convention for the Protection of Human Rights and Fundamental Freedoms, and also other ratified international treaties. Secondly, the courts, regardless of whether the party itself pointed to certain sources of international law or not, sometimes often justify their decisions by referring to the case law of the ECtHR or to ratified international treaties. Finally, in certain cases the Commissioner for Information of Public Importance and Personal Data Protection, in addressing the court, bases his arguments on the law of the ECtHR. The following indicate different models of

[34] Decision of the Constitutional Court of the Republic of Serbia, IУз-119/2008 of 20 April 2011.

[35] See Rakitić (2011), pp. 212–235. http://www.ius.bg.ac.rs/Anali/A2011-2/Anali%202011-2%20str.%20212-234.pdf. Accessed 3 February 2013.

[36] Kuzman (2010), pp. 14–20.

invoking the application of international law and the procedures of courts in cases in which they make a reference to sources of international law, or when they provide an opinion in cases when a party refers to a source of international law.

According to Predrag Vasić, a judge of the High Court in Belgrade,[37] courts of general jurisdiction in Serbia rely on the European Convention for the Protection of Human Rights and Fundamental Freedoms only in respect of certain types of disputes: claims for damages resulting from defamation, family disputes, and, to a lesser extent, property disputes, in which almost always the provision of Article 1, Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms is invoked.[38]

In a case of 2010, the authorised applicant requested a review of the conformity of a disputed provision of Article 4 paragraph 1 of the Family Act with ratified international treaties that are, under the provisions of Article 16 paragraph 2 of the Constitution, an integral part of the legal order of the Republic of Serbia and apply directly. Ruling on the applicant's request, the Constitutional Court analysed Articles 8, 12 and 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.[39] In addition to the European Convention, the Constitutional Court also analysed Article 1 of Protocol No. 12, Articles 23 and 26 of the International Covenant on Civil and Political Rights,[40] and the case law of the ECtHR. In the reasoning for its judgment, the Constitutional Court gave the following opinion:

> In its previous practice, the Court originally ruled a violation of the principle of non-discrimination based on sex under Article 14 of the European Convention in connection with the right from Article 8 of the European Convention – the right of respect for private life, expressing the view that the different treatment of persons based on sexual orientation may fall within the scope of the sphere of privacy (see the judgment of the European Court in the case of *Mata Estevez v. Spain*, No. 56 501/00). In the case of *Karner v. Austria*, the European Court ruled the conduct of the respondent State towards the applicant was discriminatory, motivated by his sexual orientation, pertaining to the right of the applicant to keep leasing the apartment after the death of a partner and in connection with the right to respect for home (see the judgment of the European Court in the case of *Karner v. Austria*, No. 40016/98). In its recent practice, in the case of *Schalk and Kopf v. Austria*, the European Court considered that the communal life of people of the same sex living in a stable *de facto* partnership may fall within the scope of the right to family life under Article 8 of the European Convention, but stated in its judgment that the issue of legal recognition of a communal life for people of the same sex belongs to the field of law where the State enjoys a margin of appreciation as to if and when it will regulate this issue (see the above judgment of the European Court on *Schalk and Kopf v. Austria*, No. 30141/04, dated 24 June 2010, paragraphs 92, 93, 94 and 105). The European Court has in several cases established a violation of the right to non-discrimination with regard to the right to respect

[37] Mr. Vasić is the president of the section of the court appointed to handle proceedings for the rehabilitation of persons convicted for political reasons during WWII and under communist rule.

[38] For the purpose of this study, Justice Vasić was interviewed in December 2012.

[39] European Convention for the Protection of Human Rights and Fundamental Freedoms, Official Gazette of SCG—International Contracts, Nos. 9/03, 5/05 and 7/05.

[40] International Pact on Civil and Political Rights, Official Gazette of SFRY, No. 7/71.

> for private life, because the respondent State has not proved that there was an objective and reasonable justification for different treatment (see the judgment of the European Court in the case *Salguiro Monta da Silva v. Portugal*, no 33290/96). By interpreting the provisions of the Covenant, the Human Rights Committee was tying the prohibition of discrimination to one of the rights guaranteed by this act. The Committee took the position that different treatment may not be considered discriminatory in the sense of Article 26 of the Pact as long as it is based on an objective and reasonable justification (see the decision of the Human Rights Committee in *Young v. Austria*, No. 941/2000) . . . The above-stated shows that according to the recognised international treaties and practices of international organisations for the protection of rights under such treaties, in relation to which the applicant sought a review of the disputed provisions of the Family Act, difference in treatment based on sexual orientation, besides being discriminatory, must pertain to a recognised and guaranteed law and must also transpire in a situation where the different treatment may not be objectively and reasonably justified.[41]

The following example shows the importance of the applicant presenting the case law of the ECtHR in the decision-making of the Constitutional Court.

In a case in which a constitutional complaint was filed with the Constitutional Court regarding an alleged violation of the right to a trial within a reasonable time, the applicant referred to ECtHR practice (*Klass and Others v. Germany*, Application No. 5029/71, judgment of 6 September 1978 paragraph 33 and *Dudgeon v. United Kingdom*, Application No. 7525/76, judgment of 22 October 1981 paragraph 41).[42] For the purpose of supporting the argument that the deadline for filing a constitutional appeal in accordance with Article 84 of the Constitutional Court Act was inapplicable in this particular case, since the action against which the constitutional appeal was filed had consisted of a continuous, ongoing situation, preventing the applicant from relying on his constitutional rights directly, the applicant referred to the jurisprudence of the ECtHR (*Malama v. Greece*, Application No. 43622/98, judgment of 1 March 2001, paragraph 35). The applicant substantiated in great detail the argument that the condition of exhaustion of remedies had in fact been met, i.e. that remedies were simply lacking, arguing that 'administrative remedies do not provide reasonable prospects for success in the particular case' and that 'resorting to non-contentious court proceedings, just as to administrative proceedings, would not have any legal basis' in respect of the applicant's request for change of sex in the registers. In doing so, the applicant cited the ECtHR's case-law (*Vernillo v. France*, Application No. 11889/85, judgment of 20 February 1991, *Chahal v. United Kingdom*, Application No. 22 414/93, judgment of 15 November 1996, paragraph 145, *Airey v. Ireland*, Application No. 6289/73, judgment of 9 October 1979, paragraph 23 and *Akdivar v. Turkey*, Application No. 21893/93, judgment of September 16, 1997, paragraph 68). The Constitutional Court's decision pointed out the following:

> The applicant emphasises that, apart from the constitutional complaint, Serbian legislation does not provide any remedy that would 'compel the National Assembly to act.' . . . Therefore, the Constitutional Court assessed that in this case there were no ordinary legal

[41] Decision of the Constitutional Court of the Republic of Serbia, ИУ-347/2005 of 22 July 2010.

[42] Decision of the Constitutional Court of the Republic of Serbia, Уж-3238/2011 of 8 March 2012.

> remedies, ... administrative or contentious court proceedings which would provide the applicant with reasonable prospects of success in securing the satisfaction of his demands and remedying the infringement upon his rights. In taking this position, the Constitutional Court was guided by the law of the ECtHR, which has stated several times which criteria must be met for the remedy to be considered appropriate and effective, the most important being: the remedy must be available in theory and in practice (*Vernillo v. France*, Application No. 11889/85, judgment of 20 February 1991, *Lepojic v. Serbia*, Application No. 13909/05, judgment of 6 November 2007, paragraph 51); the remedy must provide the possibility of solving essential issues related to the specific human rights which are being infringed in the case at hand, as well as adequate redress for the actual violations in the case at hand (*Chahal v. United Kingdom*, Application No. 22414/93, judgment of 15 November 1996, paragraph 145); when it appears that there are several remedies that victims of human rights violations may use, the victim is entitled to decide which remedy he or she shall rely upon (*Airey v. Ireland*, Application No. 6289/73, judgment of 9 October 1979, paragraph 23); and lastly, and most importantly, the remedy must provide reasonable prospects of success (*Akdivar v. Turkey*, Application No. 21893/93, judgment of 16 September 1997, paragraph 68). The Constitutional Court finds that the free development of a person and her personal dignity pertains primarily to the establishment and free development of her physical, mental, emotional and social life and identity. Although it does not contain an explicit provision on the right to respect for private life and is not explicitly encompassed by the constitutional right to dignity and free development of one's personality, the Constitutional Court sees the right to respect for private life as an integral part of the latter. On the other hand, the European Convention in Article 8 paragraph 1 contains a provision on every person's right to respect for private life. Although the term private life in the practice of the ECtHR has not been fully and precisely defined, the decision of that Court in *Niemietz v. Germany* provides an interpretation of the concept of private life, coupled with the notion that the Court does not consider it possible or necessary to attempt to give a final definition of the subject concept. However, the European Court concluded that it would be too restrictive to limit the meaning of that concept to the 'inner circle' within which an individual lives his life, and which has been chosen by that individual, and to entirely exclude the world outside the circle. In other words, respect for private life must, to some extent, include the right to establish and develop relationships with other human beings (Application no. 13710/88, judgment of 16 December 1992, paragraph 29). Also, in the European Court decision in the case *X and Y v. Netherlands* (Application no. 8978/80, judgment of 26 March 1985, paragraph 22), it was noted that the concept of 'private life' includes the 'physical and moral integrity of a person', including 'his or her sexual life'. Therefore, the Constitutional Court stated that the sphere of the private life of a person undoubtedly involves, among other things, her gender, sexual orientation and sexual life, and that the right to privacy includes the right to determine the details of personal identity and self-determination, and, consequently, the right to the adjustment of a person's sex to that person's gender identity.[43]

The following example indicates the activity of independent bodies in finding ECtHR practice that may be important for the decisions of the Constitutional Court. In one case, a joint proposal was submitted to the Constitutional Court by the Ombudsman and the Commissioner for Information of Public Importance and Personal Data Protection for a review of the constitutionality of the Military Security Agency and Military Intelligence Agency Act, which stipulates that the Military Security Agency has the right to demand and receive information on the

[43] See Draškić (2012), pp. 57–76.

users of telecom services from operators independently of any other institution and without the court's role. The authorised proposers pointed to the case law of the ECtHR, rendered in proceedings initiated by citizens of other countries with the aim of protecting their rights. In this case, the Constitutional Court issued the following opinion:

> The basic idea of the protection of rights to which Article 8 of the Convention is applied is that there are areas of life of each individual in which a state must not interfere, except in those situations where the conditions from paragraph 2 of that Article are met, i.e. when such interference is in accordance with the law, has a legitimate aim and is necessary in a democratic society. Starting from the claim that the provisions on human and minority rights under the Constitution of the Republic of Serbia must be interpreted in the interest of the promotion of values of a democratic society, and in accordance with valid international standards of human and minority rights, as well as with the practice of international institutions which supervise their implementation, the Constitutional Court stated that, in accordance with the views expressed in the case law of the ECtHR, the right to privacy of correspondence includes not only communications made in writing, but spoken ones as well, i.e. applies to electronically exchanged letters and messages, as well as phone calls. Also, the term 'means of communication' includes not only the immediate content of communication, but also information about who established, or attempted to establish communication with whom and, at what time, how long the conversation lasted, how often (frequently) the communication was realised through correspondence, conversations, or messages in a given period of time, as well as from which locations it was conducted. The ECtHR has in some of its judgments (e. g. *Klass and Others v. Germany*, judgment of 6 September 1978, *Malone v. United Kingdom*, judgment of 2 August 1984, and *Copland v. United Kingdom*, judgment of 3 April 2007) expressed the following views: 'The interception of telephone communications, to which a public authority resorts to, is a form of interference with the right to respect for one's correspondence. In fact, laws that allow public authorities to secretly intercept communications can, by the very fact of their existence, be treated as a "threat" and as such considered interference with the right to respect for correspondence and privacy.' One of the basic principles in a democratic society is the rule of law, which is explicitly mentioned in the Preamble of the Convention. The rule of law, among other things, prescribes that interference with the rights of the individual by the executive power must be subject to effective control, which should normally be performed by the judiciary, at least in the final instance, because judicial review provides the best guarantees of independence, impartiality and a proper procedure. The Court would reiterate its position that the phrase 'in accordance with the law' does not apply to domestic law alone, but to the property of law, requiring that it is in line with the rule of law principle ... Thus, this phrase implies that in domestic law there must be a measure of legal protection against arbitrary interference by public authorities with the rights protected by paragraph 1 of this Article, and this follows from the object and purpose of Article 8. The risk of arbitrariness is evident particularly in cases where the executive power is exercised secretly. The law must be sufficiently clear to provide citizens with adequate indications regarding the circumstances in which, and the conditions under which, the public authorities have the right to resort to this secret and potentially dangerous interference with the right to respect for private life and correspondence ... The Court states that the use of information about the date and length of phone calls, especially about dialled numbers, may raise issues under Article 8, because such information is an integral element of communication over the telephone.[44]

[44] Decision of the Constitutional Court of the Republic of Serbia, ИУз-1218/2010 of 19 April 2012.

The Appellate Court in Belgrade, in the reasoning of its decision rendered in case no. Гж—1214/12, refers to the Declaration on Freedom of Political Debate in the Media, adopted by the Committee of Ministers of the Council of Europe in 2004, stating the following:

> Freedom of opinion and expression is guaranteed by the Constitution of the Republic of Serbia, as well as the freedom to ask, receive and spread information and ideas by speech, writing, in pictures or in some other form. The Constitution also allows the freedom of expression to be restricted by law, if such restriction is necessary for the protection of the rights and reputation of others . . . The Declaration on the Freedom of Political Debate in the Media, which was adopted by the Committee of Ministers of the Council of Europe, on 12 February 2004, at the 872nd Meeting of the Ministers' Deputies, *inter alia*, provides that political figures accept being exposed to the public and political debate, and are therefore subject to detailed public scrutiny and, potentially, powerful and intense public criticism, expressed in the media, of the manner in which they conduct, or have conducted their public posts. It also stipulates that political figures should not enjoy greater protection of reputation and other rights than other individuals, therefore sanctions under national law of the media for violations perpetrated in the course of criticising political figures should not be severe . . . Freedom of the press enables the public at large to become acquainted with the positions of political leaders in respect of political matters of general interest . . . The Court established that the journalist acted with due diligence and appropriately, because he faithfully interpreted and sublimated contents of already published texts about the plaintiff. By disclosing the information, no false or incomplete information was disclosed . . . [O]n the grounds of these reasons, the impugned judgment had to be reversed.[45]

Following the identical approach to freedom of the media, the Appellate Court in Belgrade also invoked Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms in the reasoning of its judgment upon a plaintiff's claim for damages for the mental distress caused by the publication of false news content. The reasoning, among other things, reads:

> The provision of Article 200, paragraph 1 of the Obligations Act stipulates that in the case of mental distress occurring as a consequence of injury to reputation, honour, freedom and personal rights, the court, if it finds that the circumstances of the case, in particular the strength of distress, fear and its duration, justify it, will award just monetary compensation, regardless of pecuniary damage, to the aggrieved party, even in its absence. Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ratified on 26 December 2003, and therefore an integral part of domestic law) provides in paragraph 1 that everyone has the right to freedom of expression, that this right includes freedom to have an opinion and to receive and impart information and ideas without interference by public authorities and regardless of borders, but that this article shall not prevent States from requiring a licence for broadcasting, television or cinema enterprises, and in paragraph 2 that, since the exercise of these freedoms entails duties and responsibilities, it may be subject to such formalities, conditions, restrictions or penalties as are prescribed and necessary in a democratic society . . . From the quoted provisions of the Public Information Act, as well as from the provision of the Convention, it is clear that the freedom of expression is one of the bases of a democratic society. This also means that interference with the exercise of the freedom of the press can be justified by a prevailing demand in the public interest . . . Publication of the subject article or pieces of information could not cause injury to the reputation and honour of the plaintiff that would, in

[45] Judgment of the Appellate Court in Belgrade, Гж—1214/12 of 16 July 2012.

> accordance with the provisions of the cited Article 200 of the Obligations Act and the cited provisions of the Convention, justify an award of compensation for damages to the plaintiff, for which reason the judgment of the court of first instance is hereby on appeal partly reversed, and in respect of its first paragraph reversed, and the plaintiff's claim rejected as unfounded.[46]

The Appellate Court in Belgrade referred to the European Convention for the Protection of Human Rights and Fundamental Freedoms in the case in which a judgment was rendered in respect of a dispute involving the right to the protection of a family home. The reasoning of the judgment reads:

> By factual change of use of an auxiliary building for residential use and the use of the building for residence for more than 40 years, the defendant acted as the occupant, or lessee. Therefore, the provisions of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms grants her the right to protection of her family home.[47]

5 Judicial Application of EU Law

The Supreme Court of Cassation, in its reasoning of a judgment of 2010, referred to the Charter of Fundamental Rights of the European Union, stating the following:

> The substantive law was incorrectly applied to the proper state of facts when the judgment was granted in favour of the lawsuit. According to the Charter of Fundamental Rights of the European Union, everyone has the right to respect for his private and family life. In this Charter, children's rights and child protection are particularly emphasised. Children should have the protection and care necessary for their well-being and the best interests of children should be considered primarily in all actions concerning children.[48]

In a case from 2009, the Constitutional Court presented the following opinion on formal sources of law:

> The Constitutional Court has considered the initiator's allegations that the disputed provisions of the Judges Act are not in accordance with the generally accepted rules of international law which are an integral part of the legal order of the Republic of Serbia and applied directly, according to Article 16 of the Constitution and the Basic Principles of the Independence of the Judiciary, Recommendation No. R (94) 12 of the Committee of Ministers of the Council of Europe to Member States on the independence, efficiency and role of judges, and the European Charter on the Statute (law) for Judges, which are related to the independence and impartiality of judges . . . In terms of the Basic Principles on the Independence of the Judiciary and Recommendation No. R (94) 12 of the Committee of Ministers to Member States on the independence, efficiency and role of judges and the European Charter on the Statute for Judges, the Constitutional Court considers that these acts are not formal sources of law in terms of Article 167 of the Constitution, and that in respect of them the constitutionality review cannot be performed.[49]

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[46] Judgment of the Appellate Court in Belgrade, Гж—7983/12 of 16 January 2013.

[47] Judgment of the Appellate Court in Belgrade, Гж—1838/10 of 17 February 2010.

[48] Judgment of the Appellate Court in Belgrade, Рев. 2401/2010 of 28 April 2010.

[49] Constitutional Court, Decision IUz-43/2009 of 9 July 2009, Official Gazette of the Republic of Serbia, No. 65/2009.

In proceedings before the Administrative Court, the plaintiff made a reference to the judgment of the Court of Justice of the European Communities (*Staatssecretaris van Financiën v. Kamino International Logistics* BV C-376/07 of 19 February 2009). Upon the constitutional complaint filed against the judgment of the Administrative Court 31478/10 of 22 September 2011, the Constitutional Court gave the following opinion:

> The constitutional complaint stated: ... that the Administrative Court was required to determine whether the facts on which the final decision of Customs had been based were established beyond doubt, particularly in the context of new evidence that the constitutional complaint applicant enclosed his lawsuit in the administrative dispute proceedings (decision by the Harmonised System Committee of the World Customs Organisation on classification of subject monitors, published in the 'Official Gazette of the Republic of Serbia', No. 11 of 22 February 2011, and the judgment of the Court of Justice of the European Communities *Staatssecretaris van Financiën v. Kamino International Logistics* BV C-376/07 of 19 February 2009) ... the reference made by the complainant in the course of the administrative dispute proceedings to the judgment of the Court of Justice of the European Communities *Staatssecretaris van Financiën v. Kamino International Logistics* BV C-376/07 of 19 February 2009, had no effect on the assessment of the accepted customs declaration, because the provision of Article 3a paragraph 3 of the Customs Tariff Act provides that only decisions on the classification published in the Official Journal of the European Union are legally binding.[50]

6 Case Law on the Internet

The most important decisions of the Supreme Court of Cassation and general legal opinions deemed by that Court as capable of influencing the case law of lower courts are publicly available on the Supreme Court of Cassation website.[51] The decisions and opinions are available only in Serbian. A bulletin with general legal opinions of the General Session, conclusions of the court divisions, sentences of the decisions of courts passed at the sessions of divisions, as well as expert opinions and opinions of judges, is published by the Supreme Court of Cassation.[52] As part of additional education for judges, the Supreme Court of Cassation publishes certain decisions of the ECtHR and other international institutions of importance for the protection of human rights and fundamental freedoms.[53]

The Constitutional Court of Serbia has established a database of case law. It can be searched by the file number of the case, the type of procedure or by key words. This database is publicly available on the website of the court in Serbian. A bulletin

[50] Decision of the Constitutional Court of the Republic of Serbia, Уж-4787/2011 of 24 November 2011.

[51] http://www.vk.sud.rs/sudska-praksa.html. Accessed 22 February 2013.

[52] http://www.vk.sud.rs/bilten-sudske-prakse-vrhovnog-kasacionog-suda.html. Accessed 22 February 2013.

[53] http://www.vk.sud.rs/karakteristicne-presude-protiv-zemalja-clanica.html, http://www.vk.sud.rs/presude-protiv-srbije.html. Accessed 22 February 2013.

on the most important issues tackled by the Constitutional Court and the most interesting opinions of this Court is also publicly available on the same website.[54]

The relevant case law on access to information and data protection in Serbia can be found on the website of the Commissioner for Information of Public Importance and Personal Data Protection.[55] The cases include the basis for some of the Commissioner's decisions and opinions, the most important decisions of domestic courts, and decisions of international and foreign courts and other bodies.[56] Some cases are available only in Serbian, while others are available in English as well.

7 Legal Education on International and EU Law

The process of initial and ongoing training of judges is regulated by the Judicial Academy Act.[57] The Academy is responsible for organising and conducting training through lectures, mentoring and professional training of judicial staff and establishing co-operation with international institutions concerning its activities. In order to be admitted to a position in the judiciary, a candidate has to take an entrance exam set by the Steering Committee of the Academy.[58] The candidates with the highest overall mark, which represents the sum of a grade point average from their studies and the mark given at the entrance exam, are employed as judicial interns. During their internship, they are trained by experienced judges, *inter alia*, in the fields of European law, human rights law and international law. This training should provide interns with advanced knowledge of the judicial practice of the ECtHR, and basic principles and standards of European law and the case law of the EU Court of Justice.[59]

As a matter of principle, the continuous training of judges is voluntary. However, the High Judicial Council is authorised to organise compulsory training,[60] and there are laws that stipulate the compulsory training of judges, such as the Juvenile Offenders and Criminal and Legal Protection of Minors Act.[61] The Judicial Academy organises short-term training, as well. Since 2009, the Judicial Academy has organised over 20 seminars for judges on the Convention on Human Rights and on

[54] http://www.ustavni.sud.rs/page/view/sr-Latn-CS/83-100208/bilteni-suda. Accessed 25 February 2013.

[55] http://www.poverenik.rs/en.html. Accessed 26 February 2013.

[56] http://www.poverenik.rs/en/cases.html, http://www.poverenik.rs/en/cases-di.html. Accessed 22 February 2013.

[57] Judicial Academy Act, Official Gazette of the Republic of Serbia, No. 104/2009.

[58] Judicial Academy Act, Art. 49 paragraphs 1 and 2.

[59] The training programme is available at: http://www.pars.rs/active/sr-cyrillic/home/pocetna_obuka.html. Accessed 3 March 2013.

[60] Judicial Academy Act, Art. 43.

[61] Juvenile Offenders and Criminal and Legal Protection of Minors Act, Official Gazette of the Republic of Serbia, No. 85/05, Art. 165.

standards of application, ECtHR case law and cases dealt with by the UN Human Rights Committee, with a special emphasis on the application of relevant standards in the case law of national courts, including direct application in judgments of the highest courts, in particular the standards of Council of Europe bodies and the ECtHR in respect of the application of Articles 5, 6, 7, 8 and 14 of the European Human Rights Convention, including Protocol 12 to the Convention, and the standards and practices of the UN Human Rights Committee in respect of application of the UN conventions against discrimination.[62] Records on participants in these training events are used in judicial advancement procedures.

A judge is not allowed to rule on family matters without first obtaining a certificate on having completed training on international law standards applicable in such matters.

8 Conclusion

In the hierarchy of sources of law in the Serbian legal system, ratified international treaties and recognised principles of international law stand below the Constitution, but above all other sources of law. Moreover, the fact that human and minority rights guaranteed by the Constitution are directly applicable is directly related to the applicability of international law, not only because several international instruments are regarded as undisputed authoritative sources for interpreting contents of human rights standards and guarantees within the legal systems that have acceded to such instruments, but also by virtue of a rule of interpretation expressly imposed by the Constitution of Serbia.

Serbia has signed the Stabilisation and Association Agreement with the European Communities and their Member States, but this agreement has still not come into force (as of 1 April 2013). A dilemma exists in respect of the point in time at which certain provisions of the SAA, namely the obligation to harmonise its law with the *acquis communautaire*, as well as to 'ensure proper implementation and enforcement of existing and future legislation', would become binding for Serbia. Strong arguments may be identified in favour of the view that these obligations have already come into force. Contrary to the SAA, the Interim Agreement on Trade and Trade-Related Matters, executed between the European Community and Serbia, entered into force in February 2010. This treaty in effect obliges Serbian administrative, regulatory and judicial bodies to review Serbian legislation and administrative and court decisions in terms of certain rules and interpretative instruments of EU law.

Analysis of the case law of the Constitutional Court of Serbia has shown substantial deference of this court towards the standards that the European Court

[62] More information about these seminars is available at: http://www.pars.rs/active/sr-cyrillic/home/vesti.html. Accessed 5 March 2013.

of Human Rights has established in terms of the application of the relevant standards for the purpose of interpreting the human rights provisions of the Serbian Constitution, the right to a trial within a reasonable time, the direct application of the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms, reviews of restitution legislation, interpretation of the right to respect for private life, etc.

While the Constitutional Court may from time to time be faced with application of a ratified international treaty other than the European Convention for the Protection of Human Rights and Fundamental Freedoms, the courts of general jurisdiction in Serbia limit themselves to applying only that particular convention. The disputes in respect of which the European Human Rights Convention is applied by courts of general jurisdiction are almost solely those based on claims for damages resulting from defamation (interpretation of the freedom of opinion and expression), as well as those involving family matters, children's rights and child protection, and certain aspects of property rights.

Since the Constitutional Court has in effect become the principal authority for interpreting the European Human Rights Convention within the legal system of Serbia, sources of knowledge about the case law of the Strasbourg court are of prime importance for the final effect of the application of Convention provisions. Independent bodies, such as the Ombudsman of the Republic of Serbia and the Commissioner for Information of Public Importance and Personal Data Protection, have proved to be instrumental in providing knowledge about the relevant case law.

In general, the courts in Serbia, including the Constitutional Court, have been reluctant to give any deference to the provisions of the founding treaties of the EU or to the case law of EU courts. One notable exception is the reference made by the Supreme Court of Cassation, made in a judgment of 2010, to the provisions of the Charter of Fundamental Rights of the EU in respect of the rights to respect for private and family life, children's rights and child protection.

In general, an assessment may be made that the case law of higher Serbian courts is not sufficiently publicly accessible, with the exception of the Constitutional Court, whose decisions are fully and freely accessible on its website. The Supreme Court of Cassation only publishes its own selection of anonymous opinions on judgments and sentences. By the same token, the training of judges in respect of international law does not seem to be sufficient, particularly in respect of the case law of the European Court of Human Rights. One notable exception is the field of family matters and children's rights, in respect of which appropriate additional training of judges is mandatory.

The conducted analysis shows that in addition to enhancing institutional capacity for the application of international law, as well as increasing the transparency of established interpretative standards of Serbian courts, the application of international law in Serbia would greatly profit from raising awareness of the direct applicability of the European Human Rights Convention before courts of general jurisdiction.

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