



In line with Resolution II adopted by the Circle of the Presidents at its meeting held on 13 June 2018 in Prague, the theme of the XVIII<sup>th</sup> Congress of the Conference of European Constitutional Courts to be held in Prague from 26 to 29 May 2020 will be:

**HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS:  
THE RELATIONSHIP OF INTERNATIONAL, SUPRANATIONAL AND NATIONAL CATALOGUES IN THE  
21ST CENTURY**

**QUESTIONNAIRE FOR THE XVIII<sup>th</sup> CONGRESS  
OF THE CONFERENCE OF EUROPEAN CONSTITUTIONAL COURTS**

**I. GENERAL PART: CATALOGUES OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS**

**I.I International catalogues of human rights (ECHR, UDHR and ICCPR)**

- In your country, what is the constitutional position/characteristic/legal force of international treaties protecting human rights?
- What mechanism is used to invoke the international treaties in national court decision-making?
- Is it possible to invoke the direct effect of the international catalogues of human rights? If so, please describe the mechanism.

**I.II Supranational catalogues of human rights (the Charter)**

- Is the Charter a point of reference to review the constitutionality of legal rules and/or decisions of public authorities, be it directly (a formal point of reference in some EU member states) or indirectly by “radiating” through the national catalogues (a substantive point of reference in other states)?
- Does the human rights case law of the Court of Justice of the European Union serve as guidance for the interpretation and application of the national catalogue in your country by general courts, or as a source for judicial law-making?
- Is the national impact of the Charter conditioned, in constitutional terms, by its essentially equivalent degree of protection afforded, or as the case may be in the EU member states, is it conditioned by making a request for preliminary ruling with the Court of Justice of the EU?

I.III National human rights catalogues

- Is the catalogue of human rights part of the constitution of your country? If so, how is it incorporated (a separate constitutional charter, a part of the Constitution, a part of the constitutional order)? What is its structure?
- What is the historical background of the creation of the national catalogue of human rights in your country? Is the respective legislation in your country based on other legislation (previous or foreign), or is it original?
- What has been the development of your national catalogue of human rights over time? Is it undergoing a change? Are new rights included? Is there a constitutional procedure for its modification or amendment?

I.IV The mutual relationship between different catalogues of human rights

- Can you give examples from the case law of your court related to the use of any of the international catalogues?
- Has your court considered the relationship/hierarchy/competition of the catalogues of human rights in light of the protection afforded?
- Is there an established procedure for choosing a specific catalogue of human rights in cases where the right is protected under more catalogues (NB: The application of the Charter is binding in EU member states subject to compliance with Article 51(1), i.e. its application is not discretionary.)

**II. SPECIAL PART – SPECIFIC ISSUES RELATED TO SELECTED FUNDAMENTAL RIGHTS**

II.I Right to life

- What is the original wording of the provision protecting this right in your national catalogue?
- Is it possible to restrict the right? If so, how and under what conditions?
- Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.
- Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

II.II Freedom of expression

- What is the original wording of the provision protecting this right in your national catalogue?
- Is it possible to restrict the right? If so, how and under what conditions?
- Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.
- Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

II.III Right to privacy/right to respect for private life/right to private life

- What is the original wording of the provision protecting this right in your national catalogue?
- Is it possible to restrict the right? If so, how and under what conditions?
- Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.
- Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

II.IV Freedom of religion

- What is the original wording of the provision protecting this right in your national catalogue?
- Is it possible to restrict the right? If so, how and under what conditions?
- Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.
- Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

II.V Prohibition of discrimination

- What is the original wording of the provision protecting this right in your national catalogue?
- Is it possible to restrict the right? If so, how and under what conditions?
- Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.
- Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

II.VI Right to liberty

- What is the original wording of the provision protecting this right in your national catalogue?
- Is it possible to restrict the right? If so, how and under what conditions?
- Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.
- Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

Explanatory notes:

- ECHR – European Convention on Human Rights  
Charter – Charter of Fundamental Rights of the EU  
UDHR – Universal Declaration of Human Rights  
ICCPR – International Covenant on Civil and Political Rights

## **Notes on the design of the questionnaire:**

Most European countries have laid down a number of rights and freedoms in their various stages of development, which they consider to be of such importance that they put them above other rights, duties and values. The primacy of these rights over other values and interests of the state has also been reflected in their formal expression, that is, in a summary list of such rights and freedoms in a document with the highest legal power. Such a document is most commonly the constitution of the state; for countries with a poly-legal constitution – such as the Czech Republic – it is a special catalogue with an autonomous normative character, but it is comparable with the Constitution in terms of its legal force and system hierarchy.

Similarly to how the positions of fundamental rights and freedoms have been highlighted in national constitutional documents, international human rights documents contain provisions on human rights, their protection, application and application primacy. Therefore, national catalogues of human rights are similar to international ones in that they contain a similar list of rights, at least a similar scope of basic rights and also the fact that higher emphasis is placed on the rights and freedoms protected by the national catalogues.

International human rights documents, mostly having the form of treaties, have been influencing, conditioning and determining the decision-making process of constitutional courts in the area of human rights for decades. However, their approach to the use of international human rights documents is not uniform as it is subject to the national setting of the reception of international law sources. The questionnaire aims to inquire what steps are taken by the constitutional, or equivalent courts, when a value (a right or a freedom) is protected by more sources of law (which usually include a national constitution, the European Convention on Human Rights adopted within the Council of Europe, Charter of Fundamental Rights of the EU or another international multilateral treaty protecting human rights). Therefore, the use of various catalogues of human rights by constitutional courts should be analysed further by the XVIII<sup>th</sup> Congress of the Conference of European Constitutional Courts.

## **Notes on the structure of the questionnaire:**

The questionnaire has two parts: a general and a special part.

The first part focuses on general aspects of reasoning regarding the application of individual catalogues of human rights. It will examine, in particular, the essence of their normative enshrining in the national legal order, their plurality, their possible hierarchical position, their mutual relationships, their application in the case law, and the importance attached to the particular catalogue of human rights by a particular constitutional court. The structure of the questionnaire distinguishes national, transnational and international catalogues of human rights; the last area deals with the mutual relationship between such catalogues.

*(Note on Part I.II of the questionnaire: if your country is not a member of the EU and your court does not apply the Charter or the case law of the Court of Justice of the European Union, it is not necessary to fill in this part).*

The second part examines human rights common to most human rights catalogues. An example of six human rights makes it possible to make an in-depth comparative analysis of the approach taken by the European constitutional courts and the degree of use of the individual catalogues when protecting specific rights.

### **Practical issues for submitting the questionnaire:**

Many of the CECC Congresses in the past have focused extensively on the Charter of Fundamental Rights of the EU and EU law, even in relation to the case law of the European Court for Human Rights and the Court of Justice of the European Union. Despite the fundamental importance of both of these courts and the role of the Charter for the decision-making of the European constitutional courts, we believe that it is not necessary to repeat the conclusions from the questionnaires for previous Congresses. We would be happy if the focus is placed on national constitutional courts and how they use the human rights catalogues, rather than on the hierarchy of the courts or application priority issues in the individual jurisdictions.

In accordance with the provision of Article 9 (2) of CECC Statute and Resolution II adopted by the Circle of Presidents at its meeting on June 13, 2018 in Prague, we hereby attach the final version of the Questionnaire and kindly request you to complete it **electronically, in your national language and in English or French** (Article 3 of the Conference regulations) and it would be appreciated, if your answers to the Questionnaire **did not exceed 25 standard pages**. Please return the completed Questionnaire by electronic mail to CECC secretariat at [cecc2017-2020@concourt.cz](mailto:cecc2017-2020@concourt.cz) **by October 31, 2019 at the latest**.

Thank you!

**Your CECC-team**

