

The EFTA Court stated that it was up to the national court to find in the individual case whether the requirements for justifying discrimination were met.

Subsequently, the State Court - referring to the decision E-5/10 of the EFTA Court - considered the new provisions of the ZPO concerning security deposits for legal costs and in particular also § 57 ZPO to be EEA compliant.¹⁰⁰

Thus, the legal positions adopted by the EFTA Court and the State Court are now conformal.

7. Do other national courts also consider the jurisprudence of European courts of justice as a result of the constitutional court taking it into consideration in its decisions?

That jurisprudence is taken into consideration in that the courts base their interpretation of provisions of the ECHR or of fundamental rights in the Constitution on the practice of the State Court, which in turn orients itself at the European courts in the way described above.

One example of this is the order of the Supreme Court of 05 Apr 2013, 11 UR.2011.364, in which it dismissed an application for the granting of legal aid with reference to a judgment of the State Court¹⁰¹ on the question of the constitutionality of excluding private parties from legal aid of in criminal proceedings, which judgement was in turn based on the practice of the ECtHR.¹⁰²

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

We assume that the practice of the constitutional courts in contested questions such as the retention of data also influences the practice of the European courts. This has been shown by the case "Dassa v. Liechtenstein"¹⁰³ (see above 6.), in which the ECtHR considered the practice of the State Court, which denied the applicability of the then ECtHR practice on the

¹⁰⁰ StGH 2010/20, www.gerichtsentseide.li, cons. 2.3.1 f.; cf. also Wilhelm Ungerank, Entsprechen die nunmehrigen Bestimmungen der ZPO betreffend die Sicherheitsleistung für Prozesskosten dem EWR-Recht?, LJZ 2010, p. 32 et sqq. In the decision in StGH 2010/63, cons. 3.1 et seq., the State Court also qualified the rules on security deposits concerning legal entities pursuant to § 57a ZPO to be conformal with EEA law, also based on the mentioned decision of the EFTA Court.

¹⁰¹ StGH 2012/128.

¹⁰² Similar also the Supreme Court's order of 08 Mar 2013, DO.2012.7, concerning the applicability of Art. 6 ECHR to disciplinary matters, with reference to the ECtHR and to the State Court.

¹⁰³ ECtHR 10 Jul 2007, Application No. 696/05.