Special Issue – Preliminary References to the CJEU
Part Four

European Integration Through Preliminary Rulings? The Case of the Bulgarian Constitutional Court

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In memory of Dr Peter J van Krieken (1949-2015)—
a great lecturer and supervisor and a kindhearted
man with an intriguing personality and sagacious mind

A. Introduction

The preliminary reference procedure under Article 267 of the Treaty on the Functioning of the European Union (TFEU)[1] is instrumental for the so-called "judicial dialogue" within the European Union (EU). The goals of the preliminary reference procedure are to ensure the uniform interpretation and application of EU law and to contribute to the harmonious development of the law throughout the EU.[2] It was through the preliminary reference procedure to the Court of Justice of the European Union (CJEU) that the principles of direct effect and supremacy were developed.[3] It took many years before the first request by a Constitutional Court was sent to the CJEU. So far, the Constitutional Courts of Belgium,[4] Austria,[5] Lithuania,[6] Italy,[7] Spain,[8] France,[9] Germany,[10] and most recently Slovenia,[11] have

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[1] Treaty on the Functioning of the European Union, 30 March 2010, OJ C83/47, 2010.

[2] European Court of Justice, The Future of the Judicial System of the European Union (Luxembourg, 1999) 21–22.

[3] PAUL CRAIG & GRÁINNE DE BURCA, EU LAW: TEXT, CASES AND MATERIALS 442 (2011).

[4] *Cour d'Arbitrage*, 19 February 1997, no. 6/97.

[5] *Verfassungsgerichtshof*, 10 March 1999, B 2251/97, B 2594/97.

[6] Lietuvos Respublikos Konstitucinis Teismas, 8 May 2007, Case No. 47/04.

[7] *Corte Costituzionale*, sentenza no. 102/2008 and ordinanza no. 103/2008. For a discussion on this first reference, see Filippo Fontanelli & Giuseppe Martinico, *Between Procedural Impermeability and Constitutional Openness:*

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sent requests for preliminary rulings to the CJEU.[12] By far the most active of these in sending requests has been the Belgian Court.[13] The Portuguese Constitutional Court has indicated that it can request preliminary rulings from the CJEU but is yet to do so.[14] In the other Member States (MS) with Constitutional Courts, references have not been sent yet, although worthy occasions in terms of EU-law-related cases have occurred, as also observed in various contributions in this special issue.[15] These MSs include Bulgaria.

The Bulgarian Constitutional Court (BCC) is also part of another group. It is one of the post-socialist-rule Constitutional Courts established in Eastern Europe in pursuit of democratic governance and the rule of law. Established in 1991 by the new Constitution of the Republic of Bulgaria (CRB),[16] it was, as one commentator put it, "among the most radical

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The Italian Constitutional Court and Preliminary References to the European Court of Justice, 16 EUR. L. J. 345 (2010). Recently the *Corte Costituzionale* sent a request for the first time arising from *incidenter* proceedings—*Corte Costituzionale*, ordinanza no. 207/2013.

[8] *Tribunal Constitucional*, 9 June 2011, Order ATC 86/2011.

[9] Admittedly, not a Constitutional Court as such but it can be equated to one—*Conseil Constitutionnel*, Décision n° 2013–314P QPC 4 April 2013.

[10] Press release no. 9/2014 of 7 February 2014, Principal Proceedings ESM/ECB: Pronouncement of the Judgment and Referral for a Preliminary Ruling to the Court of Justice of the European Union, *available at* http://www.bundesverfassungsgericht.de/en/press/bvg14-009en.html.

[11] Ustavnega sodišča št. U-I-295/13 from 6 November 2014. For a short note, see S. Bardutzky, The first preliminary reference to the Court of Justice of the EU by the Slovenian Constitutional Court: the case of the Commission's Banking Communication, *available at* http://eurocrisislaw.eui.eu/news/the-first-preliminary-reference-to-the-court-of-justice-of-the-eu-by-the-slovenian-constitutional-court-the-case-of-the-commissions-banking-communication/.

[12] Giuseppe Martinico, *A (Dis-) Order of Disagreements: Exploring the nature of constitutional conflicts in EU law*, 3 SANT' ANNA LEGAL STUDIES, RESEARCH PAPER 10 (2013).

[13] Giuseppe Martinico, *Preliminary reference and Constitutional Courts: Are you in the mood for dialogue?*, 10 TILBURG INSTITUTE OF COMPARATIVE AND TRANSNATIONAL LAW, WORKING PAPER 5 (2009).

[14] *Tribunal Constitucional Portugal*, Sentencia 163/1990, 23 May 1990; Ricardo Alonso Garcia, *Los Tribunales Constitutionales y el Control del Derecho Interno Conectado con el Comunitario*, 2 REVISTA DE CIENCIAS JURÍDICAS Y SOCIALES 153, 168 (2005); *see also* Catarina Sarmento e Castro & Filipa Vicente Silva, *Cooperation of Constitutional Courts in Europe—Current Situation and Perspectives*, NATIONAL REPORT ON THE PORTUGUESE CONSTITUTIONAL COURT, XVI CONGRESS OF THE CONFERENCE OF EUROPEAN CONSTITUTIONAL COURTS 21 (2014).

[15] *See, e.g.*, Hungarian Constitutional Court, Decision 17/2004 (V. 25) AB; *Ústavný súd Slovenskej republiky*, Decision Pl US 8/04–202, 18 October 2005; *Curtea Constituțională a României*, Decizia no.1258, 8 October 2009. Such cases from the BCC are considered in Section C of this paper.

[16] Constitution of the Republic of Bulgaria, promulgated SG 56 of 13 July1991, entered into force 13 July 1991 [hereinafter Bulgarian Constitution].

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innovations"[17] introduced by that Constitution. It was the first time that a judicial institution could review the constitutionality of laws and give authoritative interpretations on the constitutional provisions in Bulgaria.[18] Since the Turnovo Constitution's creation (1879)[19] of a unicameral National Assembly,[20] until 1991 it was only the National Assembly that had the power to decide on the constitutionality of laws.[21] The BCC, as a major institutional development in the newly democratic Bulgaria, required additional safeguards due to the volatile political environment prevalent in the early 1990s.[22] These safeguards were included in the form of constitutional provisions. Today, however, they may have unwanted side effects that will be examined here.

Why has the preliminary reference tool evaded the BCC's attention? This Article attempts to answer this question by looking at various possible reasons for this oversight. It will start by looking at EU law, and continue by thoroughly examining the constitutional framework within which the BCC operates. It will show how, since Bulgaria joined the EU, the BCC has utilized this framework without using the preliminary reference tool.

Section 2 starts with a consideration of EU law. In particular, the Article will discuss whether the BCC is a court or tribunal in the sense of Article 267 TFEU, taking into consideration the different constitutional bases which trigger the BCC's powers. Section 3 will continue with the CRB provisions relating to the issue of preliminary references. It will be divided into two main parts. The first part will examine whether there is a general constitutional obstacle to the BCC requesting a preliminary ruling from the CJEU. Article 149 CRB will be central in this part as it contains the BCC's powers as well as a limitation clause on the increase or decrease of these powers. The second part will focus on the BCC's jurisprudence with EU law relevance. These cases will be divided into two categories according to the constitutional bases of the cases. The analysis will examine the BCC's varying attitude towards EU law issues. The analysis will consider whether these cases presented worthy occasions for the BCC to request a preliminary ruling from the CJEU. In

[17] Venelin I. Ganev, *The Bulgarian Constitutional Court, 1991-1997: A Success Story in Context*, 55 EUR.-ASIA STUDS. 597, 598 (2003).

[18] Емилия Друмева, Конституционно право 561 (2013) [Translated by the author: Emilia Drumeva, Constitutional Law]; HERMAN SCHWARTZ, THE STRUGGLE FOR CONSTITUTIONAL JUSTICE IN POST-COMMUNIST EUROPE 168 (2002).

[19] Constitution of the Principality of Bulgaria, adopted 16 April 1879, art 49.

[20] SCHWARTZ, *supra* note 18, at 165.

[21] DRUMEVA, *supra* note 18. Certain powers of the Council of State during its short existence under the "regime of credentials" (1881–1883) have been considered as an insignificant exception to this tradition.

[22] On the political environment, see SCHWARTZ, *supra* note 18, at 167.

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other words, did the BCC need an interpretation of EU law by the CJEU to decide on the particular cases before it?

B. EU Law as the Looking Glass

According to settled case law, in order to determine whether the body making a reference is a court or tribunal for the purposes of Article 267 TFEU, which is a question of EU law,[23] the CJEU takes into account a number of factors.[24] These factors are whether the body is established by law, whether it is permanent, whether its jurisdiction is compulsory, whether its procedure is *inter partes*, whether it applies rules of law, and whether it is independent.[25] Furthermore, while an *inter partes* hearing as such is not indispensable for making a reference,[26] it is required that there is a case pending before the national court and that the court is "called upon to give judgment in proceedings intended to lead to a decision of a judicial nature".[27] The BCC's fulfillment of the factors for requesting a preliminary ruling has been discussed to some extent in the Bulgarian legal literature, and the general consensus is that they have been fulfilled.[28]

This section aims to build on the existing Bulgarian literature. The BCC was established by the provisions in Chapter Eight of the CRB and its activities are further elaborated in the Law on the Constitutional Court (LCC).[29] Thus, it is established by law. It is also permanent as none of the provisions suggest an end date or end goal after the achievement of which it is to be dissolved. The BCC also has compulsory jurisdiction for resolving the constitutional issues enumerated in Article 149(1) CRB, and its decisions are binding. In making its decisions the BCC applies the CRB, international law, when applicable, and, on rare occasions, laws, such as the Election Code in deciding on the lawfulness of elections. Thus, it applies rules of law. The BCC is also independent from the legislator, the executive,

[23] Case C–246/80, Broeckmeulen v Huisarts Registratie Commissie, 1981 E.C.R. 2311.

[24] Case C–222/13, TDC A/S v Erhvervsstyrelsen, 2014 E.C.R. I–00000 (27).

[25] Case 61/65, Vaassen-Göbbels, 1966 E.C.R. 26, para. 273; Case C–54/96, Dorsch Consult, 1997 E.C.R. I–4961, para. 23; Joined Cases C–110/98 to C–147/98, Gabalfrisa and Others, 2000 E.C.R. I–1577, para. 33; Case C–178/99, Salzmann, 2001 E.C.R. I–4421, para. 13; Case C–182/00, Lutz and Others, 2002 E.C.R. I–547, para. 12; Case C–195/06, Österreichischer Rundfunk, 2007 E.C.R. I–8817, para. 19.

[26] Case C–18/93, Corsica Ferries, 1994 E.C.R. I–1783, para.12; Case C–210/06, Cartesio Oktató és Szolgáltató bt, 2008 E.C.R. I–9641, para. 56.

[27] Case C–96/04, Criminal proceedings against Standesamt Stadt Niebüll, 2006 E.C.R. I–3561, para. 13.

[28] *See, e.g.*, Александър Корнезов, Преосмисляне на контрола за конституционосъобразност в светлината на правоото на Европейския съюз [Alexander Kornezov, Rethinking of the constitutional review in light of the law of the European Union], 2 Правна мисъл 58 (2007).

[29] Law on the Constitutional Court SG 67 of 16 August 1991 as last amended SG 50 of 3 July 2012.

and the judiciary, and operates pursuant to the relevant provisions in the CRB and the LCC.[30]

The controversial factor is whether the BCC's procedure is *inter partes*. In discussing the *inter partes* factor a note should be taken of the different types of proceedings available at the BCC. They can mainly be divided into two: direct (*principaliter*) proceedings and indirect (*incidenter*) proceedings, to use the notions from the Italian constitutional jurisprudence. The legal bases for initiating such proceedings in Bulgaria are contained in Article 149 CRB, which is discussed in the next section.

Principaliter proceedings are direct proceedings where a Constitutional Court is the only instance considering the case.[31] Such are the proceedings initiated by State (regional or central) organs challenging particular national provisions.[32] The power of the BCC to give binding interpretations of the CRB under Article 149(1)(1) CRB is a type of *principaliter* proceedings which can be seen as problematic,[33] because in such proceedings (1) there are no applicants or respondents in the traditional sense, (2) nor are the proceedings adversarial in nature, (3) nor are they connected to adversarial proceedings as are the *incidenter* proceedings.[34] This is due to the aim of the proceeding, which is to determine the precise meaning of a constitutional provision.[35] This type of *principaliter* proceedings may pose a particular problem, because even if the BCC accepts EU law as constitutional parameter, the CJEU may reject the hypothetical request (although unlikely). According to the CJEU, the preliminary reference procedure is to be used to give guidance in particular cases with particular problems and is to be connected to a genuine dispute,[36] which is at odds with the procedure in Article 149(1)(1) CRB.

Incidenter proceedings are indirect proceedings where judges make a reference to the Constitutional Court if there is a doubt about the constitutionality of a national law provision.[37] The legal base for *incidenter* proceedings in Bulgaria can be found in Article 150(2) CRB, which states: "Should it find a discrepancy between law and the Constitution,

[30] *Id*. at Article 1.

[31] Fontanelli & Martinico, *supra* note 7, at 354–56.

[32] *See, e.g.*, *Corte Costituzionale*, sentenza no. 102/2008.

[33] Kornezov, *supra* note 28, at 61.

[34] *Id.*

[35] *Id.*

[36] *See generally* Case C–104/79, Foglia v Novello, 1980 E.C.R. I–745.

[37] Fontanelli & Martinico, *supra* note 7, at 355.

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the Supreme Court of Cassation or the Supreme Administrative Court shall suspend the proceedings on a case and shall refer the matter to the Constitutional Court."

As such it is only the highest courts that can initiate *incidenter* proceedings in Bulgaria. As it will be seen from the discussion *infra* none of the cases before the BCC that touched upon EU law issues were *incidenter* proceedings.[38] This has prevented the BCC from pronouncing on the relevance of EU law in such proceedings. Until the BCC states its stance on the issue, it will be another possible limitation on its power to request preliminary rulings. At this juncture it should be mentioned that this limitation would stem from the BCC's view rather than from EU law, since the *inter partes* nature of the proceedings is not an indispensable factor. EU law requires that there is a case pending before the BCC and that the BCC is "called upon to give judgment in proceedings intended to lead to a decision of a judicial nature." This can be said to be fulfilled by the BCC but a debate *in abstracto* on this point can be continued indefinitely and it will only be resolved by a request for a preliminary ruling. If the BCC is not sure if it satisfies the criteria for a court or tribunal, there is only one way for it to find out the answer.

Having examined Article 267 TFEU and how it applies to the BCC, one further principle of EU law needs to be recalled to wrap up the EU law section of this Article: the principle of primacy.[39] According to this principle, national law cannot obstruct the right under EU law to request a preliminary ruling.[40] The primacy principle extends to constitutional provisions as well, as the CJEU has been reiterating since the 1970s.[41] The operation of the principle of primacy in the present case would mean that even if the BCC considered that the CRB limited its right to send a request (on which the BCC has not commented), the BCC should nevertheless not feel constrained.

However, it should be noted that when the BCC discussed the issue of the status of EU law in Decision 3 of 2004,[42] it did not say unequivocally that EU law has primacy over all constitutional provisions; that is, it is not clear if the BCC accepted a limitless primacy of EU law over the CRB. What the BCC alluded to was that the extent to which EU law has primacy over the CRB is the extent to which the CRB itself allows it, which is a reminder of the famous *controlimiti* doctrine. This view is the only way in which one can reconcile the primacy of EU law with the constitutional provisions in Articles 4 and 5 CRB. When read

[38] In general such proceedings are quite rare.

[39] Case C–26/62, Van Gend en Loos, 1962 E.C.R. 1; Case C–6/64, Costa v. ENEL, 1964 E.C.R. 585; Case C–106/77 Simmenthal, 1978 E.C.R. 629.

[40] *See generally* Case C–166/73, Rheinmühlen-Düsseldorf v. Einfuhr- und Vorratstelle für Getreide, 1974 E.C.R. 33.

[41] Case C–11/70, Internationale Handelsgesellschaft, 1970 E.C.R. 1125, para. 3; Case C–409/06, Winner Wetten, 2010 E.C.R. I-8015, para. 61; Case C–399/11, Stefano Melloni v. Ministerio Fiscal, 2013 E.C.R. I–00000, para. 59.

[42] Decision no. 3 of 5 July 2004 in Case no. 3 of 2004, SG 61 of 13 July 2004.

together, these Articles state that Bulgaria is governed in accordance with its Constitution—the supreme law that cannot be contradicted. Support for this view can be found in the discussion of Article 1(2) CRB which states that the "entire power of the state shall derive from the people [and the] people shall exercise this power directly and through the bodies established by this Constitution." According to the BCC, it follows from this provision that:

> the people may if it so wishes to delegate part of its sovereign rights in accordance with the requirements of an international agreement to which Bulgaria is a party through the National Assembly it has elected. The Bulgarian membership in the European Union starts after the ratification by the National Assembly of the Accession Treaty. This ratification is the expression of the will of the people.[43]

Thus, the BCC may accept that it has the right to request a preliminary ruling under EU law if it considers that requesting preliminary rulings is within the ambit of the changed powers introduced by the "European" constitutional amendments.

With this clarification in mind, the discussion will now examine whether there are constitutional obstacles preventing the BCC from requesting preliminary rulings from the CJEU or, in other words, whether the "European" constitutional amendments have affected the BCC's functioning in such a way as to include the preliminary reference procedure in its "toolset."

C. Bulgarian Constitutional Law as the Looking Glass

The BCC has not yet explicitly considered the issue of whether or not it can send requests for preliminary rulings to the CJEU in its case law, unlike the Constitutional Courts of other EU MSs.[44] Thus, until the BCC clarifies this point, divergent views can be sustained in the literature as regards the interpretation of the relevant constitutional provisions. This section will put forward one such view and will aim to fuel a debate in the literature on the point—a debate which is, regrettably, largely undeveloped. The discussion will begin with the powers of the BCC and will examine whether there are constitutional obstacles to the BCC's requesting a preliminary ruling in general. Then, the discussion will turn to consider whether there exist particular constitutional obstacles, focusing on the different constitutional bases for initiating proceedings at the BCC. The analysis will look at how the

[43] *Id.* (Author's translation).

[44] *See, e.g.*, the Portuguese Constitutional Court, *supra* note 14.

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BCC dealt with the cases containing EU law issues and how it treats the cases depending on the different constitutional base.

I. Looking for General Constitutional Obstacles

Article 149 CRB lists the powers of the BCC[45] which lie at the heart of this section and a partial quotation of it is in order here. Under Article 149 CRB:

> (1) The Constitutional Court shall:
> 1. provide binding interpretations of the Constitution;
> 2. rule on challenges to the constitutionality of the laws and other acts passed by the National Assembly and the acts of the President;
> […]
> 4. rule on the compatibility between the Constitution and the international instruments concluded by the Republic of Bulgaria prior to their ratification, and on the compatibility of domestic laws with the universally recognized norms of international law and the international instruments to which Bulgaria is a party;
> 5. rule on challenges to the constitutionality of political parties and associations;
> […]
> 7. rule on challenges to the legality of an election of a Member of the National Assembly;
> […]
> (2) No authority of the Constitutional Court shall be vested or suspended by law.

The discussion will start with Article 149(2) CRB. It is a limitation clause which would be central to any arguments stating that the BCC generally lacks the power or authority under the CRB to request preliminary rulings. Considering that in the CRB there is no mention of requesting a preliminary ruling from the CJEU, the first question that arises is whether this is an issue of interpretation or an issue of dealing with a *lacuna* in the constitutional regime. The two are different legal concepts and there are different tools used to deal with them. With interpretation, one interprets an existing rule, while with filling-in of *lacunae,* one presupposes a lack of a rule. The issue gets even more complicated considering that

[45] According to the BCC, Art. 149(1) does not exhaustively list the BCC's powers as other provisions contain a reference to the BCC and bestow upon it certain powers. *See* Decision no. 4 of 2011 in Case no. 4 of 2011, SG 36 of 10 May 2011. However, Art. 149(1) does provide a summary of its powers.

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there are diverging views in the Bulgarian legal literature as to what constitutes a *lacuna*.[46] The next two subsections will examine the problem from the perspective of, first, a *lacuna* and, second, interpretation.

II. Finding a Lacuna

According to the BCC, when it interprets the CRB provisions it is not acting as a "positive legislator"[47] and it cannot develop or otherwise append the CRB.[48] This is because the National Assembly (and by extension the Grand National Assembly) is the sole legislator and the BCC cannot limit this sovereign function of the National Assembly. The power to interpret is aimed at revealing the meaning of the constitutional provisions and their relationship with other provisions as well as constitutional principles.[49]

However, it has been commented in the literature that sometimes the BCC was not so much purely interpreting but rather further developing the meaning of the CRB in situations where it is silent.[50] Examples of such occasions are (1) when the BCC ruled on the legal consequence of declaring a law unconstitutional,[51] and (2) when the BCC ruled on whether it has the power to declare an international agreement unconstitutional.[52] In the first case, the BCC stated that when it is declaring a law unconstitutional, its Decision is 'resurrecting' the previous applicable provisions that were abrogated by the so-declared unconstitutional law. In the second case, the BCC has the power to declare an international agreement unconstitutional through the ratification law even though the CRB states that it can do so before the ratification. This case is further elaborated below.

Accordingly, in the case of requesting a preliminary ruling at this juncture there are two possibilities. First, the BCC can declare that requesting a preliminary ruling by the BCC from the CJEU is a *lacuna* in the constitutional regime which can only be filled in by the National Assembly through a constitutional amendment. Second, the BCC can view the issue as one

[46] For an overview of the diverging views, see Krassen Stoichev, *The issue of legal gaps in the jurisprudence of the Constitutional Court of the Republic of Bulgaria*, REPORT FOR THE CONFERENCE OF EUROPEAN CONSTITUTIONAL COURTS, 1–3, http://www.confeuconstco.org/reports/rep-xiv/report_Bulgaria_en.pdf.

[47] Determination no. 1 of 26 January 2006 in Case no. 10 of 2005.

[48] Determination no. 4 of 14 August 2007 in Case no. 9 of 2007; Determination of 17 May 2004 in Case no. 3 of 2004.

[49] Stoichev, *supra* note 46, at 8.

[50] *Id.*

[51] Decision no. 22 of 1995 in Case no. 25 of 1995, SG 105 of 1 December 1995.

[52] Decision no. 9 of 1999 in Case no. 8 of 1999, SG 57 of 25 June 1999.

of interpretation, on which contingency the discussion continues in the following subsections.

III. Finding an Interpretation

If deciding whether the BCC can request a preliminary ruling from the CJEU is a matter of interpretation, then the question is which constitutional provision(s) must be interpreted. It should, in the opinion of the author, be Article 149 CRB in the light of Articles 4(3) and 85(1)(9) CRB. In particular, the question is whether Article 149(2) CRB prevents the BCC from requesting a preliminary ruling from the CJEU. The BCC uses a wide variety of interpretative methods[53] without an expressed preference or hierarchy between them. The usual practice seems to be a case-by-case evaluation of the type of ambiguity of the provision that is to be interpreted resulting in the choice of the starting point and the method of interpretation. This section will follow the BCC's example and will aim to mirror its approach in similar cases. In the present case, Article 149(2) CRB states that the BCC's authority shall not be vested or suspended by law. The notions "authority," "vested or suspended," and "by law" lack definitive clarity and need to be explained in order to examine whether the BCC is prevented from requesting preliminary rulings from the CJEU.

Before looking at these particular notions, it would be helpful to start with the context of Article 149(2) CRB. It was drafted in 1991, when the CRB was created, and was designed to protect the newly-formed institution by 'sealing in time' its powers. Article 149(2) CRB is unique and unparalleled by the provisions on the other Bulgarian constitutional organs. There are only two explicitly listed matters concerning the BCC that are to be established by a law: the rotation order for renewing the judges and the organization and the manner of proceeding.[54] Accordingly, the purpose of Article 149(2) CRB was to provide stability and security for the work of this revolutionary institution in Bulgarian history, without exceptions and in a rather positivist way. Furthermore, the CRB was not drafted with EU membership in mind as it was in the case of Greece, for example.[55] It cannot be maintained that the purpose of the provision was only to prevent political manipulations of the BCC by the National Assembly. This was indeed the main idea but the purpose of the provision is not limited to that goal. It was to preclude any changes in the powers, not only the 'bad' ones but also the 'good' ones, until the adoption of a proper constitutional amendment.

On the rare occasions that the BCC has mentioned Article 149(2) it has not gone into further detail of its meaning and significance. However, a look at the preparatory works of

[53] Such are logical, teleological, textual, historical, consistent interpretation, use of preparatory works etc.

[54] Bulgarian Constitution, Arts. 147(2) and 152.

[55] Monica Claes, *Constitutionalizing Europe at its Source: 'The 'European Clauses' in the National Constitutions: Evolution and Typology*, 24 Y.B. EUR. L. 81, 92 (2005).

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the Grand National Assembly, which drafted and approved this provision, can provide further insight. During the discussion on giving the BCC the power to constitutionally review political parties in the CRB, the limitation clause was referred to. It was suggested that it would be enough for this power to be included in the law on the BCC. However, as Yanaki Stoilov observed, if this power was not included in the CRB it would be unacceptable including it in the law.[56] According to him, "[u]nlike any other institution, it should be clear, powers of the Constitutional Court can be given only by the Constitution and this is not by accident, because otherwise there are no guarantees that through usual law-making its role would not be *de facto* diminished."[57] Eventually, this power found its way into the CRB. Accordingly, from the very beginning there was an understanding that the BCC's powers should be listed in the CRB and a positivist approach should be taken. However, the question then arises, what is a power of the BCC?

1. Authority

In the CRB the word translated as "authority" is *правомощия*, which can also be translated as "powers." It is the plural form of a combination of two words: *право,* which means right, and *мощ,* which means power. Thus, it literally means "rightful power" and as such, the words "authority" and "power" will be used interchangeably when referring to Article 149 CRB. The BCC has been ambivalent on the difference between a separate power and an emanation/consequence of using its powers. This ambivalence is exemplified in the BCC's ruling on the consequences of declaring a law unconstitutional. Instead of viewing the "resurrection" of provisions, previously abrogated by the National Assembly, as a separate power, it considered it just a legal consequence of declaring a law unconstitutional. Another example is the BCC's self-empowerment to constitutionally review international agreements after their ratification.

The ambivalence increased with the BCC's pronouncements in its cases relating to the EP elections in Bulgaria. In the *Elections Code* case,[58] the BCC considered that reviewing the lawfulness of the election of a MEP from Bulgaria was not a separate power but an extension of its already existing power in Article 149(1)(7) CRB to review the lawfulness of the ordinary elections for national representatives. A continuation of the discussion of the *Elections Code* case can be found in the *EP Elections* case.[59] In that case, the BCC dismissed a request for initiating proceedings which requested the BCC to declare the MEP elections of May 2014 unlawful. The BCC's justification was that it did not have *the power* to declare the whole of the elections unlawful but only the election of a particular MEP. Interestingly,

[56] VII Grand National Assembly, Stenographical Records 1990-1991, 165th Session, Sofia, 25 June 1991, 53.

[57] *Id*. (Author's translation).

[58] Decision no. 4 of 2011 in Case no. 4 of 2011, SG 36 of 10 May 2011.

[59] Determination no. 3 of 17 July 2014 in Case no. 11 of 2014, SG 61 of 25 June 2014.

the BCC's dismissal was based on an omission/limitation contained in the Elections Code and not in the CRB and which did not apply to the ordinary elections of national representatives.

If the BCC has the power to review the lawfulness of the election of a particular MEP, because the MEP is effectively a national representative, one would expect this extension to apply to all aspects of the powers relating to the national representatives. By dismissing the request in the *EP Elections* case the BCC put a caveat to Article 149(2) CRB and somewhat clarified the meaning of authority. Article 42 CRB states that the organization and the procedure for holding elections, including EP elections, will be regulated by a law. Article 66 CRB states that the lawfulness of an election may be challenged before the BCC under a procedure established by law. As such, the power to review the lawfulness of elections is constitutionally entrenched but is to be molded by the legislator with laws. Thus, even if *de facto* it would be up to the National Assembly to extend the power of review to the whole of the EP elections in Bulgaria, it will not violate Article 149(2) CRB because this is a legislative discretion the CRB allows. Therefore, a new/separate power of the BCC introduced by law would be a power that has no relation to an already existing power or to discretion the CRB allows.

In this context, the power to request a preliminary ruling may be argued to be either a new power or a further development/extension of the already existing powers of the BCC. The choice whether it is one or the other is crucial. In the academic literature, the mention of Article 149(1)(4) CRB in the *Taxes on bailiffs and notaries* case[60] has been read to be the constitutional gateway for cooperation with the EU judiciary.[61] This view of a former BCC judge would suggest that requesting a preliminary ruling from the CJEU is not a new power in and of itself but that it further develops the power of the BCC to review the *conventionalité* of the laws. In other words, the preliminary reference procedure could be viewed as a new tool helping the BCC in exercising its role of upholding the CRB in cases when EU law is involved and the BCC needs assistance to interpret the latter. This is certainly one way to look at it, but the question remains of whether the BCC will endorse this approach or will consider the request of preliminary ruling a separate power for which the constitutional basis is lacking?

Even if the consistency approach is taken, a constitutional basis will be needed to explain the development of the existing powers. In search of such basis, the BCC's analysis in the

[60] Decision no. 1 of 2008 in Case no. 10 of 2007, SG 27 of 11 March 2008.

[61] Емилия Друмева, *Преюридициално запитване и от българския Конституционен съд*, in в Класически и съвременни тенденции в конституционния контрол: Сборник статии от международна конференция, посветена на 20-годишнината на Конституционния съд на Република България 172(2012) (Translated by the Author, Emilia Drumeva, *Preliminary ruling from the Bulgarian Constitutional Court as well?*, in CLASSICAL AND MODERN TRENDS IN CONSTITUTIONAL REVIEW: COMPENDIUM OF ARTICLES FROM THE INTERNATIONAL CONFERENCE DEDICATED TO THE 20TH ANNIVERSARY OF THE BULGARIAN CONSTITUTIONAL COURT).

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Elections Code case can be used. In that case, the BCC's power to review the legality of the election of a Bulgarian MEP was not explicitly listed in the CRB and it was only added in an amendment of the Elections Code. This Elections Code provision was constitutionally challenged; more precisely, it was argued to be violating Article 149(2) CRB.[62] The BCC acknowledged the importance of the omission and noted that Article 149(1)(7) CRB, which provides the power to review the lawfulness of the elections of national representatives, had not been amended since its drafting in 1991. However, the BCC took into consideration the 'European' amendments of the CRB. It noted that (1) the EP elections in Bulgaria were included in the CRB and as such have constitutional basis and that (2) by looking at the debates concerning the adoption of the law on the election of Bulgarian MEPs, it could be concluded that the legislature clearly considered the Bulgarian MEPs to be national representatives. Thus, an expansive reading of Article 149(1)(7) CRB was needed. For further support, the BCC relied on Articles 9 and 14(2) of the Treaty on the European Union (TEU)[63] which, if read together, state that the EP is composed of representatives of the EU citizens. Accordingly, the BCC found support in another constitutional provision, which was amended for the purposes of the EU accession, in order to make up for the omission of the constitutional legislator.

The BCC's reasoning in the *Elections Code* case builds on two previous cases. In particular, in Decision 3 of 2003, the BCC stated that the "future integration of Bulgaria in NATO and the EU will lead to the introduction of new functions to some of the already existing main constitutional organs".[64] *The BCC found it permissible for the National Assembly to adopt constitutional amendments that add new activities to the already existing constitutional organs, as long as the form of government is preserved. This was confirmed in the* central Decision dealing with Bulgaria's integration in the EU.[65] With these two Decisions, the BCC agreed that new tasks or activities can be given to the constitutional organs through a constitutional amendment by the National Assembly if the principles on which the State is built are protected and the balance between the institutions is preserved. Although the BCC did not specifically focus on its own powers, with the *Elections Code* case the BCC implicitly agrees that its powers can also be modified and it did not find the form of government to be disrupted. The same should, it is suggested here, apply to the BCC's powers in terms of requesting preliminary rulings from the CJEU.

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[62] Request for initiating proceedings from a group of national representatives of the 41st National Assembly, 7 February 2011, available in Bulgarian at http://constcourt.bg/contentframe/contentid/554. The request was supported by the Institute for Modern Politics but was argued against by the Council of Ministers, the Supreme Bar Council and the "Bulgarian Lawyers for Human Rights" Foundation.

[63] Treaty on European Union, 9 May 2008, OJ EU C115/13, 2008.

[64] Decision no. 3 of 2003 in Case no. 22 of 2002, SG 36 of 18 April 2003. Author's translation.

[65] Decision no. 3 of 5 July 2004 in Case no. 3 of 2004, SG 61 of 13 July 2004.

Using the analysis in these three cases it would seem that to view the request for a preliminary ruling as an extension of the BCC's ordinary review powers one should consider the "European" amendment of Article 4 CRB. Article 4(3) CRB states that: "[the] Republic of Bulgaria shall participate in the construction and development of the European Union." This is a very vague provision and a lot can be read into it. The mechanism of preliminary rulings can be seen as a tool for the construction and development of the EU through its objective of ensuring the uniform interpretation of EU law. Article 4(3) CRB can thus be seen as the needed supporting constitutional basis for the BCC's power to request preliminary rulings. Support for this view can also be found in the literature.[66] Be that as it may, it should still be examined what are the other legal questions if requesting a preliminary ruling is considered to be a new power altogether. The first such legal question is whether a new power is "vested or suspended."

2. Vested or Suspended

In the CRB the words translated as "vested or suspended" are *давам или отнемам*, which can be translated more directly as "given or taken." As already observed in the previous subsection, the BCC's case law suggests that, when talking about authority, one should understand it as a complete whole—as a completely separate/new authority. Following this reasoning, if requesting a preliminary ruling is seen as a separate power—not connected to the already existing BCC powers, as proposed that it should be above—it would be considered that the BCC was vested with a new power. In such a case, if it is considered to be done by law, which will be examined *infra*, a constitutional obstacle would be present. At this point of the analysis, however, one other question needs to be examined. In particular, it must be examined whether requesting preliminary rulings suspends BCC powers. In other words, are powers taken from the BCC through the institution of preliminary rulings? This examination will be conducted with respect to the BCC's powers to review the *constitutionnalité* and *conventionalité* of laws.

When Bulgaria joined the EU the BCC lost its "monopoly" on the control over Bulgarian legislation.[67] Even if the BCC found a provision to be constitutional, the validity of that provision can still be questioned for its compatibility with EU law. To take it even further, even if the BCC has found a provision to be compatible with EU law, which it can do through its *contrôle de conventionalité* powers (examined *infra*), an ordinary court may still request a preliminary ruling from the CJEU where the CJEU can give an interpretation of EU law which in turn could require that the provision not be applied. Before Bulgaria joined the EU, if the BCC ruled a provision constitutional or compatible with the international obligations of Bulgaria, that would be the end of it. Today, this is not the case and as such the BCC has lost part of its powers to review laws in Bulgaria. The BCC shares its previous

[66] DRUMEVA, *supra* note 61, at 170.

[67] Kornezov, *supra* note 28, at 51–52.

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monopoly with the CJEU, even if one could argue that in theory the two courts have different roles and that the two roles do not overlap. The question at this point, however, is whether losing some part of a power (as opposed to abrogating the whole power) is problematic?

Article 85(1)(9) CRB explicitly states that the National Assembly shall ratify or denounce international agreements which *inter alia* "confer to the European Union powers ensuing from this Constitution". As such, it is constitutionally allowed to confer powers on the EU. Furthermore, as already observed, the more direct translation of "vested or suspended" is given or taken and it logically and grammatically refers to the whole of a power. If it is considered that a power of the BCC can be extended, as happened with the EP elections, why should it not be possible to accept that a part of power can be lost as well? The counterargument here could be the following. Even if only a part of a power is lost, the whole power can be considered lost altogether if the part that is lost is considerable or contains the essence of the particular power without which the power is present solely on paper and is no longer real. However, has this really happened in the case of preliminary rulings? The part of the power to review the laws has not been lost completely but rather a certain part of it has been reformed. First, it is only when the BCC has to deal with EU law that this loss can be identified. Second, in such cases the BCC is not always obliged to request a preliminary ruling,[68] and when it actually is obliged to do so it will receive the interpretation of the EU law provision in question and will still be the one deciding the case before it.

Although these two points can be met with a fair share of counterarguments from the perspective of the wide scope of EU law and the CJEU's instructive voice in its case law, this is still the theoretical framework. Therefore, it can be concluded that requesting a preliminary ruling does not suspend the BCC's powers in the way Article 149(2) CRB prohibits. However, again, if this is not accepted and requesting a preliminary ruling is considered a new power altogether or that it suspends the powers of the BCC to such an extent that it actually negates them, then it should be examined whether this has happened through "law."

3. By Law

The word translated as "law" is *закон*. This has a narrower meaning than law in general, corresponding more precisely to the notion of Statute or Act of Parliament. Below the CRB, *закон* is the highest norm that is produced at the national level.[69] The fact that the lower kinds of norms are not reproduced in Article 149(2) CRB is not a problem—if a change of

[68] *See infra* note 74.

[69] Codes are different type of normative acts but the rules applicable to the laws also apply to codes. *See* Law on Normative Acts SG 27 of 3 April 1973 as last amended SG 46 of 12 June 2007, Art. 4(2).

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the BCC powers cannot happen through *закон*, it cannot happen through a lower norm either. Naturally, due to its different character, the *закон* amending the CRB is excluded from the meaning of *закон* in Article 149(2) CRB. Having said that, what about international agreements which stand above the *закон* and below the CRB in the hierarchy of norms as per Article 5(4) CRB? Also, what about the *закон* which ratifies an international agreement as per Article 85 CRB? In the present case, one has to consider the law ratifying the treaty of accession of Bulgaria to the EU[70] (Accession Treaty) and the TFEU.

These questions have not been answered directly by the BCC and one has to look at the more general case law of the BCC in order to find some answers. Decision 9 of 1999[71] is relevant here. In this Decision, the BCC discussed the constitutional review of international agreements. It stated that the duly ratified and promulgated international agreements "can acquire the status and force of laws [that is *закон*]" and "[as with] all the laws in the state, these ratified international treaties should be subject to constitutional control under Article 149(1)(2) of the Constitution."[72] It continued by saying that "... the ratification act incorporates the international agreement and together they must be considered as one complete act, which can be challenged for unconstitutionality in its entirety. In that respect it is maintained that the eventual unconstitutionality of the international agreement makes its act of ratification also unconstitutional."[73]

As the BCC's case law stands today, this analysis would also apply to the EU Treaties, as the BCC has repeatedly held that they are international agreements in the sense on Article 5(4) CRB.[74]

Accordingly, if the case law of the BCC is read together, although the power to request a preliminary ruling actually stems from the TFEU, which is not a law (*закон*), it is through the *закон* ratifying the Accession Treaty or any future amendments thereof that the TFEU started producing effects in the Bulgarian legal order. Following this reading the omission of the expression 'international agreements' in Article 149(2) CRB is not a *lacuna*. It is not a

[70] Treaty between the [...] (Member States of the European Union) and the Republic of Bulgaria and Romania, concerning the accession of the Republic of Bulgaria and Romania to the European Union, 25 April 2005, O.J. L157/11, 2005 [hereinafter Accession Treaty].

[71] Decision no. 9 of 1999 in Case no. 8 of 1999, SG 57 of 25 June 1999.

[72] Translation by Evgeni Tanchev & Jenia Peteva, *The Impact of EU Accession on the Legal Orders of Bulgaria*, *in* THE IMPACT OF EU ACCESSION ON THE LEGAL ORDERS OF NEW EU MEMBER STATES AND (PRE-) CANDIDATE COUNTRIES: HOPES AND FEARS 36–37 (Alfred E. Kellerman *et al.* eds., 2006).

[73] Decision no. 9 of 1999 in Case no. 8 of 1999, SG 57 of 25 June 1999 (Author's translation).

[74] *See, e.g.*, Decision no. 1 of 2014 in Case no. 22 of 2013, SG 10 of 4 February 2014; Decision no. 3 of 5 July 2004 in Case no. 3 of 2004, SG 61 of 13 July 2004.

lacuna because the constitutional legislator kept in mind Article 85 CRB and considered that international agreements that could possibly change the powers of the BCC cannot produce effects in the Bulgarian legal order without being ratified with *закон*. Naturally, this legal construction follows the BCC's case law and its treatment of the EU Treaties as international agreements. The BCC is yet to clarify the relationship between this legal construction and the understanding of the primacy of EU law, which it has put forward in its case law. Among other necessary clarifications, the BCC should clarify whether requesting a preliminary ruling from the CJEU is constitutionally based on the "European" constitutional amendments.

IV. Interim Appraisal

From the discussion in this section it can be seen that the BCC has numerous clarifications to give as regards its stance on requesting preliminary rulings from the CJEU. First, it should say whether it considers the omission in the constitutional amendments of including the power to request preliminary rulings from the CJEU to be a *lacuna* which can only be filled through a constitutional amendment. Second, if the BCC considers that an answer can be given through interpretation, it should state whether it considers requesting a preliminary ruling to be a power/authority in the sense of Article 149(2) CRB or just an extension of one of its already existing powers. Third, if the BCC considers requesting a preliminary ruling to be such a power/authority, it should explain whether it considers the power to be vested by law or whether it suspends another power. Fourth, it should be explained whether the EU treaties and the law ratifying the Accession Treaty operate differently in the Bulgarian legal order than other international agreements to which Bulgaria is a party and the respective ratification laws. In particular, do they operate in such a way that the BCC can have some of its powers vested directly in Article 267 TFEU pursuant to the "European" amendments of the CRB?

A possible answer is that the BCC should find this a matter of interpretation and should see requesting preliminary rulings from the CJEU as a slight reform to its already existing powers. The constitutional basis for such a reform is Article 4(3) CRB, according to which Bulgaria shall participate in the EU's construction and development. On the contingency that the BCC finds that there is no *general* constitutional obstacle, the discussion now turns to examine whether there are *particular* constitutional obstacles.

V. Looking for Particular Constitutional Obstacles

This section focuses on the different procedures for seizing the BCC. One issue to be examined is whether the BCC's rationale for avoiding the use of the preliminary reference tool can be traced to the particular characteristics of the procedures hitherto initiated. This will be done by considering the BCC's attitude towards the EU law issues in its jurisprudence since Bulgaria joined the EU. Another issue to be considered is whether one

of the three case-law-based exceptions to requesting preliminary rulings apply—the doctrines of *acte clair* and *acte éclairé* as well as the genuine dispute requirement.[75]

As explained above, the procedures for seizing the BCC can more generally be divided into two: direct and indirect (*principaliter* and *incidenter*). All of the BCC's cases touching upon EU law that have been decided since the beginning of 2007 are *principaliter*. Thus, the BCC's attitude towards the *incidenter* proceedings when it comes to requesting preliminary rulings is still undetermined. Nevertheless, it is clear that since all of the proceedings were *principaliter*, the BCC was always a court "against whose decision there is no judicial remedy under national law." Therefore, the BCC could not have relied on the discretionary exception included in the text of Article 267 TFEU. Turning to the *principaliter* proceedings, there are two main types which are of interest for this Article: the power to review (1) the *constitutionnalité* of laws and (2) the *conventionalité* of the laws. The following subsections will reflect this division, while occasional references will be made to cases under other procedures.

1. Review of Constitutionnalité

The competence to review the constitutionality (also known as *contrôle de constitutionnalité*) of laws and international agreements can be found in Article 149(1)(2) CRB. This was the basis for the predominance of the cases to be discussed, which, together with the recently submitted ones, provide a thought-provoking line of case law.

1.1 Taxes on Bailiffs and Notaries Case

The *Taxes on bailiffs and notaries* case[76] was the first case where, after Bulgaria joined the EU, arguments based on EU law were presented before the BCC. The BCC was seized to review the *constitutionnalité* of an amendment to the Law on Value Added Tax (VAT) by virtue of which the services of lawyers, private bailiffs, and notaries were subjected to a VAT. The arguments supporting the amendment were based *inter alia* on EU law. It was argued that the VAT Law was harmonized with Directive 2006/112[77] and that, citing the CJEU's case law,[78] these professions were economic activities subject to VAT. The BCC declared the VAT Law's provisions to be in compliance with the CRB without considering the arguments based on EU law. This was because the BCC was asked only to review the

[75] Case C–283/81, Srl CILFIT and Lanificio di Gavardo SpA v. Ministry of Health, 1982 E.C.R. I–3415; *Foglia*, Case C–104/79.

[76] Decision no. 1 of 2008 in Case no. 10 of 2007, SG 27 of 11 March 2008.

[77] Council Directive (EC) 2006/112 on the common system of value added tax, 2006, O.J. L347/1.

[78] Case C–235/85, Commission v. Netherlands, 1987 E.C.R. 1471; Case C–202/90, Ayuntamiento de Sevilla v. Recaudadores de Tributos de las Zonas primera y segunda, 1991 E.C.R. I–4247.

constitutionnalité and not the *conventionalité* of the provisions of the VAT Law. In particular, the BCC held that:

> Without being limited by the invoked constitutional bases (Article 22 of the LNA), considering the arguments and opinions put forward as regards the contradiction or incompatibility of the law with the legal acts of the EU or the practice of the CJEU, the Constitutional Court finds it necessary to clarify that the latter two do not form a base for declaring the unconstitutionality of a law under Article 149(1)(2). According to subparagraph 4 of the same provision, the Court can rule on the compatibility of a law with the international agreements to which Bulgaria is party, when seized under it.[79]

In the literature, this stance has been criticized as being too formalistic,[80] but it has also been defended as being a careful and responsible use of constitutional powers.[81] With this Decision, the BCC effectively rejects EU law as a parameter for constitutionality review. Upholding this stance in the future would hold the BCC a captive of the legal base choices. Judge Yankov made a few very important remarks in that regard in his Concurring Opinion in the *Taxes on bailiffs and notaries* case:

> It has been more than a year since Bulgaria joined the EU. The present Decision is a necessary occasion for the Constitutional Court to take a clear stance as regards its general competence in light of the legal regulation in our country and to note *the impossibility to intervene in the areas regulated by the accession treaty* – an argument stemming from Article 5 of the EC Treaty. From that point of view, in my opinion, it is compulsory for the Decision to start with a discussion of Community law, simply because it is the *applicable law*. It is an autonomous order which is integrated directly into the legal systems of the Member States. The

[79] Decision no. 1 of 2008 in Case no. 10 of 2007, SG 27 of 11 March 2008 (Author's translation).

[80] Александър Корнезов, Практиката на конституционния съд в светлината на общностното право (2007–2008), 2 Общество и право 11 (2009) [Translated by the Author: Alexander Kornezov, The practice of the Constitutional Court in light of the Community law (2007–2008)].

[81] Drumeva, *supra* note 61, at 173.

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> requirements of Article 5(4) of the Constitution are not applicable to it.
> [...]
> In conclusion, in a case like the present one, although it may sound absurd at first sight, the Constitution is not applicable with the exception of Article 85(9). Otherwise, a law may be repealed for contradiction with the Constitution, while it is consistent with Community law. This will have the paradoxical result of suspending the Community law. In common tongue, this means that the attitude has not faded – to live as in the west, but to rule as in the east.[82]

Unfortunately, in this opinion, Judge Yankov found himself in a minority at the BCC.

1.2 Right to Exit the State *Case*

A few years later, in the *Right to exit the State* case,[83] the BCC was seized for a second time to deal with EU law related cases under Article 149(1)(2) CRB. The challenged provisions were from the Law on Bulgarian Identification Documents (BID). In particular, former Article 75(5) and (6) was challenged for unjustifiably restricting the right of individuals to freely exit the State, by going beyond the exhaustively listed grounds—"national security, public health, and the rights and freedoms of other citizens."[84] The restriction, basically, applied to individuals having huge debts and not servicing them. These provisions were, to an extent, responding to the regrettable practice of individuals taking loans under false pretexts, by defrauding guarantors, with the intention of reneging on the loans and fleeing Bulgaria.

The BCC discussed in detail the constitutional right to exit the State and its possible restrictions. It found Article 75(5) and (6) to be unconstitutional, mainly due to its disproportionality to the legitimate aim to be achieved. The relevance of this case, for EU law and the free movement of persons, is obvious. However, the BCC did not apply EU law, due to the case's review base. Nevertheless, in a single paragraph at the very end of the Decision, the BCC mentioned EU law. It stated:

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[82] Concurring Opinion of Judge Rumen Yankov in Case no. 10 of 2007, SG 27 of 11 March 2008. Author's translation.

[83] Decision no. 2 of 2011 in Case no. 2 of 2011, SG 32 of 19 April 2011.

[84] Bulgarian Constitution at Art. 35(1).

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> Declaring Article 75(5) and (6) of the Law on BID unconstitutional, will create favorable conditions for the more complete and precise transposition of Article 27 of Directive 2004/38, which limits the grounds for restricting the free movement of EU citizens and their families within the EU, only to public policy, public security and public health, without taking into account the rights and freedoms of others. Additionally, it expressly prohibits the introduction of such restrictions in order to achieve economic goals.[85]

From this passage, it can be seen that, despite considering EU law irrelevant for deciding the case, the BCC could not have simply ignored it. Whether the CJEU would completely agree with the way in which the BCC used Directive 2004/38 will not be discussed here. More interestingly for the purposes of this Article is that there was another, simultaneous, proceeding concerning Article 75(6) before the Supreme Administrative Court (SAC) of Bulgaria.

The Decision of the SAC[86] was rendered a little over a week before the BCC's Decision. In the SAC proceedings, however, the question dealt only with whether an order for enforcing an administrative measure based on Article 75(6) of the Law on BID should be annulled due to contradiction with Directive 2004/38. The SAC decided on the case without making a reference for a preliminary ruling and discussed the relevant EU law on its own. The Separate Opinions in the case stated that the SAC was not competent to answer the question referred by the president of the SAC and that it should have been answered by the CJEU. In particular, the CJEU should have been asked to interpret Article 27 of Directive 2004/38 and to say whether administrative measures restricting the freedom of movement of individuals reneging on huge debts fall within the exceptions included in that Article. This would have been the correct and most sensible approach in order to preserve the unity of EU law and to assess the legality of Article 75(5) and (6) of the Law on BID. Not only the SAC but the BCC as well should have requested an interpretation by the CJEU.

1.3 Elections Code *Case*

In the *Elections Code* case,[87] the BCC was asked to review the *constitutionnalité* and the *conventionalité* of the provisions of the Elections Code of Bulgaria. EU law was not listed as

[85] Decision no. 2 of 2011 in Case no. 2 of 2011, SG 32 of 19 April 2011 (Author's translation).

[86] Interpretative Decision no. 2 of 22 March 2011.

[87] Decision no. 4 of 2011 in Case no. 4 of 2011, SG 36 of 10 May 2011.

part of the international provisions with which incompatibility was argued, but the case is important as it dealt with, *inter alia,* elections for the European Parliament (EP). The challenged provisions with EU law relevance that will be discussed here regulated the criteria that individuals had to fulfill when voting for, *inter alia,* MEPs (active right to vote) and when running for MEPs (passive right to vote). The provisions required a certain length of residence in the EU before the right could be exercised.

The BCC found this requirement to be constitutional as long as the required residence period was not too long. It held that the periods of twelve months and two years were too long as regards the active right and the passive right, respectively. The BCC found these periods to violate Article 10 CRB, which provides that elections and referendums shall be based on "universal, equal and direct suffrage," as well as the constitutional principle of proportionality in restricting the exercise of basic rights, such as the right to vote. The BCC continued and, interestingly, also referred briefly to the Venice Commission's Code of Good Practices in Electoral Matters[88] as well as the free movement of persons as one of the EU fundamental freedoms. The BCC used the Venice Commission report as its standard-setter of which period is to be considered too long (the standard set there is a "few months"), and held that this standard had been adopted by EU law with respect to MEP elections. As regards the free movement of persons, the BCC only stated in one sentence, as a complementary reason, that the periods in question did not respect that freedom. It did not elaborate any further on this EU law issue.

Another challenged provision related to the requirement that the Bulgarian MEP candidates must not be nationals of a non-EU State. The BCC was divided on this, with six votes "for" and "against," and as a matter of procedure the request for review was rejected. Yet another challenged provision required a deposit of 10,000 leva (about € 5,000) from a political party or an initiative committee when participating in, *inter alia,* EP elections. The deposit was to be returned if the party or the independent MEP candidate acquired at least two percent of the votes or for initiative committees one-quarter of the votes in the regional voting quota.

The BCC found the financial deposit requirement to be constitutional but held that the two percent requirement was too high and that it contradicted the principle of political pluralism. It could be said that considering the CJEU's decision in *Spain v. UK,*[89] the BCC felt that this matter was well within Bulgaria's discretion and thus did not consider it necessary to ask for the CJEU's interpretation. The next provision that was challenged concerned the

[88] European Commission for Democracy through Law (Venice Commission), Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report (CDL-AD (2002) 23) 15.

[89] Case C–145/04, Spain v. UK, 2006 E.C.R. I–7917, para. 79.

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adding of the power of the BCC to review the legality of elections for the MEPs in Bulgaria, which was discussed above.[90]

This case received an interesting continuation with the *EP elections* case, which was also discussed above. The *EP elections* case was submitted under Article 149(1)(7) CRB, which provides for examining the legality of elections for national representatives. The BCC dismissed the request for initiating proceedings because it considered that it did not have the power to declare the EP elections in Bulgaria unlawful as a whole, although it did have such a power for the ordinary elections under the Elections Code. Bearing in mind the principle of equivalence under EU law, one could wonder how the CJEU would have answered if it had been asked by the BCC whether the legislator's omission prevented the BCC from reviewing the legality of the EP elections, considering the BCC's power to review the legality of ordinary national elections.

1.4 Moratorium on Land Acquisition *Case*

The *Moratorium on land acquisition* case[91] is probably one of the most clear-cut cases relating to EU law.

However, while straightforward from the legal point of view, politically it is quite controversial. The case starts with the extremely sensitive and politicized issue of land acquisition in Bulgaria. In the Accession Treaty, Bulgaria secured a seven-year transitional period before removing the restriction on the free movement of capital—the ban on land acquisition by foreigners.[92] At the end of October 2013, when huge protests against the ruling coalition were raging in Bulgaria, the opposition 'seized the moment' and made a populist move to 'save' the Bulgarian land from foreigners, somehow pushing through a Decision extending the moratorium.[93] This Decision was swiftly referred to the BCC.[94] It was more than clear for everyone who had read the CRB and knew what EU law stands for that the Decision would not withstand the review by the BCC. It is untenable to consciously maintain that the purpose of the Decision was to produce something more than political controversy during a very sensitive period. Having explained the context of the case, it is now pertinent to look at its legal significance.

[90] *See*, *supra* note 58 and accompanying text.

[91] Decision no. 1 of 2014 in Case no. 22 of 2013, SG 10 of 4 February 2014.

[92] Accession Treaty, Protocol concerning the conditions and arrangements for admission of the Republic of Bulgaria and Romania to the European Union, Part Five, Annex VI, 3 Free Movement of Capital at 108.

[93] Decision of the National Assembly for imposition of a moratorium on the acquisition of the right of property over land on the territory of the Republic of Bulgaria by foreigners and foreign legal persons until 1 January 2020, SG 93 of 25 October 2013.

[94] Determination of 14 November 2013 in Case no. 22 of 2013.

Although seized to review the *constitutionnalité* of the National Assembly Decision, the BCC considered the relevant EU law provisions extensively. The BCC was not, however, departing from its previous case law, because Article 22 CRB, which deals with the right of land acquisition, explicitly includes EU law as a "constitutional parameter." It states in the relevant part that:

> (1) Foreigners and foreign legal persons may acquire property over land under the conditions ensuing from Bulgaria's accession to the European Union, or by virtue of an international treaty that has been ratified, published and entered into force for the Republic of Bulgaria, as well as through inheritance by operation of the law.

Thus, the BCC was obliged to consider the provisions of the Accession Treaty and the EU Treaties. As the provisions were clear, the *acte clair* doctrine was implicitly relied on and reference to the CJEU was redundant. The BCC found the National Assembly to have acted *ultra vires* and to have violated several constitutional provisions. The BCC even referred to the fact that during the debates at the National Assembly, the unconstitutionality of the moratorium was pointed out but the Decision was nevertheless adopted.

1.5 Export of Pharmaceuticals *Case*

One of the cases currently pending before the BCC is the *Export of pharmaceuticals* case,[95] in which a constitutional review is requested of a provision in the Law on the pharmaceutical products in human medicine. The challenged provision introduced an obligation on wholesale traders of pharmaceutical products to notify the Bulgarian Drug Agency when exporting particular pharmaceuticals from Bulgaria.

It is argued that an unlawful approval regime exists because an export may be rejected and that this contradicts a purely notification-based regime. The basis for this is argued to be the included possibility for tacit consent to the exportation unless the director of the agency objects within a thirty-day period. The challenged provision is argued to violate certain constitutional provisions as well as Article 35 TFEU.

Curiously, the basis for *conventionalité* review is not relied on in the request to the BCC. If the BCC follows its previous case law, it will again not discuss the EU law arguments, no matter how well founded they are. It will be interesting to see whether the BCC changes its view in this case.

[95] Determination of 20 May 2014 in Case no. 5 of 2014.

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1.6 Data protection *Case*

Another interesting case, which is also pending, is the *Data protection* case,[96] where once again only constitutional review is being requested of several provisions of the Law on Electronic Communications (LEC). According to the request, the challenged provisions amended the Law on the electronic communications, with a view to transposing Directive 2006/24—the infamous Data Retention Directive. The request refers to the CJEU judgment which invalidated the Directive last year.[97] Besides the arguments that the LEC violates the constitutional rights to private life and to free and secret correspondence, the request makes another interesting argument: the challenged provisions breach EU law and thus Article 5(4) CRB, which states that international agreements enjoy primacy over the internal legislation. It will be interesting to see what the BCC does with this case, not only because it will be one of the "Data Retention cases" but also because, if the BCC agrees with the argument, it may accept EU law as a constitutional parameter through a constitutional provision.

1.7 Waste Management II *Case*

In the *Waste Management II* case,[98] the BCC was seized to review both the *constitutionnalité* and the *conventionalité* of certain provisions. As in the *Waste Management* case above, the challenged provisions were in the LWM. The part of the case dealing with the review of *conventionalité* in the light of EU law is included in the next subsection. A multitude of provisions were challenged, but the discussion here will focus only on those where EU law violations were argued by the designated interested parties. The arguments were centered on Article 39(3) LWM, which required that ferrous and non-ferrous waste be collected only at the designated municipal sites and that its collection/disposal be non-remunerated. It was also argued that Article 39(3) LWM presents (1) an impediment to achieving the environmental objectives contained in a number of Directives on waste and waste collection, and (2) a violation of an underlying principle of the waste Directives, the freedom of all interested parties to participate in waste management without barriers to trade.

On the first point, it was argued that, unlike other waste, ferrous and non-ferrous waste has an economic value, and that non-remunerated collection/disposal would decrease the incentive for citizens to collect and dispose of such waste, which would in turn impede achievement of the relevant EU environmental objectives. On the second point, reference

[96] Determination of 12 June 2014 in Case no. 8 of 2014.

[97] Joined Cases C–293/12 and C–594/12, Digital Rights Ireland and Seitlinger and Others, 2014 E.C.R. I–00000.

[98] Decision no. 11 of 2014 in Case no. 2 of 2013, SG 61 of 25 July 2014.

was made to a number of provisions in various Directives setting out the free involvement of economic operators. The BCC ignored the EU law arguments on both points and found Article 39(3) to be unconstitutional only in the part requiring non-remunerated collection/disposal. However, the BCC added that the limitation effectively removed the economic incentive for the owners of ferrous and non-ferrous waste to comply with their duty to protect the environment. On the second point, the BCC held that the site designation did not limit the type of entities that may operate there and as such did not violate the constitutional provision which requires equal conditions for conducting economic activity. In this case, the BCC showed variable selectivity towards EU law arguments but invariably refused to openly consider them.

1.8 Renewable Energy *Case*

One of the most recent cases with EU law relevance is the *Renewable energy* case,[99] where once again only the constitutionality of certain provisions was challenged. The provisions were included in the miscellaneous section of the Law on the State Budget for 2014 and were meant to amend a number of provisions in the Law on the energy from renewable resources. The challenged provisions introduced a new type of a fee for the producers of wind and solar energy.

Some of the interested parties in the case argued that besides violating certain constitutional provisions, the amendments also violated the EU law principles of legal certainty, legitimate expectations, Directive 2009/72,[100] and Articles 63 and 107 TFEU, as well as the Commission Guidance for state intervention in electricity. The Bulgarian Photovoltaic Association even suggested that the EU law violation by itself was a violation of Article 4(1) CRB, which sets out the *Rechtsstaat* principle in Bulgaria. In its case law, the BCC has stated that the *Rechtsstaat* means "exercising State power on the basis of the Constitution, in accordance with laws that materially and formally comply with the Constitution and which are created for preserving human dignity, for achieving freedom, justice and legal certainty."[101] Considering the view of the BCC that international agreements "can acquire the status and force of laws,"[102] it can be argued that in this way the BCC could start to consider EU law as a constitutional parameter. Unfortunately, the BCC did not comment on the arguments relating to EU law.

[99] Decision no. 13 of 2014 in Case no. 1 of 2014, SG 65 of 6 August 2014.

[100] European Parliament and Council (EC) Directive 2009/72 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, 2009, O.J. L211/55.

[101] Decision no. 1 of 2005 in Case no. 8 of 2004, SG 13 of 8 February 2005.

[102] Decision no. 9 of 1999 in Case no. 8 of 1999, SG 57 of 25 June 1999.

In the *Appeal of administrative acts* case,[103] in which the BCC was seized to give a binding interpretation and not review laws, an interesting point can be made relating to the Article 4(1) arguments in the *Renewable energy* case. The BCC was seized to interpret Article 120 CRB, according to which "citizens and legal entities shall be free to contest any administrative regulation which affects them, except those listed expressly by the laws." The BCC stated that the *Rechtsstaat* principle in Article 4(1) CRB requires proportionality for restrictions introduced with a law. Determining proportionality as a fundamental component of the *Rechtsstaat* principle is, in the words of the BCC, connected to the case law of the European Court of Human Rights (ECtHR) as well as the provisions on access to court in the international agreements ratified by Bulgaria. The BCC, interestingly, referred to Article 6(1) ECHR *in conjunction with* Article 6(2) TEU. Unfortunately, however, it did not elaborate on its reason for mentioning Article 6(2) TEU, nor on whether it would consider EU law in its interpretations of Article 4(1) CRB. Time will show whether the BCC is willing to change its view on the role of EU law as a constitutional parameter.

2. Review of Conventionalité

The competence to review the conventionality (also known as *contrôle de conventionalité*) of legislation, that is, whether they are in accordance with the international agreements to which Bulgaria is a party, can be found in Article 149(1)(4) CRB. Under the power to review the *conventionalité* of laws, the BCC showed its openness towards EU law but all the same did not enter into dialogue with the CJEU.

2.1 Paid Leave *Case*

The *Paid leave* case[104] was the first case in which the BCC was asked to review the *conventionalité* of certain provisions in light of, *inter alia,* EU law, next to conducting a *constitutionnalité* review. The law at issue was the Labour Code. The challenged provisions stated that paid leave unused from previous years, up to 1 January 2010, could only be used until 31 December 2011. The first six points of the case dealt with the *constitutionnalité* review, from which EU law was absent. The BCC then discussed the incompatibility with international law, by going through a long list of human and labor rights instruments, before finally getting to the EU law discussion. This last discussion was based on Article 31(2) in conjunction with Article 52(1) of the Charter of Fundamental Rights of the European Union (the Charter)[105] and Article 7 of Directive 2003/88[106].

[103] Decision no. 14 of 2014 in Case no. 12 of 2014, SG 95 of 18 November 2014.

[104] Decision no. 12 of 2010 in Case no. 15 of 2010, SG 91 of 19 November 2010.

[105] Charter of Fundamental Rights of the European Union, 2007, OJ EU C303/01.

[106] European Parliament and Council Directive (EC) 2003/88 concerning certain aspects of the organization of working time, 2003, OJ L299/9.

Unfortunately, this discussion amounted to no more than a paragraph, and a legal analysis of the provisions was not provided. Furthermore, the BCC did not explain why it believed the Charter to be applicable in that case. The extra-judicial comment of one of the judges explained the absence of a request for preliminary ruling in that regard as stemming from the *acte clair* doctrine.[107] Probably this was also the reason for the extreme judicial economy.

2.2 Waste Management *Case*

The *Waste management* case[108] was the second case in which the BCC was seized with a request to review the *conventionalité* of certain provisions in light of, *inter alia,* EU law, as well as conducting a *constitutionnalité* review. The law in question was the Law on Waste Management (LWM). The challenged provisions included a new requirement for the licensing of waste activities, which was essentially not up to the operators to fulfil but to the municipalities. This made it close to impossible for many waste operators to obtain licenses. It was argued that these provisions also violated Article 3 TEU, Articles 9, 11, 119, 145, 151, and 191 TFEU, Directives and Regulations in the area of waste management, and Articles 16, 17, and 37 of the Charter.

The BCC found this requirement to be only unconstitutional and did not find incompatibility between the challenged provisions and the multitude of international provisions invoked, including the cited EU law provisions. With respect to EU law, the BCC started with a discussion of the doctrine of direct effect in general and then turned to the different instruments. As regards the Regulations, it stated that the request did not contain a reference to a specific norm with direct effect. The BCC did not provide an analysis as to why, in its opinion, there were no provisions with direct effect. As regards the invoked Directives, the BCC stated that they did not have direct effect but only a "vertical effect" requiring the legislator to produce the result required by a particular Directive. It was held that this had been done in the present case. According to the BCC, the Bulgarian legislator remained within the discretionary limits set out by the Directive. The BCC, however, did not provide an analysis of why this was the case. It did not discuss what it considered to be the scope of discretion allowed under the Directive and how the Bulgarian legislator remained within it. Surely on both issues (direct effect and limit of discretion) the CJEU would have been better suited to comment.

As regards the provisions of the Treaties, the BCC was also quite concise. It stated that the rules in the challenged LWM were developed in accordance with Articles 9, 11, and 191 TFEU and Article 3 TEU. The BCC also found it necessary to mention in one sentence that

[107] DRUMEVA, *supra* note 61, at 175.

[108] Decision no. 3 of 2012 in Case no. 12 of 2011, SG 26 of 30 March 2012.

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the competition was not distorted, as the licensing requirement was applicable to all economic entities. There was no mention of the Charter provisions invoked. Consequently, the BCC, seemingly acting under the *acte clair* doctrine, rejected the arguments for inconsistency with EU law. However, as already explained, it did not provide a convincing analysis to underpin its implicit reliance on the *acte clair* doctrine.

2.3 Labour Associations *Case*

The *Labour associations* case[109] was yet another case where the BCC was seized with the request to review the *conventionalité* of certain provisions in light of, *inter alia,* EU law, as well as to conduct a *constitutionnalité* review. The law in question was once again the Labour Code. The challenged provisions introduced two sets of changes. The first one was by the challenged Articles 34 and 35 of the Labour Code, with which the legislator increased the number of criteria to be met by employers and employees' organizations in order to participate in the National Council for Tripartite Cooperation. The second one was by the challenged Article 414(a) of the Labour Code, which provided for the imposition of an administrative fine on a worker working without an employment contract.

With regard to the challenge of Articles 34 and 35, the BCC found some of the amended criteria in Article 35 to be unconstitutional but did not find any of them to be incompatible with the international agreements to which Bulgaria is a party. With regard to Article 414(a), the BCC found it to be contrary to a number of constitutional provisions, because this provision equates the employee's and the employer's positions in the violation, which, according to the BCC, is impermissible. The BCC also found Article 414(a) to be in violation of Article 15 of the Charter (the freedom to choose an occupation and the right to engage in work). The BCC pointed out that this is not an absolute right and that it can be limited if the principle of proportionality is observed. However, it went on to hold Article 414(a) was disproportionate as it was neither necessary, nor suitable, and nor was it the least restrictive available measure.

Although the, albeit short, discussion and application of the Charter is to be welcomed, it is to be noted that the BCC, once again, did not discuss why it believed the Charter to be applicable. It is not clear how the legislator was acting within the scope of EU law when adopting Article 414(a), which is a requirement for the Charter's application according to the CJEU case law.[110] Bearing in mind the *Paid leave* case, one could conclude that the BCC treats the Charter like any other human rights instrument, disregarding its more limited scope of application. The BCC seemed to have applied the *acte clair* doctrine, ignoring again the preliminary reference tool. Finally, what is even more peculiar is that in the operative part of the case, the BCC declared the discussed Labour Code provisions to be

[109] Decision no. 7 of 2012 in Case no. 2 of 2012, SG 49 of 29 June 2012.

[110] *See, e.g.*, Case C–617/10, Åklagaren v Hans Åkerberg Fransson, 2013 E.C.R. I–0000, para. 19.

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only unconstitutional. That is, it omitted its finding of a Charter violation, despite this being the very last thing that it discussed in its Decision prior to the operative part.

2.4 Waste Management II *Case*

The most recent case in which the BCC was seized to review, *inter alia,* the *conventionalité* of certain provisions with EU law was the *Waste Management II* case (the constitutionality review part of which was discussed above).[111] The provision allegedly violating EU law was Article 82(2) LWM. This set out rules concerning bank guarantees which were required to obtain permits relating to the separate collecting and recycling of certain waste. In particular, Article 82(2) LWM requires, in the relevant part, that the guarantee in question be issued by a commercial bank with a court registration in Bulgaria and licensed by the Bulgarian National Bank (BNB). It was argued that Article 82(2) LWM violated Article 56 TFEU because banks registered in another EU MS would not be able to provide the required bank guarantee. This requirement was also argued to inhibit economic entities registered in other EU MSs from providing waste management services in Bulgaria, because they would not be able to present a bank guarantee from a bank in another EU MS. In the submission of some of the interested parties, it was also argued that Article 82(2) violated Article 18 TFEU.

The BCC agreed that the text of Article 82(2) LWM could be seen as contradicting the TFEU only if it applied to banks, both, within and outside of the EU. However, the BCC held that Article 82(2) LWM did not have such wide scope of application. In ruling this way the BCC had to employ consistent interpretation methods to interpret Article 82(2) LWM together with the Law on the Credit Institutions (LCI). Using this interpretation technique was necessary because the text of Article 82(2) LWM did not suggest any limitations on the scope of application. The relevant LCI provisions that were needed for the interpretation state that banks registered in an EU MS may provide in Bulgaria all the services that they are licensed for in that EU MS provided the BNB is notified by the competent authority that issued the license. Relying on these provisions, the BCC ruled that Article 82(2) LWM applies only to banks licensed outside the EU, thus, making Article 56 TFEU inapplicable for the case. The LCI was ruled to be the applicable law for the bank guarantee. Hence, Article 82(2) LWM did not need to be subjected to *conventionalité* review.

While the consistent interpretation approach is to be respected, one might wonder whether, for reasons of legal clarity, a declaration of inconsistency with EU law would have been more desirable, forcing the legislator to redraft the provision and, at the very least, include a "without prejudice" supplement. In the opinion of this author the BCC should discourage such ambiguous legislative practices as the one in which every time a provision seems contrary to EU law one must go through every possibly relevant Law to find a

[111] Decision no. 11 of 2014 in Case no. 2 of 2013, SG 61 of 25 July 2014.

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provision excluding the possible EU law inconsistency. Such ambiguity may, on certain occasions, even violate the principle of the effectiveness of EU law.

D. Conclusion

The preliminary reference mechanism set out in Article 267 TFEU has proved to be an indispensable tool for European integration through law. It is the formal venue for 'judicial dialogue' within the EU, and Constitutional Courts are increasingly getting into 'the mood for talking'. However, there is still a group of Constitutional Courts that prefer to remain silent. The BCC is one of them, and why this is the case is open to discussion.

This Article examined the legal framework applicable to the BCC and provided some possible explanations for that silence. From the point of view of EU law, the BCC seems to fulfil the criteria for a court or tribunal set out in Article 267 TFEU. However, from the point of view of Bulgarian constitutional law, the picture is not necessarily clear and the fact that the BCC has never found it suitable to discuss the preliminary reference procedure is puzzling. While it is certainly possible to look at the CRB and conclude that the BCC is constitutionally barred from requesting a preliminary ruling, there are also good arguments to the contrary, and in the opinion of the author, it is the latter that should be followed. They should be followed not only because of the principle of supremacy but also because they present a more harmonious reading of the CRB.

This Article also conducted an exhaustive overview of the BCC's case law in which EU law issues were present, with the aim of this being to look for possible explanations as to the BCC's silence. All of the cases were direct proceedings where the BCC was a court of last instance. From the very beginning, the BCC introduced a dichotomy in its case law between the review bases, ruling that EU law is not a constitutional parameter. Despite the persistence of arguments relying on EU law on points of constitutionality review, the BCC has been unwavering. However, more recently a certain shift can be observed in the way in which the parties before the BCC use EU law as a constitutional parameter by relying on the Bulgarian equivalence of the *Rechtsstaat* principle. It is too early to say if this is a temporary occurrence or not and whether the BCC will be persuaded. In the few cases in which the BCC was seized to review the *conventionalité* of certain provisions, the BCC seemed to have acted under the *acte clair* doctrine and did not need the guidance of the CJEU (assuming it could have asked for it).

Generally, the BCC has been quite inconsistent in its treatment of EU law issues and has rarely given them proper consideration. The BCC's ambiguous stance on the preliminary reference tool has regrettably continued for more than eight years now, even though the BCC has dealt with numerous cases with EU law relevance. In the light of the recent historical decision of the German Constitutional Court to request a preliminary ruling from the CJEU, the Constitutional Courts that are still silent have lost their main role-model. The extreme formalism and positivist reading of Article 149(2) CRB should be criticized and not

adopted. It is high time that the BCC joined or at least expressed its openness towards joining the "judicial dialogue" and began to play its role in European integration.

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