4th Congress of the World Conference on Constitutional Justice
THE RULE OF LAW AND CONSTITUTIONAL JUSTICE
IN THE MODERN WORLD
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QUESTIONNAIRE

A. The rule of law and constitutional justice in the modern world

I. The different concepts of the rule of law

1. What are the relevant sources of law (e.g. the Constitution, case-law, etc.) which establish the principle of the rule of law in the legal system of your country?

The principle of the rule of law is guaranteed first and foremost in the Constitution of the Republic of Bulgaria (CRB), namely, in its Preamble, and in Art. 4, Para 1 which reads thus: "The Republic of Bulgaria shall be a law-governed state. It shall be governed by the Constitution and the laws of the country"

Constitution of the Republic of Bulgaria
We, the National Representatives of the Seventh Grand National Assembly, aspiring to express the will of the Bulgarian people,
Declaring our loyalty to the universal human values of liberty, peace, humanism, equality, justice and tolerance;
Elevating to the rank of paramount principle the rights of the human person and the dignity and security thereof;
Aware of our irrevocable duty to safeguard the national and state unity of Bulgaria,
Hereby proclaim our determination to create a democratic, law-governed and social state,

2. How is the principle of the rule of law interpreted in your country? Are there different concepts of the rule of law: formal, substantive or other?

The primacy and the immediate effect of the Constitution are features sine qua non of the principle of the state committed to the rule of law in modern constitutionalism which recognizes the underlying role of the Constitution in the legal system and the nature of the Constitution as the directly applicable law. Thus the Constitution overrides all legal acts and shall be applied whenever legal prescriptions that are incongruent with it exist. That the direct effect of the basic law is proclaimed in the Constitution demonstrates the desire to overthrow the idea of the declaration nature of the Constitution provisions that need the agency of laws and bylaws to enable the provisions to have legal effect. The highly abstract wording of the Constitution prescriptions does not preclude the direct effect of any of the Constitution provisions.

The Constitutional Court extends the direct application of the Constitution provisions and insists that their meaning should be interpreted in the context of the Preamble, inter alia. The Court lets the Constitution cover directly any international instrument's operation.

The Constitutional Court rulings recognize that the existence or nonexistence of a law shall not suppress the Constitution's direct effect. Whenever the Constitution texts provide

explicitly for legislation in place, the direct effect of the Constitution materializes to make the Constitution provisions binding on the Legislature which in turn is bound to conform.

The Constitutional Court infers the need of check for compliance with the Constitution while it agrees that the noncompliance of legal texts that were in place prior to the adoption of the Constitution is a particular problem of the Constitution's direct effect and any court shall be free to rule on constitutionality and to directly apply the Constitution rather than the legal texts that are incongruent with it to a specific case while the Constitutional Court retains its monopoly to hand down a ruling on the unconstitutionality of a law that is applicable to the case and to make that ruling binding on all legal persons.

3. Are there specific fields of law in which your Court ensures respect for the rule of law (e.g. criminal law, electoral law, etc.)?

a/ Criminal law:

Decision No. 12 of 13 October 2016 on Constitutional Case No. 13/2015:

"Nonetheless, if such hypothetical perpetrators are stripped of the rights that any defendant is to enjoy in fair trial, then the rule of law becomes questionable and the democratic mainstay of society is put in jeopardy.

"If the verdict is devoid of justice and if biases and propaganda destroy the truth, then the democratic pillars of society would be shaky. In short, democracies will not be steady if legal rules are not enforced in a systemic and careful manner to guarantee that justice reigns supreme upon the foundation of the rule of law.

"Justice in the period of transition is not an end in itself. It is more than just the means to achieve the end – the rule of law. It is the rule of law that gives the feeling of morality and justice. Rule of law changes, inter alia, the approach in justice as the focus shifts from reprisal to prevention in order to preclude recurrence. Rule of law should be understood in a broader way and encompass both efficient dispensation of justice and guarantees that fundamental rights like fair trial, equality before the law, nondiscrimination, proscription of severer retroactive legislation and legality of criminal offenses.

"In a state committed to the rule of law the pursuit of justice should not lead anywhere but to the rule of law. Criminal law should consider, inter alia, the moral principles that the public adheres to, yet criminal law is passed to deal with really existing social relations and not as a token act of belated, hence unattainable justice.

"Art.5, Para 4 of the Constitution, as interpreted by the Constitutional Court in its Decision No. 7/1992 prescribes that for acts that are termed "crimes" by international instruments to be covered by the domestic legislation, the corpus delicti and the punishment to be imposed commensurate with the crime shall be established in a domestic law that conforms to the domestic legislation prescriptions.

"The Constitutional Court's jurisprudence consistently advances the concept of the state committed to the rule of law in view of the formal element – legal certainty and the issuing substantive law requirements therefrom. They all are brought together by the idea of the rule

of law – the universal and equally binding obligation for all legal persons. Art. 4, Para 1 of the Constitution expressly proclaims the rule of law as the underlying principle of the constitutional and legal order.

"Separation of law and politics is one of the essential dimensions of rule of law for it minimizes the likelihood of an outcome with a ruling that is based on the judges' personal values, preferences and creeds. The opposite is more than a negative for justice; it would be a failure of constitutional values and principles for the advancement of which as a dimension of democracy the courts play an enormous role.

"Constitutional justice is bound to subject the pieces of legislation to a thorough scrutiny to see that the values that the public has made binding by incorporating them into the organic law are respected.

"By definition and in terms of impact rule of law keeps a rein on state power. Rule of law calls for the assessment of the acts of state in the spirit of the standards that are associated with ideas of key importance for constitutionalism.

"It will be impossible to observe the principle of the rule of law if the law is rewritten to please circumstances while the Constitution-established principles and values that are binding on the members of society upon their own will are ignored.

"Again and again the Court underscores its firm position that in a state committed to the rule of law the pursuit of fair solutions is sure to lead to the rule of law.

"The Court agreed that the challenged § 36 of the Transitional and Concluding Provisions of the Act Amending the Criminal Code providing to reopen claims barred by statute of limitations undermines confidence in the stability of the law, hence in the rule of law. The Constitutional Court took a consistent position that any legislation that impedes law enforcement or that is internally contradictory is not to be tolerated by the Constitution as it clashes with the principle of the state committed to the rule of law (Decision No. 10/2009, Decision No. 2/2013, Decision No. 5/2000 and Decision No. 5/2002).

"Given the above-stated consideration, the Court perceived a high risk for criminal courts to act at their own discretion and this objectionable in a state committed to the rule of law, as proclaimed by Art. 4, Para 1 of the Constitution."

b/ Health insurance and health law

Decision No. 8 of 28 June 2016 on Constitutional Case No. 9/2015:

"The principle of the rule of law (owing to its underlying and fundamental nature) is applied widely in all legal world domains:

"It is important to note that if reforms are to be carried out in one or other sector of politics it would be appropriate to employ legal tools that are developed and adjusted in a procedure that is far easier as compared to the legislating procedure for such a modus operandi will reflect the changing needs of society. Moreover, the acts of the cabinet and of the cabinet ministers are subject to checks for compliance with the Constitution (Art. 120, Para 2; Art.

125 of the Constitution) and thus it is guaranteed that **the principle of the rule of law as established in Art. 4, Para 1** of the Constitution is adhered to. It is important to note that the management of a public resource like the special-purpose health insurance fund calls for social and political responsibility. The responsibility of the Executive, in particular the political responsibility of the Council of Ministers, may be exercised at any time by ways and means that the constitutional law provides for in contrast to the responsibility of the political representation that is exercised from time to time by the elections."

c/ Tax law

Decision No. 10 of 24 October 2013 on Constitutional Case No. 8/2013:
Regarding the retroactive effect of tax legislation the Constitution does not imperatively prohibit as the penal legislation does – cf. Art. 5, para 3 of the Constitution. The understanding as expounded in the Constitutional Court's doctrine and practice that are based on Art. 4 of the Constitution which proclaims the principle of the state committed to the rule of law is firm that the substantive tax law shall not be retroactive.

d/ Energy law

Decision No. 13 of 31 July 2014 on Constitutional Case No. 1/2014:

Dissonance with Art. 4, para 1 of the Constitution: „The Republic of Bulgaria shall be a law-governed state. It shall be governed by the Constitution and the laws of the country."
Art. 35a, para 2 of the ERSA gives the formula to be used to determine the size of the fee whereas Art. 35b of the ERSA provides that the fee referred to in Art. 35a shall be deducted and paid in by the public provider, respectively by the end suppliers and sets the deadline for the payment. Art. 35c of the ERSA reads that for fees under Article 35a, not paid in within the deadline, an interest shall be due at the rate of the statutory interest under Interest on Taxes, Fees and Other State Receivables Act. The newly created Art. 73 of the ERSA provides for the administrative sanctions against economic actors who fail to incur the liabilities under Art. 35a and Art. 35b of the ERSA.
The texts under consideration are not unconstitutional per se. However, they are pertinent to and serve the provisions of Art. 35a, paras 1 and 3 of the ERSA that are unconstitutional and as the texts referred to are conditional upon the ERSA provisions, it is to be inferred that they are equally unconstitutional since their standalone existence is at variance with the principle of the state committed to the rule of law.

4. Is there case-law on the content of the principle of the rule of law? What are the core elements of this principle according to the case law? Please provide relevant examples from case law.

Though the features of the state committed to the rule of law are not given a precise and thorough definition by the national constitutions or courts and though sometimes they are not consistently codified in statute law, they constitute a common denominator of the modern European constitutional conventions. In the particular case of the Bulgarian legislation, there have been a number of cases where the Constitutional Court referred to the following postulates of the state committed to the rule of law:

a) lawfulness (including transparent, accountable and democratic law-making process);

b) legal certainty;

c) exclusion of self-willed behavior;

d) access to justice in independent and impartial courts;

e) respect for human rights; nondiscrimination and equality before the law.

The following decisions may be cited from the Constitutional Court's case-law:

a/ Legal certainty

Decision No. 4 of 11 March 2014 on Constitutional Case No. 12/2013:
A state committed to the rule of law" stands for sovereign power that is exercised on the basis of the Constitution and within the confines of the law. The Constitutional Court has made multiple pronouncements on the essence of the concept „law-governed state" and ruled that in „substantive terms" it is a state where justice reigns supreme and that in „formal terms" it is a state of the domination of legal certainty where the substance of law and order lends itself to a clear and unambiguous definition. Law-abidance in state affairs makes it imperative that they be predictable and calls for legal certainty that stems from predictability. Legal certainty and stability are distinctive features of a state committed to the rule of law as they require sustained and consistent legal regulation of societal relations.

b/ Access to justice in independent and impartial courts

Decision No 10 of 15 November 2011 in case No 6/2011:

To avoid speculation as to whether it is an "extraordinary" tribunal a specialist criminal court must firstly apply the general rules laid down in substantive and procedural law that govern proceedings before ordinary courts; and, secondly, the judges must be appointed according to the same set of rules that apply to judges appointed at ordinary courts.
The contested provision is not detrimental to legal certainty as judgments are to be passed by a properly established court. The advantage to be enjoyed by the specialist criminal court does not breach the requirement for establishing jurisdictional competence on the basis of an objective criterion – in the case at hand the link between several cases instituted against different persons in respect of different criminal offences, which requires conjoining the cases concerned in order to correctly appraise the facts and circumstances of each case.
According to the general rule the jurors in cases to be heard by a particular court are nominated by the local council in the judicial district under the jurisdiction of the court concerned (Article 68(1) ZSV). The contested provision of Article 68(2) ZSV does not depart from the established rule but makes arrangements for the jurors in cases to be tried by the Sofia-based specialist criminal court to be nominated by the Sofia Municipal Council (Article 100a(2) ZSV). It is more important to note that municipal councils only nominate jurors who are then approved by the General Assembly of the judges of the competent higher tribunal in accordance with Article 68(3). Hence the procedure according to which the jurors in cases to be tried by the specialist criminal court are to be confirmed by the General Assembly of Judges of the appellate specialist criminal court is fully in line with Article 68(3) ZSV.

c/ Nondiscrimination and equality before the law

Decision No. 3 of 27 June 2013 on Constitutional Case No. 7/2013:

Really in a state committed to the rule of law the Legislature is bound to apply the same solution to similar cases and a solution that varies from case to case if equality before the law and justice in society are to be guaranteed. Cases are seen as similar if the differences between them, if at all, are not essential. Essential differences, if any, make it binding on the Legislature to intervene and differentiate the legal texts that ensure equality in protection and support. Art. 14 of the Constitution reads that the family shall enjoy the protection of the State while Art. 47, para 1 of the Constitution makes it binding on the State to assist parents in the raising and upbringing of their children. However, legislation about assistance to families by means of benefits shall not remain undifferentiated owing to the essential differences in the needs from family to family. This is the only way to guarantee the equality before the law of the family allowances beneficiaries, as insisted by Art. 6 of the Constitution. It is beyond doubt that families where children are brought up by one parent who outlived the other make up a vulnerable category on account of an unlooked for mishap that entailed irremovable and irreversible consequences. Hence the Lawmaker's intervention for their sake guarantees equality in the protection of the family and children (Art. 14 of the Constitution) and justice in the attitude of the State. The question is whether the Lawmaker has violated the principle of equality before the law by the award of a privilege to be enjoyed only by one category of parents who singly bring up their children.

Decision No. 14 of 4 November 2014 on Constitutional Case No. 12/2014:

Whatever the case may be, the principle of the state committed to the rule of law as per Art. 4, para 1 of the Constitution calls for proportionality of the codified restriction. That is to say, the restriction shall be appropriate, the softest possible and, in parallel, an amply sufficient tool to reach the constitutionally warranted goal. The endeavor to find the exact measure in restriction of legal defense within the margins of Art. 120, para 2 of the Constitution is a serious legislative problem. Consideration for "the prohibition of excessiveness" as a consolidated component of the law-governed state relates to the case-law of the European Court of Human Rights (ECHR) under the Convention for the Protection of Human Rights and Fundamental Freedoms (CPHRFF) and to the prescriptions for recourse to court by virtue of the international instruments that the country has ratified, promulgated and enacted and that supersede any domestic legislation stipulating otherwise (Art. 5, para 4, sentence 2 of the Constitution). The issue under consideration correlates to Art. 14 (1) of the International Covenant on Civil and Political Rights (ICCPR) and Art. 6 (1) of the CPHRFF read in combination with Art. 6 (2) of the Treaty on European Union. Further the ECHR judgments should likewise be taken into account (see Terra Voningen B.V. v. Netherlands, Chevrol v. France, Klass and others v. Germany, I.D. v. Bulgaria, Mihailov v. Bulgaria, „Capital Bank" AD v. Bulgaria, Fazliiski v. Bulgaria, etc). It is inadmissible to let the exception that Art. 120, para 2 of the Constitution allows to conflict with the country's international duty to ensure that any person shall have recourse to independent and impartial court in the determination of his or her rights and obligations.

5. Has the concept of the rule of law changed over time in case-law in your country? If so, please describe these changes referring to examples.

Recently a trend has become visible to show that in view of the Constitutional Court's prerogatives that derive from the Constitution (the Constitutional Court is an arm of state authority whose primary function is to check pieces of legislation for compliance with the Constitution and in keeping with Art. 1 of the Constitutional Court Act /CCA/ it shall guarantee the supremacy of the Constitution, *and not of the law per se*), the principle of the rule of law is upheld inasmuch as it is embedded in the Constitution. In fact the legal arrangement of this institution in Bulgaria largely follows the model that became common in Europe under the influence of Hans Kelsen. The Constitutional Court is an authority and part of the system of public authorities – its prerogatives derive directly from Art. 149 of the Constitution where they are enumerated. More specifically, while the Constitutional Court is on a par with the supreme bodies of the three branches of power, it does not interfere into their activity. Being an authority, the Constitutional Court has a specific function which is to see that laws are compliant with the Constitution. Therefore, the Constitutional Court has a direct bearing on the lawmaking but is not the lawmaker. Art. 62, Para 1 of the Constitution reads thus: The National Assembly of the Republic of Bulgaria shall be vested with the legislative authority. In other words, Parliament is the sole lawmaking authority. The Constitutional Court, accordingly, is to check laws for compliance with the Constitution. Some academics who seek to circumvent the formula of Art. 62, Para 1 of the Constitution reading that the National Assembly shall be the sole lawmaking authority opt for a compromise that the Constitutional Court is engaged in quasi, not genuine legislation. Apparently they are reluctant, as many others, to perceive the check for compliance with the Constitution as "negative legislation", therefore the concept "lawmaker" has a meaning that is different from what is understood when the National Assembly's competence is at issue. In its Decision No. 18/1993 on Constitutional Case No. 19/1993 the Constitutional Court admitted that though it is termed "court", it is not part of the dispensation of justice nor is it part of the Judiciary. The main reason leading to such a conclusion is that the Constitution itself took the Constitutional Court out of the system of courts and put the provisions that treat it into a separate chapter. The conclusion that the Constitutional Court is outside the Judiciary has been criticized in scholarly writings. The opinion has been advanced that the Constitutional Court is a judiciary institution as it deals with legal disputes, hence the jurisprudence it is engaged with. However, as its Constitution-assigned function is specific, the Constitutional Court should be defined as a special court of constitutional justice. Yet when the legal status of the Constitutional Court is to be defined, the definition should be based on its key function, viz. the check of laws for compliance with the Constitution. In that sense the Constitutional Court is not engaged in the administration of justice. Indeed when supervision is exercised over the constitutionality of laws, the Constitutional Court's activity assumes the form of dispensation of justice by a court, however, this activity is not an act of ordinary dispensation of justice. Beyond the check for compliance with the Constitution, the Constitution vests in the Constitutional Court some other prerogatives that do deal with the settlement of legal disputes.

6. Does international law have an impact on the interpretation of the principle of the rule of law in your country?

Since international instruments which have been ratified and come into force are considered part of the domestic legislation and become laws (Art.5, Para 4 and Art. 85 of the Constitution), they likewise shall be subject to checks for compliance with the Constitution (Decision No. 9/1999 on Constitutional Case No. 8/1999). The Constitutional Court's original jurisprudence postulated that it is only the ratification instrument that is to be subject

to a check for compliance with the Constitution; subsequently, however, the above-cited decision of 1999 revised the approach as it decreed that a ratification instrument shall incorporate the international instrument and that the two instruments shall be seen as an integral act. Consequently this position was further clarified to say that the check of the ratification act shall encompass the international instruments, inter alia, that are the subject of the ratification only when the instruments come from the domain of international public law (Resolution No. 4/2002 on Constitutional Case No. 6/2002). Further, Art. 149, Para 1, Item 4 reads that the Constitutional Court shall 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 international law standards and the international instruments to which Bulgaria is a party. However, the exercise of ex ante control to make sure that a specific piece of legislation is consistent with the Constitution shall not preclude the Constitutional Court from exercising control to verify constitutionality even after the international instrument's ratification (Decision No. 9/1999 on Constitutional Case No. 8/1999).

II. New challenges to the rule of law

1. Are there major threats to the rule of law at the national level or have there been such threats in your country (e.g. economic crises)?

Despite the pressure exerted by force majeurs like the 2008 financial crisis and the international financial markets downfall provoked by the illicit trade in toxic derivatives of mortgage credits, the principle of the rule of law remained intact on the territory of the country. While such developments might have been steered either by the country's marginal role in the key investment deals on the international financial markets, the national Legislature, Executive and Judiciary impacted the positive cause-and-effect relationship.

2. Have international events and developments had a repercussion on the interpretation of the rule of law in your country (e.g. migration, terrorism)?

Unfortunately recently the migration pressure (or the refugee crisis, as the Bulgarian media term it) has tended to have a negative repercussion on the principle of the rule of law (in international aspect). While the circumvention of the Dublin Regulation that produces an non-proportional burden on states whose geographic location (being external EU borders) makes them vulnerable is just wishful thinking that so far has not materialized, certain key provisions of the 1951 Refugee Convention are repeatedly violated at institutional level by EU institutions. For instance, the principle of *non-refoulment* is often trampled upon by the European authorities and this breach clashes with the EU law but also with the principle of the rule of law.

3. Has your Court dealt with collisions between national and international legal norms? Have there been cases of different interpretation of a certain right or freedom by your Court compared to regional/international courts (e.g. the African, Inter-American or European Courts) or international bodies (notably the UN Human Rights Committee)? Are there related difficulties in implementing decisions

of such courts/bodies? What is the essence of these difficulties? Please provide examples.

It has happened (though seldom) for the Constitutional Court to come across collisions between national and international legal norms. One example is the *Ilinden Case* (where in practical terms the Court ruled against the right to association of a political party which was judged to be excessively radical). The decision could be seen as opposition to ultraconservative rightist parties (that are constitutional in the light of the Western model) such as UKIP (United Kingdom Independence Party), Britain First, Marine Le Pen's Front national and suchlike.

In Decision No 1 of February 29, 2000 on Constitutional Case No 3/99 the Constitutional Court ruled that the challenged party was anticonstitutional. The Constitutional Court assumed that the constitutionality of a party is to be judged primarily on the basis of its activity. Judgement on the basis of a party's statutes and program is not sufficient.
Although registered as a political party in February 1999 OMO Ilinden-PIRIN had an illicit predecessor and is its successor.
As during the clandestine period after the party was registered, its activities are covered by the prohibition in Art. 44 para 2 of the Constitution on organizations acting to the detriment of the country's sovereignty and territorial integrity or the unity of the nation. The declarations, appeals, maps that were printed and circulated, the interviews and written statements by that party leaders for Bulgarian and foreign institutions claim that the Pirin region from Bulgaria's territory is part of Macedonia for which they want a status of full autonomy, withdrawal of the Bulgarian troops which they call occupation troops, and the dissolution of all Bulgarian political parties and organizations. The party challenged treats that part of the country's territory as non-Bulgarian, foreign land that has been given to Bulgaria to govern it temporarily under an international treaty. The party seeks, among other things, to separate the territory in question from Bulgaria.
A political party, which claims that part of the country's territory is foreign land and seeks to separate it, is anticonstitutional and has to be outlawed.

III. The law and the state

1. What is the impact of the case-law of your Court on guaranteeing that state powers act within the constitutional limits of their authority?

Art. 5, Para 1 of the Constitution proclaims that it shall be the supreme law within the system of laws and bylaws and provides the guarantees to that effect. One of these guarantees, perhaps practically the most important one, is the existence of a Constitutional Court and the prerogatives that such a court is vested with. The Constitutional Court acts are instrumental in ensuring the primacy of the Constitution and of the principles that it proclaims. The Constitutional Court decisions are binding. The Constitutional Court rules on the unconstitutionality of laws and other National Assembly acts and also of presidential acts and thus guarantees that the required standards of the state committed to the rule of law and of the separation of powers are adhered to.

Decision No. 1 of 12 March 2013 on Constitutional Case No. 5/2012:

The Constitutional Court's decisions shall be binding on all State institutions, legal entities and citizens. As an integral part of law and order, they ensure the primacy of the Constitution. The Constitutional Court decisions' binding power invites the conclusion that all subjects of law shall comply with them. The decisions are equally binding on the National Assembly as a supreme sovereign authority. In a state committed to the rule of law noncompliance with, improper enforcement or circumvention of Constitutional Court's decisions amounts to violation of the Constitution. The Constitutional Court deems it necessary to recall that was instituted to guard the primacy of the Constitution; therefore the Parliament is bound to execute the Court's decisions. The opposite would render constitutional control meaningless and violate the principle of the separation of powers as laid down in Art. 8 of the Constitution.

The Constitutional Court's jurisprudence sets the limits within which its constitutional prerogatives are to be exercised and formulates the basic guiding principles that it shall adhere to in its activity.

Decision No. 3 of February 9, 1996 on CC No. 2/96:

The Constitutional Court ruling on the motion by a group of 54 MPs from the 37th National Assembly found anticonstitutional the provision of Art. 13 para 2 of the Law on Local Taxes and Fees (LLTF). Under Art. 13 para 2 of the LLTF the Council of Ministers shall set the rules of tax assessment of real estate to be used in fixing the property tax brackets. In principle this means it is the Government and not Parliament that is involved (Decree 254/1995) in the assessment of the property tax to be paid by individuals and legal entities.
Under Art. 60 para 1 of the C. it is only a law that can introduce and assess tax. The National Assembly is not free to delegate that exclusive right to the Executive. This constitutional principle holds good of all elements that go into tax assessment: the taxable entity, the taxable unit, the tax brackets, the tax rate etc. Tax regulations that have not been established by a law contravene the Constitution.

The Constitutional Court's jurisprudence to interpret Art. 120, Para 2 of the Constitution reading "Citizens and legal entities shall be free to contest any administrative act which affects them, except those listed expressly by the laws" establishes the criteria to guide the lawmaking authority and the courts in the application of the exception that the Constitution provides for.

Decision No. 21 of October 26, 1995 on CC No. 18/95:

Motion by the Chief Prosecutor of the Republic of Bulgaria asking for binding interpretation of Art. 120 para 2 of the C. Shall administrative acts that are not normative or individual be appealed against with the courts.
The Constitutional Court ruled that citizens and legal entities are free to appeal against any administrative act, including an internal one, if it violates or threatens legitimate interests and is not specifically excluded by a law from being appealed against in the courts.

Decision No. 14 of 4 November 2014 on Constitutional Case No. 12/2014:

The Constitutional Court can refer to its case-law for the clear definitions it has given of the nature of the problem that relates to the interpretative matter under consideration, namely, the answer to the question: What is the constitutional measure of the exception under Art. 120,

para 2 of the Constitution? In particular, is the Legislature free to make judicially unappealable, as it sees appropriate, a definite range of administrative acts at its own discretion or shall the Legislature's action be confined to criteria that are not explicitly set forth in the Constitution but stem from the spirit and the underlying principles of the Constitution?

There is no reason to retreat from the understanding that when the recourse to legal defense for definite administrative acts is suppressed, legislative appropriateness is constricted in the sense that unappealability shall not be an obstruction to the exercise of the fundamental rights and freedoms of the citizen unless the protection of supreme Constitution-enshrined values that pertain to public interests of particular importance calls for. For instance, for the sake of the defense of the national security it may appear to be justified to restrict the appeal in court against administrative acts that directly involve the country's defense capability or relations with other states.

However, it is an unacceptable thesis that a law shall be allowed to provide for departure from the principle of appealability only against administrative acts whose contents and consequences do not infringe on the citizens' fundamental rights. As noted above, the blanket regulation that derives from the Constitution and that is the basis on which a proportionate and reasonable curtailment of various kinds of rights, fundamental rights included, shall be the applicable regulation.

So far the Constitutional Court has given predominantly restrictive interpretations of the possibility to remove the appeal procedure for administrative acts established by law. In principle, the Court assumed that such an exception to the general rule of Art. 120, para 2 of the Constitution may be justified by particularly important public interests and only within narrow confines that implicate specific rather than generally referred acts that don't irremediably undermine the exercise of the fundamental rights of citizens and the principle of the state committed to the rule of law. For instance, the Legislature shall not make administrative acts unappelable on the basis of the authority that issues them (an administration or a particular group of administrations) while it ignores the substance of the acts. The Court has agreed and is agreeing with these views.

Also the Constitutional Court thought that by the enactment of unappelability under Art. 120, para 2 of the Constitution the Legislature shall not rule out the possibility of judicial defense against void administrative acts whenever the infringement on lawfulness undermines the very foundation of the set of administrative procedures that the Constitution establishes and that the existing legislation develops further (for instance, whenever the issuing authority is not vested with the legal competence or the form that the law prescribes is not observed). Individuals who suffer from such acts shall all the time be free to take legal action in reaction to distortions of the acts by severe and drastic violations of the legal procedure that makes the acts invalid. This is the way to follow if the wronged individuals are to possess an efficient tool to eliminate the constitutive effect of the fundamentally vitiated administrative act and to be compensated, as appropriate, for the damage suffered in consequence of the act's application. The opposite would be tantamount to a flagrant violation of the principles of the state committed to the rule of law in the sense of Art. 4 of the Constitution.

Whatever the case may be, the principle of the state committed to the rule of law as per Art. 4, para 1 of the Constitution calls for proportionality of the codified restriction. That is to say, the restriction shall be appropriate, the softest possible and, in parallel, an amply sufficient tool to reach the constitutionally warranted goal. The endeavor to find the exact measure in restriction of legal defense within the margins of Art. 120, para 2 of the Constitution is a serious legislative problem. Consideration for "the prohibition of excessiveness" as a consolidated component of the law-governed state relates to the case-law of the European Court of Human Rights (ECHR) under the Convention for the Protection of Human Rights

and Fundamental Freedoms (CPHRFF) and to the prescriptions for recourse to court by virtue of the international instruments that the country has ratified, promulgated and enacted and that supersede any domestic legislation stipulating otherwise (Art. 5, para 4, sentence 2 of the Constitution).

2. Do the decisions of your Court have binding force on other courts? Do other/ordinary courts follow/respect the case-law of your Court in all cases? Are there conflicts between your Court and other (supreme) courts?

The Constitutional Court decisions have binding force on all state powers, legal entities and individuals (cf. the text cited in Point 1 of Decision No. 1 of 12 March 2013 on Constitutional Case No. 5/2012). The Court decisions are promulgated in Darzhaven Vestnik (The State Gazette) within 15 days reckoned from the date of their rendition and take effect within three days reckoned from the date of their promulgation. An act that has been declared unconstitutional ceases to apply on the date on which the decision becomes effective.

Art. 150, Para 2 of the Constitution of the Republic of Bulgaria reads that should they find a discrepancy between the law and the Constitution, 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. The Constitutional Court is not in conflict with the supreme courts; the Constitutional Court is not an institution of the Judiciary. In its Decision No. 18 of 16 December 1993 on Constitutional Case No. 19/1993 the Constitutional Court interpreted the correlation between the institutions of the Judiciary and the Constitutional Court:

"The Constitutional Court is outside the Judiciary system and shall not 'sit on the top' (the phrase is what was used in the request) since Art. 119, Para 1 of the Constitution does not include it among the enumerated institutions whose function is the administration of justice.

"The above text leads to the conclusion that the Constitutional Court does not dispense justice in the sense of Chapter Six of the Constitution.

"In terms of organization and function the Constitutional Court does not fit into any of the three branches of power – the Legislature, the Executive and the Judiciary. The Constitutional Court is on a par with the supreme institutions of the three branches of power. Therefore while the Constitutional Court protects the Constitution, it is called to make the adjustments required and to strike a balance as the state authorities that are placed 'on the top' of the three branches of power exercise their prerogatives.

"To ensure that the Constitutional Court will act absolutely impartially as an institution that is positioned between the three branches of power to strike a balance as they exercise their prerogatives, its members are elected on a parity basis by the three branches of power. Four Constitutional Court justices shall be elected by the National Assembly; four justices shall be appointed by the President; and four justices shall be elected by a joint meeting of the justices of the Supreme Court of Cassation and the Supreme Administrative Court."

3. Has your Court developed/contributed to standards for lawmaking and for the application of law? (e.g. by developing concepts like to independence, impartiality, acting in accordance with the law, *non bis in idem, nulla poena sine lege*, etc.)?

The Constitutional Court plays an extremely important role and makes an essential contribution to the observation of the constitutional principles by all state powers. The Constitutional Court's activity guarantees and ensures that all fundamental principles that are entrenched in the Organic Law will be translated into reality. Apart from the above-cited decisions that are relevant to this matter, the following decisions may be given as concrete examples of a standard established in lawmaking by the Constitutional Court's case-law:

Decision № 10 of 3 December 2009 on CC № 12/ 2009:

Naturally the Constitution does not give an exhaustive and systematically knit catalog of the different aspects that the legislating process in a state committed to the rule of law shall respect. Yet these aspects can be inferred from the logic and the set of principles that the Constitution stands upon. The principle of the state committed to the rule of law makes it binding on the legislating authority to be consistent and predictable and to prevent the passage of pieces of legislation that contradict each other. The pieces of legislation that the legislating authority passes shall guarantee legal security, including the respect for rights that individuals and corporate entities have acquired under the law while the legislating authority shall abstain from amendments that are beneficial to the State but detrimental to the individuals and corporate entities. In a state committed to the rule of law the legislating authority shall draft pieces of legislation that are in tune with rightful interest within the model that the Constitution sets rather than bring in restrictions and privileges incidentally or haphazardly or grant privileges and rights that cannot materialize. And finally, in a state committed to the rule of law such cases must be treated in a way which is one and the same for all rather than let differentiation in the pieces of legislation on the basis of criteria that are non-inherent to the Constitution.

Decision No. 2 of 4 February 2014 on Constitutional Case No. 3/2013:

The Constitution defines the Bulgarian State as a state committed to the rule of law. Abidance by the Constitution and by the laws is the core of any state committed to the rule of law. The laws shall express the Constitution-proclaimed principles and put forward fair and socially justified solutions within the framework of the matter that they treat. The rule of Art. 4, para 1 of the Constitution is the underlying principle of constitutional order and the basis on which all relations within a society are legitimately regulated.
The principle of the state committed to the rule of law calls for clear, precise and unambiguous texts of the pieces of legislation. If the texts were not such, the legislation would be unfit to regulate the main relations within society. It is along these lines that an answer is to be given to questions whether the revenue and expenditure part alike of the social security and health insurance systems have been breached and whether the breach affected the guarantees that are to ensure the exercise of the citizens' fundamental Constitution-proclaimed rights.

Decision No. 4 of 11 March 2014 on Constitutional Case No. 12/2013:

In principle the law takes effect ex nunc and applies to facts and circumstances that emerge after its entry into force. Each new civil law "inherits" juristic facts that emerged while the

abolished law was in place and that are not cancelled: in such cases the question that arises touches on retroactive legislation that the new civil law is. The Legislature has the authority to freely fix the time limits of the operation of the laws regarding, inter alia, legal relations that resulted from the action of the revoked legislation but that are to be settled as the new legislation goes into effect. Whenever the new legislation is to be valid with respect to legal relations that were established and existed prior to its enactment, this is regarded as "unreal" retrospective effect or immediate effect of the new legislation. For the new civil law to be valid vis-à-vis legal relations that were in place prior to its entry into force, the Lawmaker shall explicitly make it retroactive. Retroactive effect always exists with procedural law provisions as it covers pending proceedings where juristic facts emerged in the past but their legal effects have not occurred. No doubt the new civil law becomes valid immediately with respect to proceedings that were not completed by the date of the law's entry into force, may rearrange, in a new way, the juristic facts and legal relations that have emerged prior to its entry into force by means of ex nunc changes that conform to its provisions, yet this is always made contingent upon preoccupations with justice and relevance.
The Constitution does not forbid to make the new civil law retroactive with respect to facts and legal relations that already existed when it was passed; the Constitution merely fixes the date of the law's entry into force: statutory acts go into effect three days after their promulgation unless provided otherwise. The strict prohibition of retroactive legislation is to be found solely in Art. 5, para 3 of the Constitution and is confined only to criminal laws that provide for sanctions that are new or harsher than the revoked sanctions in order to prevent the aggravation for criminal offenders. The Constitutional Court case-law draws on the Court's understanding that any other pieces of legislation that deal with legal public relations, for instance the imposition and payment of taxes, shall not be retroactive. In general, the principles of the state committed to the rule of law rule out the passage of retroactive legislation that seeks to curtail existing rights or to impose retroactive liabilities but this shall not be valid whenever new rights are granted.

4. Do you have case-law relating to respect for the rule of law by private actors exercising public functions?

The Constitutional Court's case-law provides examples of the option and conditions under which public functions may be entrusted to private actors.

Decision No.10 of October 6, 1994 on CC No.4/94:

Regarding the right to assiciation the Constitutional Court ruled that the citizens are free to determine the object of their association pursuant to Art.44 of the C. for which they do not always require preliminary permission by a state body. Where it is in the interest of the state and the public, the number and composition of associations with a certain objective can be restricted without contravening the C. It is possible to delegate some state functions to citizens' associations. This can be done only by a law and in observance of the principle of voluntariness.

Decision No 5 of 10 May 2005 on Constitutional Case No 10/2004:

Regarding the rest of the challenged provisions the Constitutional Court ruled them to be in contravention to the Constitution. To support this part of its decision the Court noted that the cited provisions establish a National Company, "Ports", a state-owned enterprise with powers

that previously were in the hands of a Government agency. Hence the question whether the Constitution allows to delegate Government functions, regardless of their nature, to legal entities outside the State Administration and whether the exercise of Government-specific functions gives a privileged status to the state-owned enterprise which exercises them over the remaining economic actors.
In the opinion of the Constitutional Court the powers of Government institutions to guarantee the security of all economic actors in the country shall not be transferred outside the Executive. This is to be surmised from Art. 1, para 2 of the Constitution reading that the power of the State shall be exercised through the Constitution-established bodies and not by state-owned enterprises. However, the newly established state-owned enterprise has been vested with power functions that can be delegated to Government agencies alone and Art. 105, para 2 of the Constitution delegates these functions to the Council of Ministers. Further, the Court thought that the merger of the delegated Government-specific functions and the business puts the state-owned enterprise in a privileged position in relation to the remaining legal entities and monopolizes these functions in favor of the said enterprise and thus contravenes Art. 19, para 2 and Art. 18, para 4 of the Constitution.

5. Are public officials accountable for their actions, both in law and in practice? Are there problems with the scope of immunity for some officials, e.g. by preventing an effective fight against corruption? Do you have case-law related to the accountability of public officials for their actions?

Statistics concerning the accountability of public officials, justices or Members of the National Assembly have not been made available to the Constitutional Court. Public officials can be sued subject to the Criminal Code or face financial or disciplinary sanctions subject to the Civil Service Act. As said by the Constitution when exercising the judicial function, the judges, prosecutors and investigating magistrates shall bear no civil or criminal liability for their official actions or for the acts rendered by them, except where the act performed constitutes an indictable intentional offense, i.e. they enjoy functional immunity whereas in all other cases they shall be liable to criminal proceedings under the Criminal Code or to civil proceedings under the Judiciary Act. As per the Constitution a Member of the National Assembly shall be immune from detention or criminal prosecution except for the perpetration of a criminal offence, and in such a case the permission of the National Assembly or, in between its session, of the Speaker of the National Assembly, shall be required. No permission shall be required when a Member is detained in flagrante delicto; the National Assembly or, in between its session, the Speaker of the National Assembly, shall be notified forthwith.

No permission for initiating criminal prosecution shall be required, where the Member of the National Assembly has given his/her consent thereto in writing. The Prosecutor General shall approach the National Assembly with a request that it strip a Member of his/her immunity. In fact, usually the Member of the National Assembly gives his/her consent in writing whenever such a request is submitted.

Constitutional Court case-law related to accountability and immunity:

Decision No. 10 of 27 July 1992 on Constitutional Case No. 13/1992 to interpret the Constitution texts that provide for the immunity of the Members of the National Assembly:

“1. The immunity of the Members of the National Assembly shall exempt them from criminal liability as per Art. 69 of the Constitution and shall make them immune from prosecution as per Art. 70 of the Constitution.

“The Member of the National Assembly shall not renounce his/her immunity.

“2. Immunity from prosecution shall be ex cathedra immunity to be enjoyed by the Members of the National Assembly when they voice opinions or vote floor and off-floor during their term in office or after its expiry.

“3. Immunity from prosecution stands for the prohibition to initiate criminal proceedings against Members of the National Assembly during their term in office for crimes that they committed.

“The Members of the National Assembly shall be immune from detention or criminal prosecution except for the perpetration of a criminal offense, and in such cases the permission of the National Assembly or, in between its session, of the Speaker of the National Assembly, shall be required.

“No permission shall be required when a Member is detained in flagrante delicto.

“4. The phrase ‘Criminal proceedings may be initiated’ under Art. 70 of the Constitution means authorization from the competent authorities to initiate pretrial proceedings and to launch an investigation into a grave crime that has been committed by a Member of the National Assembly.”

Decision No 1 OF January 14, 1999 ON Constitutional Case No 34/98:

The Constitutional Court ruled that the provision of Clause 5 (3) of the Law on the Amendment to the Judiciary Law which allows the chairmen of the Supreme Court of Cassation and the Supreme Administrative Court and the Minister of Justice to propose to the Supreme Judicial Council that justices be stripped of their immunity and suspended, contravenes Art. 127 para 1 of the Constitution, which provides it is only the Prosecution that shall bring charges against criminal suspects.

Decision No. 5 of May 17, 1995 on CC No. 3/95:

Motion by a group of Members of Parliament challenging the constitutionality of articles of the Standing Orders of the National Assembly.
On Art. 105 para 3 of the Standing Orders in the part of the term "proofs" used there. The Constitutional Court ruled the motion was founded. The provision of Art. 105 para 1 regarding the term "sufficient proof" is in contravention to the principle of the separation of powers as only the Judiciary can judge the sufficiency of proofs. The phrase "sufficient data" is the correct one.

Decision No 13 OF December 16, 2002 on CC No 17/2002:

The Constitutional Court concluded it was inconsistent with the Constitution to let one fifth of the SJC members have the right to ask that magistrates be stripped of their immunity because, as the Constitution reads, it is only the prosecution that can bring a charge against

criminals. The said quota of SJC members is not empowered by the Constitution to start criminal prosecution, collect, check and weigh up the evidence under the terms of the Code of Penal Procedure.

Decision № 2 of 6 March 2008 on CC № 1/2008:

The Constitution does not provide for special treatment, i.e. immunity to be enjoyed by officers and NCOs against detention in the way it provides for the Members of Parliament in Art. 70, for the President and Vice-President in Art. 103 and for justices in Art. 132. Further, the latest amendments to the Constitution constricted the scope and substance of immunity whereas Art. 191 of the Act on Defense and the Armed Forces of the Republic of Bulgaria (ADAF) goes beyond the immunities that the Constitution grants. Therefore Art. 191 of the ADAF is not compliant with the Constitution.

Decision No. 5 of 12 May 2016 on Constitutional Case No. 2/2016:

"The initiation of pretrial proceedings usually precedes the indictment when it is not certain enough that the public official under suspicion has committed the crime. No doubt there exists a public need of fully impeccable public service. Therefore the requirement that the public servant should be loyal to 'the will and the interests of the nation' can support a compromise but only when his/her disloyalty has been conclusively proved.

"The unavailability of a differentiated approach to indicate the rung where the public official stands within the public service ladder and to measure the magnitude of the threat that the alleged crime poses to society lead to identical legal consequences regardless of the possible substantial differences. The provision of Art. 100, Para 2 of the Civil Service Act about a civil servant's release which is not made contingent upon an individual and differentiated assessment may curtail the civil servants' labor right even when no step is made across the point beyond which 'the will and interests of the nation' should prevail over the protection of the right which is exercised by the civil servant in question. The fact that the removal from office is not subject to meaningful judicial control disables the exercise of the civil servant's right to protection. Therefore the contested provision is incompatible with Art. 56 of the Constitution.

"The Constitutional Court assumes that the legitimate goal is absolutely possible to be achieved by ways and means other than Art. 69 of the Criminal Procedure Code and that Art. 100, Para 1, Item 2 of the Civil Service Act furnishes the appointing authority with a supplementary tool. Crime in public office is always a disciplinary breach. The appointing authority should see to the good name of the institution and is free, on a case-by-case basis, to take a decision on removal from office in the course of disciplinary proceedings."

IV. The law and the individual

1. Is there individual access to your Court (direct/indirect) against general acts/individual acts? Please briefly explain the modalities/procedures.

The existing legislation does not let citizens approach on their own the Constitutional Court with a complaint. The Constitution of the Republic of Bulgaria provides for an indirect individual access of citizens to the Constitutional Court through the intermediation of the

National Ombudsman and, following the latest amendments to the Constitution, of the Supreme Bar Council. The National Ombudsman and the Supreme Bar Council have the authority to approach the Constitutional Court with challenges of constitutionality of pieces of legislation that encroach on the citizens' rights and freedoms. In addition, the Constitutional Court shall act on an initiative of not fewer than one-fifth of all Members of the National Assembly, the President, the Council of Ministers, the Supreme Court of Cassation, the Supreme Administrative Court or the Prosecutor General.

2. Has your Court developed case-law concerning access to ordinary/lower courts (e.g. preconditions, including, costs, representation by a lawyer, time limits)?

A key Constitutional Court decision concerning access to courts is Decision No. 1 of 1 March 2012 on Constitutional Case No. 10/2011. Acting on this decision by which the Constitutional Court declared unconstitutional a legal text that provided that penalties and electronic tickets to impose a fine of 50 leva or less shall not be appealable, the Parliament amended another eleven laws and put an end to the described modality.

Decision No. 1 of 1 March 2012 on Constitutional Case No. 10/2011:
In a state committed to the rule of law whenever dispensation of justice is involved, the recourse to court should always be available. Dispensation of justice is an activity that the Constitution (Art. 119) grants to courts. The constraint on the appeal procedure for penal orders and thus the acceptance of dispensation of justice while the recourse to the Judiciary is not guaranteed conflicts with Art. 119 of the Constitution. The same should hold good of the electronic tickets inasmuch as the law makes them as effective as penal orders (Art. 189, para 11, RTC). In general, sanctions in the form of penal orders as per Art. 189, para 13 of the RTC is dispensation of justice while the elimination of the recourse to the Judiciary whereon the court pronounces a final ruling that is discordant with the principle of the state committed to the rule of law and the principle of the separation of powers inasmuch as it relieves the Executive of judicial control on matters that bear on the citizens' rights. In that context it should be specifically emphasized that dispensation of justice correlates with the freedom to appeal in court. Whenever a certain activity has characteristics of dispensation of justice, the protection that the law shall extend to citizens is not to boil down to an appeal with an administrative body. Such an option is to be associated with nothing but contestation of administrative acts and that by way of exception only.
Another text that is discussed in the challenge and in the position on the case as a justification to pronounce Art. 189, para 13 of the RTC anticonstitutional is Art. 56 of the Constitution. This article reads that every citizen shall have the right to legal defense whenever his rights or legitimate interests are violated or endangered. The Constitutional Court has pronounced several rulings to the effect that a fundamental universal right is at stake. While the right to legal defense has differing aspects depending on its substance, it is primarily a right to active reaction by any citizen whenever his rights are violated or his legitimate interests are infringed upon. Strictly interpreted, the text shows that the right to defense does not boil down to legal defense. If the defense is ensured by an administrative procedure, the letter and the spirit of the legal text will be abided by (an argument arising from Art. 56, sentence 2 of the Constitution). In the opinion of the Constitutional Court Art. 56 of the Constitution allows for one form or another of the right to defense and does not take a position on the question whether a form might be counted out to give privilege to another. Answers to these questions may be found only if compared to other Constitution texts. The joint interpretation of Art. 56 of the Constitution when read in combination with Art. 117 and Art. 119 of the Constitution

leads to the conclusion that legal defense is primarily the basic form of defense in a law-abiding state. This is normal for legal defense constitutes complete possible defense of rights violated or legitimate interests infringed upon. The possibility to obtain administrative defense only concerns solely the hypothesis in Art. 120, para 2 in fine of the Constitution and the Constitutional Court's interpretation of it. Therefore the interpretation of Art. 56 of the Constitution read in combination with Arts. 117, 119 and 120 of the Constitution advances the idea that in a law-abiding state legal defense of rights is the determining form of defense. Whenever dispensation of justice is implicated, and administrative penalty is dispensation of justice, the legal defense shall always exist as an option and there shall be no justification to rule it out providing the courts are the institutions that have Constitution-granted powers to dispense justice. To meet this requirement, it will be sufficient if the final adjudication of the dispute is left to the relevant court.
The small amount of the sanction imposed is cited as the reason for the abandonment of appeal action as per Art. 189, para 13 of the RTC. However, the Constitutional Court finds this connection unacceptable. An administrative violation may constitute an "insignificant case" for reasons other than the fact that a low fine is imposed. Conversely, the fine, if at all, will be low for the violation is seen as an "insignificant case". As the legislation shows the determination of violence as an insignificant case given other circumstances, primarily whether it is the first violation of the type in question and whether the ensuing damage, if any, is insignificant. Generally, a doing which is termed "violation" is an insignificant case when it insignificantly affects the values for the protection of which it is codified as criminally liable.

In addition several other Constitutional Court decisions that deal with the matter in question may be cited.

Decision No 9 of April 14, 1998 on CC No 6/98:

The Constitutional Court emphasized that the right to legal defense of citizens is a fundamental Constitution right which is of particular importance in a democratic state committed to the rule of law - Art. 56 of the Constitution. The citizens' right to have a counsel for the defense is an essential element in the general right to defense.
The citizens' right to legal defense has special Constitution protection should a penal procedure be initiated on detention or indictment - Art. 30 para 4 of the Constitution. The right to legal defense covers all stages of the event. It may be or may not be exercised by the citizen detained or accused but once the citizen has availed of it and hired a lawyer, this right shall not be restricted or withdrawn.
As the provision challenged stipulates, the jury shall not be under the obligation to adjourn a criminal case hearing when it is not binding to have a counsel for the defense when the latter is not present at the hearing. Thus the defendant is left without legal defense. All proceedings at such a hearing will leave the citizen accused without the possibility to defend in the mode that he or she has chosen, with a counsel for the defense. No doubt this would be to his or her disadvantage.

Decision No. 6 of 15 July 2013 on Constitutional Case No. 5/2013:

Unlike administrative proceedings under the general framework of the Administrative Procedure Code where stakeholders who have been injured by administrative acts have the chance to timely react and defend their rights in expropriations as per Art. 38, para 1 and para 2 of the State Property Act and Art. 27, para 1 of the Municipal Property Act, the notice in

Durzhaven Vestnik is the earliest information they can obtain about the completed expropriation proceedings. The cited texts virtually make it binding on citizens and legal entities to read each number of Durzhaven Vestnik if they want to contest the legality of the forcible expropriation given that the competent central or local government institution is not bound to notify the rightful owner about their intention to exercise the power of eminent domain or about the expropriation act itself. Such an approach that facilitates solely the State and the municipalities to the detriment of the citizens and legal entities' right to resort to administrative remedies is dissonant with the Constitution.

Decision No. 10 of 29 September 2016 on Constitutional Case No. 3/2016:

"The comparison of the text challenged with the acknowledged and clear substance of the principle of the equality of citizens before the law leads to the conclusion that the inconsistency claimed does not exist. No privilege is to be enjoyed by definite subjects of law who are defended by a solicitor and who claim for coverage of the costs of the proceedings like the lawyer's fees inasmuch as the principle of the reimbursement of the costs for the counsel of the defense is codified in the Bulgarian law. The taxation of costs is intended to recompense the successful party concerned, i.e. to enable it to recoup the proceedings costs thus incurred. Dispensation of justice is a public service and since the solicitor and the lawyer are on a par in the legal proceedings and perform identical procedural acts, in view of their defense of the interests of the parties that have hired them, the legislative assessment of the employment of the same approach when the costs of legal defense are shared out is constitutional."

3. Has your Court developed case-law on other individual rights related to the rule of law?

In the course of 25 years the Constitutional Court developed extensive case-law on the citizens' fundamental rights that the Constitution proclaims. Since the right to private property is one of the fundamental rights that the Constitution proclaims and is probably the matter on which the Constitutional Court has developed multiple case-law, for the purpose of this Questionnaire the decisions given as examples of such case-law relate to the citizens' right to private property.

Decision No. 8 of 19 June 1995 on Constitutional Case No. 12/1995:

"The contested Sentence Two of the provision in question reads that owners of farmland that could not be restituted since buildings or structures have been put up on the land shall be compensated with land of equal worth from the State Land Bank or from municipal land banks providing the compensation is due for 0.2 hectares and more.

"The Constitution guarantees the right to own property and protects this right regardless of the size of the possessions. The expropriation of immovable property shall, in principle, be compensated with property of equal worth. The Constitution does not discriminate against farmland so no discretionary motive will derogate it."

Decision No. 5 of March 21, 1996 on CC No. 4/96:

The Constitutional Court ruled in favour of the motion by a group of Members of Parliament challenging the constitutionality of Art. 28 para 1 of the Cultural Monuments and Museums Act (CMMA) providing that the buying, selling, exchange or donation of non-portable cultural monuments between owners and physical persons or legal entities shall require the consent of the National Institute of Cultural Monuments (NICM) when the monuments have world or national importance, and of the respective municipal council for all other monuments.
The Constitutional Court ruled that Art. 28 para 1 of the CMMA contravened the provisions of Art. 17 paras 1 and 3 of the C. Curtailing a fundamental right of an owner who shall be free to dispose of his or her property right essentially curbs that right. In a market economy environment and civil society that the Constitution provides for and guarantees the Government shall not intervene by its institutions nor shall the municipalities intervene in civil relations and dictate the terms of a transaction including the party to a transaction.

Decision No. 6 of 15 July 2013 on Constitutional Case No. 5/2013:

The Constitutional Court also ruled that the compensation in the event of taking private real property is not seen as being paid-up in advance if an ultimate price is not set. Practically, this is taking of private real property under Art. 38, para 3, and sentence two of Art. 39, para 1 of the State Property Act and a failure to comply with the Constitution-prescribed binding conditions – fair compensation that has been ensured in advance to satisfy the owner. The provision of Art. 29, para 3, item 1 of the Municipal Property Act allows to proceed with expropriation pending a court's final decision on the amount of the compensation that is contested by the owner. Such an approach by the legislating authority conflicts with Art. 17, para 5 of the Constitution of the Republic of Bulgaria and with the principle of the state committed to the rule of law (Art. 4, para 1 of the Constitution). In the event of unliquidated claim the court is the only authority to determine the ultimate fair compensation. It is only after the compensation as awarded by the court is paid up that the condition of a fair compensation that is due to the owner and that has been ensured in advance is met, as per Art. 17, para 5 of the Constitution. Forcible expropriation is an exception to the principle of the inviolability of private property, hence the inadmissibility to give latitudinarian interpretations of Constitution prescriptions. The texts of Art. 38, para 3, Art. 39, para 1, sentence 2 of the State Property Act and of Art. 29, para 3, item 1 of the Municipal Property Act are in contravention of Art. 4, para 1, Art. 5, para 1 and Art. 17, para 1 and para 5 of the Constitution of the Republic of Bulgaria.

Decision No. 6 of 10 June 2014 on Constitutional Case No. 7/2014:

The ownership right may be curtailed subject to compliance with the principle of the state committed to the rule of law as per. Art. 4, para 1 of the Constitution and the parameters of the exercise of rights as per Art. 57, para 2 of the Constitution, however, such curtailment shall be codified, shall be needed to enable the achievement of a constitutionally legitimate goal and shall be a proportionate weapon of defense of Constitution-proclaimed values at risk.
In addition to the aspect as considered here and related to the kind of the act of Parliament and the passage procedure, the way in which the moratorium was declared defied the principle of the state committed to the rule of law as per Art. 4, para 1 of the Constitution on two other aspects: first, it shakes legal certainty; second, it disregards the required proportionality between the curtailment of a fundamental right and the goal it pursues that in the case at issue is compatible with the public interest to overcome the consequences that

stem from specific illicit encroachments upon Government property and to prevent recurrences in future.

4. Is the rule of law used as a general concept in the absence of specific fundamental rights or guarantees in the text of the Constitution in your country?

Art. 4, Para 1 of the Constitution of the Republic of Bulgaria reads that Bulgaria shall be a state committed to the rule of law and that is shall be governed by the Constitution and the laws of the country. This fundamental principle is valid for all actors and is one of the pillars upon which the state is built. The application of this fundamental principle guarantees that there will be balance and control between the state powers and respect for the rights of the citizens.