

4<sup>th</sup> Congress of the World Conference on Constitutional Justice

THE RULE OF LAW AND CONSTITUTIONAL JUSTICE  
IN THE MODERN WORLD

11-14 September 2017, Vilnius, Lithuania

NATIONAL REPORT

CONSTITUTIONAL COURT OF THE REPUBLIC OF MACEDONIA

**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 Constitution of the Republic of Macedonia establishes the principle of the rule of law at the level of a fundamental value of the constitutional order in Article 8 paragraph 1 line 3. As such, it represents one of the basic principles upon which rests the constitutional order of the Republic of Macedonia, together with the principles of respect for the fundamental freedoms and rights of citizens recognised in international law and set down in the Constitution; free expression of national identity, the division of state powers into legislative, executive and judicial, political pluralism and free, direct and democratic elections, legal protection of property, respect for the generally accepted norms of international law and others, which also under the said article of the Constitution are fundamental values of the constitutional order of the Republic of Macedonia.

In addition, certain rights and guarantees that are considered to be key elements of the principle of the rule of law are guaranteed by separate provisions of the Constitution, such as, for instance, the equality of citizens (Article 9), the presumption of innocence (Article 13), the principle *nullum crimen, nulla poena sine lege* and *res judicata* (Article 14), the principle of protection of freedoms and rights before the courts and judicial control of administrative acts (Article 50), the principle of legality (Article 51), the principle of publication of laws and the prohibition of retroactive effect of the laws (Article 52), constitutional guarantees for restrictions of the freedoms and rights (Article 54), the independence of the courts (Article 98).

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?

In legal theory and science of constitutional law, several authors have dealt with conceptual determination and interpretation of the principle of the rule of law, which in theory is often equated with the notion of a state ruled by law.

For Prof. Shkarikj, the rule of law and state ruled by law are not identical terms, although they have some points in common. The notion of the rule of law is based more upon the natural law and the notion of a state ruled by law on positive law. Consequently, the first concept puts the emphasis on the nature of things, and the latter on the functions of the legal system and the formal signs of the constitution and laws. Prof. Shkarikj finds the common points between these two notions in insisting on the supremacy of law and legality in the actions of state authorities. According to him, from the standpoint of human freedoms and rights, more acceptable is the notion of the rule of law rather than a state ruled by law, for a reason that the first notion stronger emphasises the primary role of the citizen and the latter the state power. The rule of law is based on several postulates: first, the primary importance of human rights and freedoms; second, the existence of limited state power; third, the separation of powers into legislative, executive and judicial; fourth, an independent judiciary; and fifth, legal certainty of the individual and citizen (Prof. Dr. Svetomir Shkarikj - Gordana Siljanovska- Davkova, "Constitutional Law", "Kultura", Skopje, 2009).

Prof. Gordana Siljanovska-Davkova believes that the rule of law is based on man's freedom and his right to independently develop his own capabilities, using the law and the legal system. In this context, the rule of law emerges as a form of human freedom, not as a form of its restriction (Gordana Siljanovska-Davkova, Democracy and Globalisation - between Rule of Law and Rule of Men, Pravni zivot, no.12, 4/2006).

According to Prof. Renata Treneska-Deskoska, in the most general sense, the rule of law, as a principle of law with limited and controlled political power, can be equated with constitutionalism. However, they are not the same. Despite its complexity, the rule of law is narrower principle and theory of constitutionalism. To elaborate on the content of the rule of law means to explore the legal foundations of constitutionalism in relation to political institutions (Prof. Renata Treneska-Deskoska, "Rule of law" or "Rule of man"?! - Politicka misla, 13/2006).

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.)?

The principle of the rule of law has particular significance in criminal law, given that the important principles of criminal law such as the principle *nullum crimen nulla poena sine lege, ne bis in idem, lex mitior*, the principle of prohibition of retroactive effect of criminal laws, are considered to represent constituent elements of the concept of the rule of law. Below are listed several cases in which the Constitutional Court of the Republic of Macedonia found violation of the above principles, thus affirming the rule of law in the field of criminal law. What the Constitutional Court particularly emphasises in its constitutional jurisprudence is the requirement for clarity and precision of criminal law norms which gains special significance in criminal law due to its repressive nature and possibility of prejudice to the rights and freedoms of the individual.

In one of the more recent cases - **U.br.87/2015**<sup>1</sup> the Constitutional Court repealed the transitional and final provision of the Law on Misdemeanors, which it found to have a retroactive effect, to be vague and imprecise and therefore contrary to the principle of the rule of law.

With its **Decision U.br.228/2005**<sup>2</sup> of 5 April 2006, the Constitutional Court annulled Article 38-e of the Criminal Code ("Official Gazette of the Republic of Macedonia" nos.37/1996, 80/1999, 4/2002, 43/2003, 19/2004 and 81/2005) which foresaw the possibility of replacing imprisonment with a fine. The Court held that the provision was contrary to the Constitution and the principle of the rule of law because it deviated from the overall concept of the penal system governed by the positive legislation.

---

<sup>1</sup> The Court stated that: "*The principle of the rule of law obliges the legislator to design precise, unambiguous and clear norms, because only such legal norms could represent a solid basis for action by state authorities, which means that only clear and precise norms guarantee legal certainty to citizens as part of the principle of the rule of law. The rule of law implies consistent application of the legislation, which should be general, precise and unambiguously formulated rules. This is especially important in the field of criminal law given the repressive nature of criminal law sanctions and their potential to penetrate the fundamental human rights.*"

<sup>2</sup> In terms of the principle of the rule of law, in its Decision the Court held: "*The principle of the rule of law and a state ruled by law are two fundamental postulates of constitutional order. With the emergence of written constitutions these two principles are laid down as basic principles of the constitutional order. Hence, the establishment of the rule of law as a basic fundamental value of the constitutional order of the Republic of Macedonia means acceptance of the principles of modern constitutionalism. The rule of law and a state ruled by law leave no room for their separation in both theoretical and practical aspects. The establishment of the legal order of the state is a civilisational value so that the rule of law as one of the fundamental values of the constitutional order of the Republic of Macedonia also means constituting order in which law will be the ground for action by all and everyone, including the state.*"

With its Decision **U.br.210/001**<sup>3</sup> of 6 February 2002, the Constitutional Court repealed the provision in Article 101 paragraph 2 of the Criminal Code ("Official Gazette of the Republic of Macedonia" nos.37/96 and 80/99), which envisaged the possibility for the legal consequences of the conviction to be automatically implemented, by force of law. As a consequence of this decision of the Constitutional Court, later the Court repealed provisions in many laws that restricted the exercise of a right of the citizen because of a conviction for a punishable offence, which restriction occurs automatically, by force of law, not on the basis of a concrete court decision.

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 your case-law?

In both the Constitution of the Republic of Macedonia and in the constitutions of most European countries the principle of the rule of law is not defined by constitutional standards, but its content can indirectly be derived from other constitutional provisions (the principle of constitutionality and legality, the principle of publishing laws, the prohibition of retroactive effect of the law, the presumption of innocence, judicial independence, judicial protection of rights, judicial review of administrative acts) or from certain principles that are not expressly set forth in the Constitution and for which there is generally accepted consensus that are important elements of the rule of law (principle of clarity and precision of the legal norms, legal certainty, prohibition of arbitrariness). Almost all these listed items are considered to determine the content of the rule of law, as stated in the Report of the Venice Commission of the Rule of Law (document CDL-AD (2011) 003rev, paragraph 41 of the Report).

Considering the fundamental role of constitutional courts in the protection of constitutional values and principles through achieving their main role - abstract control of constitutionality and legality, constitutional courts emerge as an important guarantee for the realisation of the principle of the rule of law. In the absence of closer and more specific definitions of the said principles in the constitutional text, case-law of constitutional courts appears as an important source for their further development and operationalisation.

---

<sup>3</sup> The Court, based on the principle of the rule of law as a fundamental value of the constitutional order, in its decision indicated that: "*the legal consequences of the conviction cannot be automatically implemented by force of law, but it can be done only by a final court decision, that is, penal-legal relation is exhausted in relation to the offence and the sentence imposed by court on its perpetrator and that further consequences from its execution, that is, conviction for that offence consisting in restricting the rights of citizens are not permitted, unless expressly defined by the Constitution.*"

1. The most common cases in which the Constitutional Court of the Republic of Macedonia finds a violation of the principle of the rule of law are those in which the Constitutional Court finds that the legislator, in the legal regulation of certain matters, has not respected the **requirement for clarity and precision of legal norms** as an element of the rule of law. This principle, according to the jurisprudence of the Constitutional Court is particularly important in the laws governing the exercise of human rights and freedoms.

As an example of constitutional case-law can be cited the **Decision U.br.98/2003<sup>4</sup>** of 17 December 2003 in which the Court repealed a provision of the Law on Internal Affairs that as a condition of employment at the Ministry of Interior in addition to the general conditions envisioned special requirements such as decency, enjoying the honor and reputation and behavior guaranteeing to consciously and honestly perform the entrusted tasks and duties. In its Decision the Court indicated that the principle of the rule of law implies domination of objectified legal norm which must necessarily determine objective facts to assess the fulfillment of certain conditions on which the exercise of rights depends. The norm which because of its vagueness and imprecision provides an opportunity for arbitrary application is contrary to the principle of the rule of law.

2. In the context of this issue is the accepted view in the case-law of the Constitutional Court, which is always insist on and that is that **citizens' rights and conditions for their exercise may be regulated only by law and not by a bylaw**. In the view of the Constitutional Court, by-laws adopted by the Government, ministries and other administrative bodies, as well as the independent regulatory bodies can only work out legal provisions aimed at their application, but not determine rights and obligations, nor prescribe new conditions and criteria for their exercise beyond the legal requirements and criteria. This leads to violation not only of the principle of the rule of law, but also of another important principle - the principle of separation of powers-, which is also a fundamental value of the constitutional order of the Republic Macedonia. As an example of constitutional case-law can be cited **Decision U.br.237/2009<sup>5</sup> of 28.04.2010** with which the Constitutional Court repealed provisions of the Law on Salaries of Judges and the Rules of Procedure and Criteria for Monitoring and Evaluation of the Performance of Judges adopted by the Judicial Council of the Republic of Macedonia.

---

<sup>4</sup> According to the Court: *"The impugned provision contains no objective standards as to who is and who is not fit to work in the Ministry of the Interior, which behaviour makes a person unworthy, what are the criteria to be designated that a person will the whole life act as he has behaved before, and what makes these criteria reliable... The Court holds the view that the provision is ambiguous, insufficiently defined and determinable, and in the absence of precise and clear criteria it creates a room for arbitrariness that questions the principle of the rule of law."*

<sup>5</sup> The Court in its Decision indicated that: *"The criteria are determined by law, and a bylaw further develops the same, which principle is in line with the principle of the rule of law and the separation of powers into legislative, executive and judicial, as the fundamental values of the constitutional order of the Republic of Macedonia."*

3. The Constitutional Court in many of its decisions also held that the principle of **proportionality** is an element of the principle of the rule of law. The Court found violation of the constitutional principle of the rule of law when the legal norms established certain obligations for citizens that represent an additional burden on citizens and which the official authorities can realise in a faster and easier way. As an example can be cited the obligations for citizens to submit proof of a criminal record, that is, no criminal record, as a condition for acquiring certain rights, the obligation for the citizen to submit proof of regular payment of tax liabilities or obligations for reporting unlawful conduct before the inspection bodies.

In its Decision **U.br.103/2010**<sup>6</sup> of 22 December 2010 the Constitutional Court found it contrary to the principle of the rule of law for a citizen who as unemployed begins to work without an employment contract, to immediately notify in writing the competent inspection authority, for which a minor offence liability and fine of 200 euros were envisaged.

As disproportionate and contrary to the principle of the rule of law, the Court also repealed the provision which in addition to the interest for late payment of tax liability also envisaged an increase in tax debt. Although this measure was legitimate according to the Court in order to establish tax discipline, the specific measure by which the legislator wanted to achieve this goal the Court assessed as disproportionate because it represented a multiple burden on the citizen on the same ground (**Decision U.br.237/2006** of 21 November 2007).

The Court found a violation of the principle of proportionality in assessing the constitutionality of the provision of the Law on Passports which restricted the right of citizens to leave the country. The Court abolished the provision as incompatible with the Constitution on the grounds that the confiscation of the passport of a person who was forcibly returned or expelled from another country for acting contrary the regulations for entry and residence in that State is a restriction on the right of these people to leave their own country and travel to any other foreign country, which is disproportionate and excessive and beyond the limits of this right under Article 27 paragraph 3 of the Constitution of the Republic of Macedonia (**Decision U.br.189/2012** of 25 June

---

<sup>6</sup> The Court found that: "... *this obligation of the citizen is not in accordance with the Constitution of the Republic of Macedonia. This is because the citizen cannot get established such obligations, because the control of employers in concluding employment contracts may be performed by competent state institutions only, that is, the State Inspectorate of Labour, but in no case could it be borne by the employee. The Court held that although the purpose of the measure is legitimate - disabling unconscientious employers to carry out the exploitation of labor and prevent avoidance of obligations stipulated by the law, "the specific way by which the legislator wanted to achieve the goal of establishing social discipline, according to the Court is disproportionate and also a burden on the citizen or employee. Hence, the obligation established by the Law on the employee is a violation of the constitutional principle of the rule of law and legal certainty of citizens because this obligation is not aimed at providing greater certainty in the area of labor relations."*

2014).

4. An important element of the principle of the rule of law is the **equality of citizens** and prohibition of discrimination. The rule of law means that the law applies equally to all, without any privileges for certain individuals or groups. The Constitutional Court of the Republic of Macedonia in its constitutional jurisprudence has located violation of the principle of the rule of law when the legal norms put certain categories of citizens into a privileged position compared to other citizens in terms of exercising the same rights (eg. the right to pension, right to salary, etc.).

One of the more important decisions in relation to this is the **Decision U.br.191/2005**<sup>7</sup> of 12 April 2006, with which the Constitutional Court abolished provisions of the Law on MPs which foresaw more favourable and privileged conditions for obtaining a pension for MPs in the Assembly of the Republic of Macedonia.

5. The principle of the rule of law in its content includes also the elements such as the right of appeal, that is, the right to an **effective remedy and the right of citizens to judicial review of the legality of administrative acts**, which in the legal system of the Republic of Macedonia is realised by the institute administrative dispute decided by the Administrative Court. With its **Decision U.no.231/2008**<sup>8</sup> of 16 September 2009 the Constitutional Court repealed a provision of the Law on Administrative Disputes which regulated the right of appeal in procedures in administrative disputes incompletely and

---

<sup>7</sup> "The right to equality is one of the fundamental legal principles enshrined in the Constitution of the Republic of Macedonia. This right encompasses two elements: first, that all citizens have the right to be treated equally before the law and, secondly, that the law applies equally to all citizens by the state bodies. In other words, the right to equality before the law means protecting citizens from any kind of discrimination in the enjoyment of rights and in the fulfillment of the obligations. The constitutional principle of equality obliges the legislator in the regulation of relations to perceive the principle of equality in a concrete rather than abstract manner through the rule that the equals should be handled equally and unequals unequally. Hence, considering the above, the Court finds that with the impugned legal provisions the legislator established different conditions and manner of exercise of early retirement pension that basically cannot be anything other than acquiring rights under privileged conditions and apply to MPs only, not to all public officials who are in the same social position or to all citizens without giving justified grounds. Thereby the legislator puts citizens in an unequal position, which is in direct contradiction with Article 9 of the Constitution of the Republic of Macedonia."

<sup>8</sup> In its decision the Court held: "The full exercise of the right to appeal is not enough the same to be envisaged as a remedy, but should be further governed with regard to the deadlines for lodging, the reasons for which it may be filed and the court which is competent to handle it. ... The impugned article of the Law on Administrative Disputes has constitutional defects that do not comply with the principle of the rule of law as a fundamental value of the constitutional order under Article 8 paragraph 1 line 3 of the Constitution. This is because the right of appeal can be exercised restrictively, or as "naked" right through arbitrary rules that do not regulate the specific right to fully or govern the right selectively. The principle of the rule of law in itself contains the principle of legality, which obliges the legislator to formulate precise, unambiguous and clear rules that will eliminate any possibility of confusion, and the based on the constitutional provision is obliged to establish the right of appeal everywhere that it can serve as a corrective to the irregular and unlawful decisions of the courts that finally decide on the rights and obligations and interests of citizens."

selectively.

6. The principle of **legal certainty** and protection of **legitimate expectations** are also principles which the Constitutional Court in its case-law derives from the principle of the rule of law. Often these principles come to the fore when the legislator changes the legal regime for the acquisition or exercise of certain rights of citizens (eg. change of conditions for establishment or termination of employment, conditions for the acquisition of social rights<sup>9</sup>, etc.), when often a question can be raised as to the **retroactive effect of the norms**. The view of the Court in these cases is that it is an undisputed right of the legislator when changing the mode of regulation of relations in a separate area to govern the transition from the old to the new regime, but the state should ensure that this transition take place in a way that will not question legal certainty and already vested rights and interests to which they relate.

The Court found violation of the principle of **legal certainty** as an element of the rule of law in the case U.br.237/2006 of 21.11.2007 and abolished the provision of the Law on Tax Procedure which envisaged imprisonment for committing a tax offence, although in the criminal justice system of the Republic of Macedonia imprisonment may be imposed only for a crime, and not for less serious offences such as misdemeanors.

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.

The concept of the rule of law in constitutional law theory and case-law in the Republic of Macedonia is relatively new and began to develop in the late eighties and early 90's of the last century with the fall of the socialist social system. The rule of law as a concept was first mentioned as a constitutional term in the current Constitution of the Republic of Macedonia, which was adopted after its independence in 1991, although certain elements that are considered to be an integral part of the principle of the rule of law (such as the principles of constitutionality and legality, judicial protection of rights, principle of legality in prescribing the criminal offences and penalties, the presumption of innocence, the principle of equality of citizens, etc.) were

---

<sup>9</sup> In its Decision U.br.119/2006 of 27 June 2007, the Constitutional Court stated: "*The impugned provision calls into question the achievement of legitimate expectations, in the present case of the users of the rights arising from the Law on Employment and Insurance against Unemployment, according to the conditions that were stipulated in the then applicable laws for the exercise of the rights which the users applied for. This in turn means that the challenged Article 4 of the Law creates a legal situation, that is, possibility for the law to be applied also to relationships - requests that were submitted before its entry into force, whereby the Law has a retroactive effect. Therefore, not only does the challenged Article 4 of the Law violate the principle of the rule of law, but also the principle of the prohibition of retroactive effect of laws prescribed in Article 52 paragraph 4 of the Constitution.*"

envisaged by the Constitution of the Socialist Republic of Macedonia of 1974 which was valid in the previous socialist system.

The analysis of the jurisprudence of the Constitutional Court of the Republic of Macedonia regarding the application of the principle of the rule of law reveals that in the years immediately following the adoption of the 1991 Constitution, the Constitutional Court in its decisions sporadically invoked this principle, thereby mostly the Court merely quoted the provision of Article 8 paragraph 1 line 3 of the Constitution, according to which the rule of law is a fundamental value of the constitutional order, without interpreting the meaning and content of this principle. As late as after 2000, especially in the recent years, has the Constitutional Court not only more frequently invoked this constitutional principle, but also in its decisions has given its interpretation and brought it into connection with other constitutional norms that establish its constituent elements.

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

As noted in the previous answers, the Constitution of the Republic of Macedonia does not more specifically define the principle of the rule of law; it is defined as one of the fundamental values of the constitutional order. The content of the concept of the rule of law is developed by the Constitutional Court in its case-law and following the example of the European concept of the rule of law and in particular the case-law of the European Court of Human Rights which in many occasions clearly indicates that this principle inspires the whole Convention and is an integral part of each Party to the Convention.

## **II. New challenges to the rule of law**

7. 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)?

As the case with most countries in the world has been the Republic of Macedonia has also been confronted with the economic crisis in the recent years, but it seems that it has not had a strong impact on the rule of law. This is for a reason that in the Republic of Macedonia no drastic legislative and regulatory measures have been adopted (such as, for instance, salary restriction, limitation of public spending, layoffs in state institutions) as has the case been in many European countries, which legislative measures have been challenged before the constitutional courts.

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

No such impact has been observed so far.

9. Has your Court dealt with the 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.

Article 118 of the Constitution of the Republic of Macedonia stipulates that: The international agreements ratified in accordance with the Constitution are part of the internal legal order and cannot be changed by law. Article 8 of the Constitution, which establishes the fundamental values of the constitutional order of the Republic of Macedonia, among other fundamental values defines the basic rights and freedoms of the individual and citizen recognised in international law and set down in the Constitution (Article 8 paragraph 1 line 1) and respect for the generally accepted norms of international law (Article 8 paragraph 1 line 11).

From the above provisions it appears that in addition to the Constitution and laws and international agreements are an integral part of the internal legal order, that is, source of law and according to the constitutional provision of the Amendment XXV the courts apply them in the exercise of their functions. International agreements as part of the internal order are automatically incorporated into the internal legal order of the Republic of Macedonia and are directly applicable by the Macedonian courts.

However, given the fact that Article 110 of the Constitution which defines the jurisdiction of the Constitutional Court does not specifically envisage the Court's jurisdiction in relation to international agreements, the Constitutional Court does not assess the conformity of international agreements with the Constitution, nor assess the agreement of laws with international agreements. Hence, the Constitutional Court does not directly apply international treaties, but indirectly. The Constitutional Court uses regularly quotes them in its decisions or rulings that address issues related to human rights and freedoms as an additional argument for the constitutionality or legality of the act subject to evaluation.

### III. The law and the state

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

The rule of law implies the realisation of the principle of constitutionality and legality in its formal-legal meaning in terms of merits, compliance of all acts in the country with the highest act - the Constitution. However, the rule of law implies wider understanding of the fundamental values of the Constitution, which is subjection of all state bodies to the Constitution and laws, that is, obligation of all state bodies and public officials in their powers, actions and activities to adhere to the Constitution, laws or legal order. Hence, the rule of law is considered to be a fundamental, basic principle of the organisation and functioning of the state which is linked to the principle of separation of powers, which prevents the concentration of power in one center or one body and allows it to be divided into multiple autonomous and independent bodies that have constitutionally defined powers, that is, constitutionally established competencies. The Constitutional Court in this regard is the controlling authority which by performing its core competence - assessing the constitutionality and legality - can intervene in case of violation of the separation of powers, that is, when a certain state authority, with the acts it adopts, exceeds its constitutional competences. The following may be stated as examples of case-law.

With its Decision **U.broj.28/2006 of 12 July 2006**, the Constitutional Court repealed a provision of the Rules of the Assembly of the Republic of Macedonia which gave the opportunity for the Assembly of the Republic of Macedonia to decide on excluding the public from the work of the Assembly by a majority vote of the total number of Representatives, contrary to the constitutional provision which stipulates a 2/3 majority vote to exclude the public from the work of the Assembly.

With its Decision **U.br.167/2002** of 23 April 2003, the Constitutional Court repealed the Decree adopted by the Government of the Republic of Macedonia which had provided the right to use a passenger motor vehicle of the former Prime Minister after the termination of his office. The Court held that with this bylaw the Government had overstepped its authority because it had defined rights for the Prime Minister after the cessation of his office that were not for the purposes of performing the official duties. The Court held that the stipulation of certain rights following the termination of the function of a former president of the Government made these rights become privileges just because of the fact that certain person in a certain period of time was the holder of public function, that is, it called into question the principle of equality and the principle of the rule of law laid down in the Constitution.

In its Decision **U.br.237/2009**<sup>10</sup> of 28 April 2010, the Court found exceeding of powers of the Judicial Council of the Republic of Macedonia in prescribing the criteria for evaluating the performance of judges by a bylaw. The Court held that this matter was very important for the professional career of judges and the inconsistent approach to its regulation could jeopardise the principle of the rule of law and the separation of state powers into legislative, executive and judicial, as the fundamental constitutional values of the Republic of Macedonia.

11. 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?

Pursuant to Article 112 paragraph 3 of the Constitution, decisions of the Constitutional Court are final and enforceable since they are mandatory for all agencies, organisations and institutions, including other courts.

When the Constitutional Court in the proceedings of abstract control of laws determines that a law or a provision is contrary to the Constitution and annuls or repeals it, the legal effect of the court's decision is such that the act virtually becomes null and void and is no longer part of the legal order, which is reflected in all proceedings before other courts deciding on applications for the exercise or protection of the rights of citizens based on the annulled law. In such case in the decision-making on individual applications the competent court cannot apply the law or regulation annulled, but will apply the law or regulation that was applicable before it.

In accordance with this legal effect of annulling decisions of the Constitutional Court, and to eliminate the consequences of the application of the law or other regulation that was annulled, Article 81 paragraph 1 of the Rules of the Constitutional Court stipulates that everyone whose rights have been violated by a final or enforceable act adopted based on law, regulation or other general act which was annulled by a decision of the Constitutional Court shall be entitled to request the competent authority to annul that individual act, within 6 months from the date of publication of the decisions of the Court in the Official Gazette of the Republic of Macedonia. If the change in a single act cannot remove the consequences of the application of the law, regulation or

---

<sup>10</sup> The Court underlined that: "*The Judicial Council has a constitutional obligation to guarantee the independence of the judiciary, and that according to the Court can be done by professional, responsible and impartial enforcement of the constitutional and legal provisions that regulate the judiciary in the Republic of Macedonia and especially its competences, and not by taking legislative function, in the case with the determination of the criteria for monitoring and evaluating the performance of judges.*"

general act annulled by the decision of the Constitutional Court, the Court may determine the consequences be removed by reinstatement, with compensation for damages or otherwise.

However, no procedural law of the Republic of Macedonia contains specific provision that reopening court proceedings may be required also in the event when a decision of the Constitutional Court annulled the law on the basis of which a final court decision was taken. However, the absence of such a provision should not be an obstacle for the competent court to decide on a specific request of the party for annulment or amendment of a final court decision on this ground as well, because the annulling decision of the Constitutional Court obliges it, given that its legal effect applies to everyone (*erga omnes*), including other courts.

Unlike the legal effects of decisions of the Constitutional Court that annul or repeal law, other regulation or general act relating to everyone, the effects of the decisions of the Constitutional Court that annul individual final or effective act that has violated a freedom or right of the citizen, are restricted only between the parties in the dispute decided by the annulled act. The effect of such decisions of the Constitutional Court is *inter partes*.

Courts normally comply with the decisions of the Constitutional Court and so far there has been no case of conflict between the Constitutional Court and other courts. Courts in accordance with the existing Law on Courts may appear as applicants in the proceedings for assessment of the constitutionality and legality before the Constitutional Court by initiating a procedure for so-called concrete control of constitutionality. Namely, in accordance with Article 18 of the Law on Courts, the Court lodges an application for initiating a procedure for assessing the compliance of a law with the Constitution when a question is raised in the procedure for its compliance with the Constitution, for which it shall notify the immediate higher court and the Supreme Court of the Republic of Macedonia. When the court considers the law to be applied in the present case is not consistent with the Constitution, and constitutional provisions cannot be directly applied, it will suspend the procedure pending the decision of the Constitutional Court of the Republic of Macedonia.

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

See case-law referred to in the answer to question I/4.

Regarding the independence of the judiciary, in its **Resolution U.br.277/1995** of 29 November 1995, the Court held that the principle of independence and autonomy in exercising the juridical function guarantees the objective, impartial and conscientious performance of the judicial function which must be immune from the influence of individuals or institutions. The Court pointed out that independence is ensured above all with the election of judges with unlimited term of office, judicial immunity and other guarantees. As one of the guarantees that ensures the independence of judges and jurors, in the opinion of the Court, is the limitation in the same court to be elected judges and jurors who are related or married, which prevents to influence certain judges by persons elected in the same court who using their office and family relations are in a position to exert influence when making certain decisions.

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

With its **Decision U.br.1/2014** of 10 December 2014 the Constitutional Court **repealed** Article 83 paragraph 7 of the Statute of the Bar of the Republic of Macedonia which gave opportunity for the Bar to dismiss the request of a lawyer for termination of lawyer's activities, if he has not paid the membership fee. Based on the principle of the rule of law and separation of powers, as well as the constitutional position of the Bar as an independent and autonomous public service providing legal assistance and carrying out public mandates in accordance with the law, the Court pointed out that with the contested provision the Bar, wanting to disciplining lawyers with respect to timely payment of dues, actually exceeded its legal powers and could not condition the termination of the right to engage in legal activities by paying a membership fee. The Court held that this violated not only the principle of the rule of law, but also the constitutionally guaranteed right to work and free choice of employment set out in Article 32 of the Constitution.

With its **Decision U.br.31/2007**<sup>11</sup> of 9 January 2008 the Constitutional Court repealed the provisions of Article 12-a paragraph 4 and Article 12-b of the Law on Attorneyship which established unworthiness for performing legal activities. The Court held that the possibility of the Bar to refuse entry in the register of lawyers of a person whom it deemed unworthy of

---

<sup>11</sup> The Court pointed out that: "*The rule of law is a fundamental value of the constitutional order of the Republic of Macedonia, under which what should be understood is domination of objectified rule. According to the Court what must be established necessarily are objective facts and circumstances related to the exercise of a right, which sphere includes the right to engage in attorneyship activities. The Court finds that the impugned provision contains no objective standards as to who is not worthy to carry out attorneyship activities, that is which earlier behaviour or activities which they previously performed make a man unfit to perform attorneyship activities. That makes the provision unclear, insufficiently defined and determinable, and in the absence of precise and clear criteria leaves room for arbitrariness which calls into question the principle of the rule of law.*"

performing legal activities due to previous behaviour or activity, was widely undefined discretionary right of the Bar that was targeting the dignity of individual.

14. 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?

The question of immunity of public officials in the Republic of Macedonia is regulated by the Constitution, under which immunity is enjoyed by the following holders of public offices: the President of the Republic, Members of Parliament, Prime Minister, judges, prosecutors, members of the Judicial Council and the Constitutional Court judges. Thereby the Constitution provides for two types of immunity: material legal immunity, that is, immunity for an opinion in the performance of public office, and procedural and legal immunity, that is, immunity from detention or arrest. Until 2005 ministers in the government also enjoyed immunity, but according to the recommendations of GRECO, the constitutional amendments of 2005 removed the immunity of ministers in order to allow holders of these functions to be prosecuted for corruption-related offences. The position of the Constitutional Court regarding the immunity of public officials is that immunity is a constitutionally regulated matter and that the legislator cannot by law expand the circle of public officials who enjoy immunity<sup>12</sup>.

#### **IV. The law and the individual**

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

In the Republic of Macedonia there is a direct individual access of citizens before the Constitutional Court in both the proceedings for assessing the constitutionality and legality of laws and general legal acts and the proceedings for protection of rights that the party believes to have been breached with an individual act by a court or administrative authority.

The *actio popularis* principle set out in Article 12 of the Rules of the Constitutional Court, according to which any person can lodge an

---

<sup>12</sup> Assessing the constitutionality of the provision of the Attorneyship Law which stipulated that attorneys enjoy immunity, with its Decision U.br.173/2002 of 7 May 2003 the Constitutional Court noted that: "under the Constitution enjoyment of immunity is reserved only for certain holders of public functions as laid down in the Constitution itself, and not for holders of other functions determined by law, as set out for attorneys in the specific impugned provision of the Law."

application for initiation of proceedings for assessing the constitutionality of a law or constitutionality and legality of a regulation or other general act. The lodging of the applications is not bound by the existence of a legal interest of the applicant. It is only required that the application be drafted in the proper form, that is, content.

Under the Constitution, the Constitutional Court protects the freedoms and rights of the individual and citizen relating to the freedom of belief, conscience, thought and public expression of thought, political association and action and the prohibition of discrimination against citizens on the grounds of sex, race, religion, national, social or political affiliation. Unlike the abstract normative control, subject to assessment under this mandate are individual acts and actions of public authorities that citizens believe to be violating some of their constitutional rights. Subject to challenge can be not only administrative act, but also a court decision in any instance.

The procedure for the protection of the freedoms and rights of the individual and citizen relating to the freedom of belief, conscience, thought and public expression of thought, political association and activity and the prohibition of discrimination on grounds of sex, race, religion or national, social and political affiliation, shall be initiated by a request for the protection of freedoms and rights of anyone who believes that some of these rights and freedoms are violated by a final or effective act or action. Thereby, the request must be made in the proper form, that is, it should include the act or action violating freedoms and rights, facts and evidence thereof, the reasons for which protection is required and other relevant data.

The Constitutional Court decides on the protection of freedoms and rights as a rule based on a held public debate, to which the Ombudsman is invited. In order to protect the freedoms and rights court can annul the individual act, prohibit the effect causing the infringement or dismiss the request. This procedure is based on the principles of priority and urgency.

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

In terms of access to the courts applies the basic principle contained in the Law on Courts, according to which no one can be denied access to the courts for the protection of fundamental rights and freedoms due to lack of material resources. As an example of the constitutional case-law in this regard we cite the **Decision U.br.188/2008** of 17 December 2008 by which the Constitutional Court did not initiate proceedings for assessing the constitutionality of the Civil Procedure Act which envisaged that the court would not act on a lawsuit or take other action for which the court fee was not

paid and that if the plaintiff did not pay the court fee within 15 days of the date of filing the lawsuit the lawsuit shall be considered withdrawn. The Court held that this provision was not contrary to the Constitution, given that the law provided for the option of exemption from payment of legal costs.

In its **Decision U.br.2/2016** of 28 September 2016 the Court found violation of the right to defence of the defendant in criminal proceedings with the stipulation that for crimes which may be punishable by imprisonment of at least ten years a defence attorney may be an attorney with experience of at least five years after passing the bar exam. The Court held that the right to choose a defence counsel from among the attorneys could not be conditioned by the legislator by prescribing additional special conditions different from the conditions for obtaining the work licence as the case with the contested provision was, but it was the party to choose which attorney would represent him in the concrete court proceedings.

Concerning the right of appeal before an administrative court, see **Decision U.no.231/2008** of 16 September 2009 referred to in the answer to the question I/4.

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

Yes, on the relationship between the rule of law and individual rights that are considered to represent the constituent parts of this principle, see the examples presented in the answer to question no.I/4.

Here we mention the **Decision U.br.34/2005** of 31 May 2006 concerning the deprivation of liberty and the right of presumption of innocence. With this decision, the Constitutional Court repealed the provisions for mandatory detention under Article 184 paragraph 2 and Article 185 paragraph 1 of the Criminal Procedure Code. The Court found that by including the measure of compulsory detention for crimes that entail life imprisonment, the judge is denied based on his free judicial conviction and comprehensive and careful assessment of the facts and evidence to assess whether there are grounds for detention stipulated in the Criminal Procedure Code<sup>13</sup>.

---

<sup>13</sup> In the reasoning of the Decision the Court held that the provision of mandatory detention shifted the constitutional position of the court to decide on the need and merits of detention as the strictest measure to ensure the presence of the defendant in criminal proceedings, and through this peremptory norm obliged the court only formally to adopt a decision on detention. The stipulation of an obligation for the court to render a compulsory detention only because the law imposes it imperatively, means that the Law for specific crimes opted for detention, not the court, as a result of which the Court finds that this provision violates the constitutional principle of the rule of law, separation of powers and the right of presumption of innocence.

18. 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?

As stated in the answers to the questions above, the rule of law is a principle which is directly mentioned in the Constitution of the Republic of Macedonia and which is a fundamental value of the constitutional order. From this constitutional principle, as outlined, numerous other principles are derived, such as the principle of legal certainty, legitimate expectations, the requirement for clarity and precision of the legal norms, the right to a fair trial with all its guarantees, the prohibition of arbitrariness and others. The provisions of the Constitution of the Republic of Macedonia do not define more closely the content of the notion of the rule of law, thus leaving it to the Constitutional Court, that is, its case-law and legal science.