



## CONSTITUTIONAL COURT OF THE REPUBLIC OF NORTH MACEDONIA

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

#### QUESTIONNAIRE FOR THE XVIIIth CONGRESS OF THE CONFERENCE OF EUROPEAN CONSTITUTIONAL COURTS

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

##### I.1. International catalogues of human rights (ECHR, UDHR and ICCPR)

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

**Answer:** Constitutional and legal basis for the application of international law, including first of all international treaties in the field of human rights by national courts, are the following provisions of the Constitution of the Republic of North Macedonia<sup>1</sup>; Article 8, which lays down the fundamental values of the constitutional order of the Republic of North Macedonia, and, *inter alia*, defines as fundamental values 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) as well as the *respect for the generally accepted norms of international law* (Article 8 paragraph 1 line 11); then Amendment XXV to the Constitution relating to the judiciary and which stipulates that: "*The courts shall be autonomous and independent. Courts shall judge on the basis of the Constitution and laws and international treaties ratified in accordance with the Constitution*"; and Article 118 of the Constitution which provides that "*International treaties ratified in accordance with the Constitution shall be part of the internal legal order and may not be changed by law.*"

Accordingly, international treaties form an integral part of the internal legal order, that is, they are a source of law, with the act of ratification they are automatically incorporated into the internal legal order of the Republic of North Macedonia and are directly applicable by the Macedonian courts.

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<sup>1</sup> The Constitution of the Republic of Macedonia was adopted on 17 November 1991, based on the results of the referendum held on 8 September 1991 with which the Republic of Macedonia became an independent state.

Based on the constitutional provision of Article 118 of the Constitution under which international treaties may not be changed by law, it appears that they are hierarchically higher than domestic laws, but lower than the Constitution of the Republic of North Macedonia.

Article 110 of the Constitution of the Republic of North Macedonia regulating the jurisdiction of the Constitutional Court stipulates that the Constitutional Court decides on the *conformity of laws with the Constitution and the conformity of other regulations and collective agreements with the Constitution and laws*. In the so far constitutional jurisprudence has dominated the standpoint that given the fact that the said provision does not expressly provide for the jurisdiction of the Court in relation to international treaties, they can not be evaluated before the Constitutional Court, nor can they be a criterion for assessment of the conformity of laws with international treaties.

However, when it comes to international human rights treaties, in particular the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Constitutional Court uses and regularly quotes them in its decisions or resolutions when deciding on matters relating to human freedoms and rights, using them as an additional argument for the constitutionality or legality of the act under evaluation. The meaning and significance of the principle of constitutionality and legality, whose protection falls within the competence of the Constitutional Court of the Republic of North Macedonia, is primarily to ensure compliance of laws with the Constitution and compliance of other regulations and general acts with the Constitution and laws. What has dominated in the case law is the view that the only framework and boundaries for the Constitutional Court in assessing the constitutionality and legality of domestic law are the Constitution and laws of the Republic of North Macedonia, and that constitutional judicial control cannot be based solely and exclusively on the provisions of the European Convention.

Due to the overlapping of the catalogues of human rights guaranteed by the Constitution of the Republic of North Macedonia with the rights guaranteed by the European Convention, the Constitutional Court's practice in the reasoning of its decisions has been to find, that is, declare that the impugned law, other regulation or general act is consistent or not with the Constitution or laws of the Republic of Macedonia, and in conjunction with the relevant provisions of the Convention. Thus, the particular provision of the Convention is used as an additional and stronger argument for the constitutionality, that is, legality of the act subject to assessment before the Court, and not as the sole basis and argument for the decision-making.

A significant step forward in the application of the European Convention by the Constitutional Court was made with the Decision U.no.31/2006 of 1 November 2006, which repealed a provision of the Law on Public Gatherings limiting the public gathering. In this decision the Court held that constitutional rights should be interpreted in the context of the European Convention on Human Rights and that the European Convention and the case-law of the European Court of Human Rights should represent not only an additional argument, but a criterion for interpretation of the Constitution: "*Proceeding from Article 8 paragraph 1 line 1 of the Constitution, according to which one of the fundamental constitutional values are the fundamental rights and freedoms of the individual and citizen recognised in international law and*

*set down in the Constitution, having regard to the meaning of the European Convention for the Protection of Human Rights and Fundamental Freedoms, not only as part of the internal legal order of the Republic of Macedonia, but because of the general principles which it relies on and promotes, the Court finds that the interpretation of Article 21 of the Constitution should rely on those general principles”.*

Regarding the direct effect of the provisions of international human rights catalogues, it stems from the Constitution, that is, the abovementioned provision of Article 118<sup>2</sup> of the Constitution and Amendment XXV<sup>3</sup> to the Constitution.

These provisions are further operationalised in the Law on Courts which in Article 18 provides as follows: "If the court believes that the application of the law in the specific case is contrary to the provisions of an international agreement ratified in accordance with the Constitution, it shall apply the provisions of the international agreement, provided that they can be directly applied. The court in the specific cases shall directly enforce the final and enforceable decisions of the European Court of Human Rights, the International Criminal Court or another court the jurisdiction of which is recognised by the Republic of Macedonia. In the decision-making the court shall apply the views expressed in the final judgments of the European Court of Human Rights.

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

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

**Answer:** Regarding the question of the application of supranational catalogues of human rights such as for example the European Union’s Charter of Fundamental Rights, we point out that the Republic of North Macedonia is not a member of the European Union. Thus, the EU law is not applied directly by national courts, with the exception of the Stabilisation and Association Agreement, as an instrument governing the relations between the Republic of North Macedonia and the European Union.

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<sup>2</sup> International agreements ratified in accordance with the Constitution are part of the internal legal order and can not be changed by a law.

<sup>3</sup> The courts are independent. Courts judge on the basis of the Constitution and laws and international agreements ratified in accordance with the Constitution.

### I.III. National human rights catalogues

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

**Answer:** National catalogue of human rights in the Republic of North Macedonia is an integral part of the Constitution which was adopted in 1991. Human rights are first contained in Chapter I titled Basic Provisions, which, among other provisions, sets out the fundamental values of the constitutional order of the Republic of Northern Macedonia. The basic rights and freedoms of the individual and citizen, recognised in international law and defined by the Constitution, are laid down as the first of the fundamental values of the constitutional order of the Republic. In addition, free expression of national identity and adequate and equitable representation of citizens belonging to all communities, the rule of law, division of powers, political pluralism, and free direct elections, legal protection of property, humanism, social justice and solidarity, respect for generally accepted norms of international law, and others, are defined as fundamental values of the constitutional order.

Further in the normative part of the Constitution, human freedoms and rights are regulated in a separate Chapter titled Basic Rights and Freedoms of Individual and Citizen which covers Articles 9 through 60 of the Constitution. Given that the total number of articles in the Constitution is 134, it can be concluded that more than one third of the total number of articles in the Constitution treats human freedoms and rights and their protection, which is an indication that this issue occupies a pivotal position in the Constitution. The freedoms and rights of the individual and citizen in the Constitution are systematized according to the universally accepted division of freedoms and rights into civil and political rights (regulated in Articles 9 through 29) and economic and social rights (regulated by Articles 30 through 49). The remaining provisions of this Chapter are classified under the separate item 3. Guarantees of fundamental freedoms and rights, and item 4. Basics of economic relations.

The Constitution of the Republic of Macedonia was adopted in 1991, based on the results of the referendum held on 8 September 1991 in which the citizens of the Republic of Macedonia expressed their desire Macedonia to be constituted as an independent and democratic state, and it is basically a civil constitution set on liberal-democratic foundations. With the new Constitution the socialist social order based on one-party system was abandoned and the new democratic system began to develop based on respect for the freedoms and rights of the individual and citizen, equality, the rule of law and separation of powers into legislative, executive and judicial. However, despite the change of the social order which was legislated with the Constitution, it is considered that in terms of the freedoms and rights of the individual

and citizen the Constitution is a continuation of the constitutional order, for a reason that all previous Constitutions of the country (in the period when the country was part of the former state of Yugoslavia) included provisions on human freedoms and rights, in particular those related to social rights, such as the right to work and the right to remuneration. Of course, due to the change of the social order, some rights conditioned by socialist and self-government order in the past were abandoned, while some rights, primarily those of the body of civil and political rights, gained in importance.

The national catalogue of freedoms and rights contained in the Constitution is quite comprehensive and regulated in accordance with international instruments on human rights and freedoms, that is, in accordance with international catalogue of rights and freedoms. Certainly, individual freedoms and rights, such as rights of national minorities, other than internationally accepted guarantees, are regulated in the national Constitution also in accordance with the characteristics of our country.

From the fact that human freedoms and rights are a constitutional matter, it appears that neither can new rights be established by law, nor can the constitutionally defined freedoms and rights be narrowed down, restricted or denied by law. The law may only prescribe the manner, and in some cases the conditions under which, they can be exercised. This is confirmed by the fact that several provisions in the Constitution provide for the exercise of individual rights and freedoms be regulated by law.

National catalogue of freedoms and rights over the years has evolved and enriched, and some of its provisions have undergone changes with the constitutional amendments to the Constitution that have been made several times<sup>4</sup>. The first amendment of the constitutional provisions on human freedoms and rights took place in 1998, when Amendment III was adopted, which concerned the length of detention. The Amendment stipulates that the detention time until bringing the indictment, by court decision, may last 180 days at the most from the date of detention. After the indictment is brought, the detention is extended or imposed by the competent court in cases and procedure established by law.

The most extensive constitutional changes are considered to be the constitutional amendments IV through XVIII adopted in 2001, as the result of the so-called Ohrid Framework Agreement, which political agreement settled the 2001 armed conflict. These constitutional amendments reinforced the constitutional position and rights of the communities in the Republic of Macedonia that are not a majority. These constitutional amendments concern the question of the use of languages and alphabets, preservation of ethnic, cultural, linguistic and religious identity of the communities, the use of the symbols, the right to education in the mother language in primary and secondary education, the mechanisms of political decision-making when making an election to state functions, and the establishment of a Committee for Interethnic Relations.

These amendments introduced a new constitutional principle, that is, new fundamental value of the constitutional order of the Republic of Macedonia, which is

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<sup>4</sup> The 1991 Constitution of the Republic of Macedonia has so far been amended eight times: in 1992, 1998, 2001, 2003, 2005, 2009, 2011 and 2019.

the principle of **adequate and equitable representation** of the citizens belonging to all communities in the state bodies and other public institutions at all levels. This constitutional principle is intended to reflect the population structure in the sphere of state government and public institutions.

The amendments introduced the so-called "Badinter majority" or double majority in the decision-making in the Assembly of the Republic of North Macedonia on certain issues related to the rights of the communities. Namely, Amendment X to the Constitution foresees that the Assembly makes decisions on the laws directly affecting culture, use of languages, education, personal documentation and use of symbols by a majority vote of the present Representatives, whereby there must be a majority vote of the Representatives belonging to the communities that are not majority in the Republic of Macedonia.

Amendment VII amended Article 19 of the Constitution which guarantees freedom of religion and establishes the secular character of the state. This Amendment reinforced the principle of equality of all religious communities by explicitly citing other religious communities (except the Macedonian Orthodox Church), such as the Islamic Religious Community, the Catholic Church, the Evangelical-Methodist Church and the Jewish Community.

Amendment XIX which was adopted in 2003, amended the constitutional provision concerning the right to privacy, that is, secrecy of correspondence and other forms of communication (Article 17 of the Constitution). This amendment allowed exception from the inviolability of the secrecy of correspondence and all other forms of communication, not just the letters as it had been initially foreseen in the text of the 1991 Constitution. The exception is based on a court decision, under the conditions and in a procedure established by law, for the purposes of preventing or detecting crimes and protecting the interests of the security and defence of the Republic. With a view to stronger protection of freedom and inviolability of all forms of communication, the amendment provided a constitutional basis for the adoption of a law that would regulate this matter, and which is adopted by a two-third majority vote of the total number of Representatives in the Assembly.

In 2005, several amendments to the Constitution were adopted in order to create a constitutional basis for major reforms in the field of judiciary. These amendments included the changes in the constitutional provisions relating to the judiciary (Chapter III - Organisation of state powers), but some of the amendments also encompassed the provisions of Chapter II - Fundamental Freedoms and Rights of the Individual and Citizen, which chapter also contains the national catalogue of human rights and freedoms. This includes Amendment XX which guarantees legal protection against a final decision taken in misdemeanor proceedings, and Amendment XXI which guarantees the right to appeal against court decisions, while the right to an appeal against individual acts of the bodies of administration is envisaged to be regulated by law.

Amendment XXXII adopted in 2011 amended Article 4 paragraph 2 of the Constitution and stipulates that a citizen of the Republic of Macedonia cannot be deprived of the citizenship, nor can he/she be expelled from the Republic of

Macedonia. A citizen of the Republic of Macedonia cannot be extradited to another state, except by virtue of a ratified international agreement, with a court decision.

Regarding the procedure for amending the provisions of the Constitution relating to the rights and freedoms of the individual and citizen, the constitutional provisions of Chapter VIII of the Constitution apply which regulate the procedure for amending the Constitution. This procedure is conducted in several stages, as follows: proposal for amending the Constitution, decision for amending the Constitution, adoption of a draft amendment to the Constitution and at the end adopting a Decision on amending the Constitution which is adopted by the Assembly of the Republic by a two-third majority of the votes of the total number of Representatives in the Assembly.

However, there is some specificity in terms of amending the constitutional provisions that regulate the status and rights of the members of the communities that are not in the majority and which is the result of the adoption of Amendment XVIII to the Constitution. This amendment establishes the constitutional provisions that require the so-called Badinter majority or double majority for their change. Namely, in accordance with the said amendment, the decision to change the Preamble, the articles on local self-government, Article 131, any provision relating to the rights of the members of the communities, including in particular Articles 7, 8, 9, 19, 48, 56, 69, 77, 78, 86, 104 and 109<sup>5</sup>, as well as a decision on adding any new provision relating to the subject-matter of those provisions and articles will require a two-third majority vote of the total number of Representatives in the Assembly in which there must be a majority votes of the total number of Representatives in the Assembly who belong to communities that are not majority in the Republic of Macedonia.

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

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

**Answer:** In the performance of its functions, that is competences of abstract constitutional judicial control as well as in the direct constitutional-judicial protection of individual rights of the citizen the Constitutional Court of the Republic of North Macedonia applies the international legal sources, mostly the European Convention for the Protection of Human Rights and Fundamental Freedoms.

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<sup>5</sup> These are provisions from the Constitution of the Republic of North Macedonia concerning the rights of members of communities, especially those pertaining to the official use of the languages, fundamental constitutional values of the Republic, equality of citizens, freedom of religion, rights of communities, historical and artistic heritage of Macedonia, the Ombudsman, the Committee on Relations with the Communities, the Security Council, the Judicial Council and the Constitutional Court.

From the recent constitutional case law we would note the matter U.br.153/2017 (Decision of 20 June 2018) in which the Constitutional Court assessed the constitutionality of the provision in the Family Law which restricted the right of the child to file a lawsuit to challenge paternity until the child reaches 21 years of age. In this case the Constitutional Court invoked Articles 8 and 14 of the European Convention for the Protection of Human Rights and the relevant case law of the European Court of Human Rights, as well as Article 3 of the Convention on the Rights of the Child. The Court found that the impugned provision was unconstitutional because it restricted the right of the citizen to his personal and family life, the right to be able to determine the biological link with his real parents at any point in his understanding of the key facts about this legal situation.

The Constitutional Court in its work refers to and cites provisions also from the universal human rights instruments, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights<sup>6</sup>, the International Covenant on Economic, Social and Cultural Rights<sup>7</sup>, Convention on the Rights of the Child<sup>8</sup>, the International Labour Organization Conventions and the Geneva Conventions of 1949.

When the Constitutional Court refers to the rights that are part of the international catalogues of human rights, as a rule it quotes the relevant provisions of the Convention which guarantees the right at stake, without having to engage in a detailed analysis of the provisions of the convention and without analysing the relationship or scope of the provisions, in terms of comparison of the provision of the international catalogue with the relevant constitutional provision that is part of the national catalogue.

However, in the constitutional case law we have also found one instance in which the Court engaged in analysing the constitutional provision of Article 21 of the Constitution which stipulates the right to peaceful assembly *vis-à-vis* the provision of Article 11 of the European Convention, with regard to laid down restrictions on the right to peaceful assembly. Under Article 21 of the Constitution of the Republic of North Macedonia, the right to peaceful assembly and protest may be restricted only in time of war and emergency, while restrictions of this right provided for in the

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<sup>6</sup> In its decision U.br.37/2002 of 12 September 2002 the Constitutional Court found unconstitutional the provision of the Law on Defence envisaging possibility for alternative military service due to conscientious objection which was to be determined in separate proceedings before a special authority and within a specified period. In this case the Constitutional Court invoked the provisions of the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights and the European Convention on Human Rights.

<sup>7</sup> In the case U.br.139/2005 of 21 December 2005, the Constitutional Court found to be contrary to the Constitution the provisions for damage compensation in case of unlawful termination of employment and referred to the provisions of the International Covenant on Economic and Social Rights and the European Social Charter relating to the right of the worker to a salary.

<sup>8</sup> In its Resolution U.broj.28/2008 of 23 April 2008, concerning the constitutionality of life imprisonment, with regard to the international regulations for life imprisonment the Constitutional Court invoked the provisions of Article 37 of the Convention on the Rights of the Child prohibiting the imposition of life imprisonment on juvenile perpetrators of criminal offences. In its Resolution U.broj.134/2010 of 18 May 2011, the Constitutional Court invoked Article 15 paragraph 1 of the Convention on the Rights of the Child concerning the child's right to freedom of association and freedom of peaceful assembly.

European Convention on Human Rights do not make a distinction between the circumstances whether the assembly is restricted in conditions of emergency or war and normal conditions. Analyzing the content of the two provisions the Court found that: *"The absence of an express constitutional provision for the possibility of restricting the exercise of the right of peaceful assembly in regular, that is, peacetime conditions, in the opinion of the Court, should not be interpreted in the sense that the right to peaceful assembly in regular circumstances is an absolute right exercised without any boundaries and without any respect for the freedoms and rights of others. There is no such principle of absolute exclusivity in both European and international context and the Court holds that it cannot be established under the Constitution of the Republic of Macedonia either" and that for these reasons and "given the importance of the European Convention for the Protection of Human Rights and Fundamental Freedoms not only as part of the internal legal order of the Republic of Macedonia, but because of the general principles on which it relies and promotes, the Court holds the view that the interpretation of Article 21 of the Constitution should rely on these general legal principles".*

From the above-noted it can be concluded that in certain cases, the absence of express provisions in the national catalogue of freedoms and rights can be compensated with making a reference to the provisions of the international catalogue, that is, the international conventions on human rights and through the interpretation of national provisions in the spirit of the general principles of international conventions.

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

### **II.1. Right to life**

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

**Answer:** The right to life is guaranteed in Article 10 of the Constitution, under which human life is inviolable. Paragraph 2 of this Article of the Constitution stipulates that capital punishment shall not be imposed on any grounds whatsoever in the Republic of Macedonia.

Under Article 54 of the Constitution, the freedoms and rights of the individual and citizen can be restricted only in cases determined by the Constitution. The freedoms and rights of the individual and citizen can be restricted during states of war or emergency, in accordance with the provisions of the Constitution. The restriction of freedoms and rights cannot discriminate on grounds of gender, race, colour of skin, language, religion, national or social origin, property or social status. The restriction

of freedoms and rights **cannot apply to the right to life**, prohibition of torture, inhuman and degrading treatment and punishment, legal determination of punishable offences and sentences, as well as to the freedom of belief, conscience, thought, public expression of thought and religious confession.

The Constitutional Court has considered and analyzed the right to life under Article 10 of the Constitution in the context of the appraisal of the constitutionality of the legal provisions for the use of means of coercion and firearms by the police.

Thus, in the matter U.br.10/2006 (Resolution of 22 March 2006) the Constitutional Court appraised the constitutionality of the provisions of the Law on Internal Affairs that defined the cases in which police officers could use firearms. The applicant believed that given the possibility for the person to be deprived of life due to the use of means of coercion and firearms, the measure constituted a restriction of the right to life which under the Constitution was inviolable and could be restricted only in cases laid down by the Constitution, and not by law. In its resolution not to initiate a procedure for appraising the constitutionality of the impugned provision the Constitutional Court held that: *"The inviolability of human life and his physical and moral integrity are his basic and fundamental right, which is a real basis for the exercise of his other fundamental rights and freedoms. The exercise of this right cannot be detrimental to the same right of others. Hence, the logical conclusion is that the authorised officer who is at risk, that is, when he is attacked directly and the attack is ongoing, with the use of firearms he does not violate human life or his physical and moral integrity, but uses it when other means of force cannot protect the lives of citizens, and cannot fend off the direct attack on himself that threatens his life. Taking into account these grounds, every society, including ours, reserves means of coercion, strictly defining their use by law in the function of the exercise of the rights and freedoms of the individual and citizen. In this sense, the use of means of coercion, including firearms, in strictly defined boundaries and specifically prescribed procedures under the law, cannot oppose the constitutional inviolability of the right to life, physical and moral integrity of the person. From the analysis of the content of the impugned legal provision it arises that it is not in collision with the fundamental rights and freedoms of the individual and citizen, because it clearly and accurately lists the cases in which the authorised officer may use firearms, that is, expressly lists the conditions under which firearms can be used by an authorised officer of the Ministry of Internal Affairs. Namely, the impugned legal provision allows the use of firearms by authorised officer only if it is necessary in the cases specified. Hence, the logical conclusion is that not always the use of firearms by authorised officers is a violation of guaranteed inviolability of human life, and especially not in cases when it was necessary to protect the interests of citizens and society from crime"*.

In another case (Decision U.40/2003 of 30 June 2004), the Constitutional Court repealed the provision from the Law on Financial Police envisaging authorisation for financial police officers to use firearms "to prevent the escape of a vehicle". In the decision-making the Court relied on Article 10 of the Constitution of the Republic of North Macedonia and Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In the analysis the Court referred to the specific powers and duties of the financial police and the need to establish a balance between freedom and security, that is, between crime control, as public interest, and

respect for the rights and freedoms of the individual, and held that: "*The use of maximum force is undesirable in a democratic society should be understood that in the most extreme cases of criminal conduct must not impose concept available with maximum force by the police or the financial police. The right of use of force is justified only if it is applied to remove more evil than itself, ie it as a means of enforcement of the law is allowed to the extent and volume corresponding to the goals they want to achieve. Considering the above, the Court considers that the impugned provision under which financial police officers can use firearms to prevent the escape of a "vehicle", contains a risk of abuse in its application to the detriment of the constitutional principles of inviolability of human life, his physical and moral integrity and his freedom and is beyond the measures and standards for justified and absolutely necessary use of force within the meaning of the European Convention for the Protection of Human Rights and Fundamental Freedoms. For these reasons, it holds that Article 10 paragraph 1 item 2 of the Law does not comply with the aforementioned provisions of the Constitution.*"

## II.II. Freedom of expression

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

**Answer:** Article 16 of the Constitution of the Republic of North Macedonia guarantees freedom of personal belief, conscience, thought and public expression of thought. The freedom of speech, public address, public information and the establishment of institutions for public information is guaranteed. Free access to information and freedom to receive and impart information are guaranteed. The right of reply in the media is guaranteed. The right to a correction in the mass media is guaranteed. The right to protect a source of information in the mass media is guaranteed. Censorship is prohibited.

From the above constitutional provision of Article 16 it may be concluded that it contains the guarantee of freedom of expression, but does not contain restrictions on this right, as is the case with the provision of Article 10 paragraph 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms or in Article 19 paragraph 3 of the International Covenant on Civil and Political Rights. Hence, the general provision of Article 54 of the Constitution, under which the rights and freedoms of the individual and citizen can be restricted only in cases defined by the Constitution, applies also to the restriction of this right. The freedoms and rights of the individual and citizen may be restricted during states of war or emergency under the provisions of the Constitution. The restriction of freedoms and rights may not discriminate on grounds of sex, race, colour of skin, language, religion, national or social origin, property or social status. The restriction of freedoms and rights may not apply to the right to life, prohibition of torture, inhuman and degrading treatment

and punishment, legal determination of punishable offences and punishments, as well as the freedom of belief, conscience, thought, public expression of thought and religion.

Regarding the restriction of freedom of expression, in its Decision U.br.50/1998 of 8 April 1998 the Constitutional Court pointed out that *"despite the high level of guarantee of freedom of thought and its public expression in the Constitution of the Republic of Macedonia, it can not apply without restrictions. In order to ensure common life, the legal system must restrict the freedom of the individual to protect the freedom of others, that is, to restrict its application in content .... It is important that since the basic freedoms and rights are defined by the Constitution the grounds for their restriction must also be found in the Constitution. One way of restriction is the reference to regulate the exercise of a right or freedom by law. In addition, the Constitution may foresee the extent of the restriction of a freedom or right, which is binding on the legislator, or generally determine the extent to which the legislator may restrict the fundamental freedoms and rights. If the Constitution does not refer to that, fundamental freedoms and rights may not be regulated, restricted by law, and their content and boundaries will be determined through the comprehensiveness of the constitutional provisions and values and the norms of the legal order as a precondition for real exercise of freedoms and rights guaranteed by the Constitution.*

*The Constitution of the Republic of Macedonia is based on the guarantee of the freedom of belief, conscience, thought and public expression of thought, in a way that is general for all individuals, and precisely in terms of this generality must be interpreted the provisions of Article 54 paragraph 4 of the Constitution which excludes the restriction of this freedom ... However, this does not mean that there is no restriction for the individual in the manifestation of the generally guaranteed freedom of belief, conscience, thought and public expression of thought. The boundaries of the manifestation of this freedom for the individual rest in the actions sanctioned by law, irrespective of whether they are criminal or civil-legal sanctions. Hence, the constitutional administrative dispute whether there is a violation of the constitutionally guaranteed freedom of public expression of thought by sanctioning its manifestation is brought down to constitutional and legal assessment whether this sanction has violated the very content of the constitutionally guaranteed freedom of the individual without any restriction to publicly express opinions, or is a sanctioned action which, although as its public form has the public expression of opinion, has actually lost the sense of freedom of thought and public expression of thought which the Constitution guarantees and protects, turning into an action violating other freedoms, rights and interests safeguarded by the Constitution and law".*

In its Decision the Court further quoted the provisions of Article 10 of the European Convention on Human Rights and Article 19 of the International Covenant on Civil and Political Rights and by comparing the way the freedom of belief, conscience, thought and public expression of thought are guaranteed by the Constitution of the Republic of Macedonia and way of guaranteeing this freedom in these instruments, came to the conclusion that these were two different approaches. The Court pointed out the following: *"In fact, the International Covenant on Civil and Political Rights and the European Convention on Human Rights take as a starting point the right of the individual to freely manifest his or her conviction and conscience and to freely express his or her opinion, without any restriction in any form, and at the same time*

*refer to the restrictions of this freedom, which must be expressly provided for by law and which are necessary in a democratic society for the protection of the rights and freedoms of others, national security or public safety, health and morals.*

*Irrespective of the difference in the approach of restricting the freedom of public expression of thought, the final conclusion is brought down to the principle of legality, contained in Article 14 paragraph 1 of the Constitution of the Republic of Macedonia ("No one may be punished for an act which had not been established, prior to being committed, as a punishable offence under law, or other regulation, and for which no punishment had been prescribed"), and the sanctioning of acts which violate the rights and freedoms of others and other constitutionally guaranteed values, to the extent that is necessary in a democratic society. After all, this is exactly the content of Article 2 of the Criminal Code of the Republic of Macedonia which lays down the foundation and frontiers of criminal legal coercion, according to which "The protection of human freedoms and rights and other fundamental values and the application of criminal-legal coercion to the extent necessary to prevent socially detrimental actions constitute the basis and frontier for the determination of criminal offences and the imposition of criminal sanctions".*

As an example in this sense in the recent constitutional jurisprudence we refer to the Decision in the case U.br.116/2017 (Decision of 27 June 2018). In this case, the Court held that the two members of the political party "The Left" had their right to freedom of thought and public expression of thought and the prohibition of discrimination on grounds of political affiliation violated, on grounds of their arrest for participating in a peaceful protest against the display of the military equipment of the United States of America and the Army of the Republic of Macedonia. The purpose of the members of the political party had been to show that they were against militarism being spread by the USA with demonstration of power in Macedonia.

The Court held a public hearing on the case, in which it heard the applicants and their lawyer and found a violation of freedoms and rights. The Court held that the act of depriving them of liberty and disabling them to carry the banner on which their message was written had violated the applicants' right to expression of thought, without having justification for taking the concrete measures by the police members, that is, without any proportionate restriction on the freedom of thought and public expression of thought.

As regards freedom of expression, in its decision the Constitutional Court indicated the following: *"The right to freedom of expression is guaranteed to citizens by international legal acts on human rights, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the European Convention for the Protection of Human Rights and other acts, which are ratified by the Republic of Macedonia, thus guaranteeing and regulating the protection of the right to freedom of expression. Accordingly, our country committed itself to respect, guarantee and protect human rights and freedom of expression, also incorporated in Article 16 of the Constitution. Considering that the right to freedom of expression is constitutionally guaranteed, this right is further regulated by a series of laws and other acts. In this context, our country has developed a legal and institutional*

*framework that should enable this right to be exercised and to distinguish it from similar concepts, such as hate speech, defamation and insult.*

*Furthermore, the Court holds that to determine whether there is a restriction on freedom of expression, in accordance with paragraph 2 of Article 10 of the European Convention for the Protection of Human Rights, what should be applied is the so-called tripartite test, which stems from the very wording of paragraph 2 of Article 10 of the Convention and consists in examining whether a restriction of freedom of expression is prescribed by law, whether it is directed as achieving a legitimate aim and is "necessary in a democratic society".*

The Court pointed out that the protest in a public place could not disrupt the (public order) normal life, including traffic, and that in this case there was a ground for the authorities to show a certain degree of tolerance towards peaceful gatherings, that among the protesters there was no unlawful conduct that would cause a justified action of the police members and proportionate restriction on the freedom of peaceful assembly. The Court in this case also found a violation of the right to equality and non-discrimination on grounds of political affiliation.

The Constitutional Court also argued on the relationship between the constitutional provisions on human freedoms and rights and the European Convention in its case U.br.133/2013 from 12 March 2014, when it did not initiate a procedure for assessing the constitutionality of the provision of Article 3 of the Law on Civil Liability for Defamation and Insult ("Official Gazette of the Republic of Macedonia" no.143/2012) which provides that if a court with the application of the provisions of this Law cannot decide on certain issue related to the determination of liability for insult or defamation, or considers that there is a legal gap or conflict of the provisions of this Law with the European Convention for the Protection of Human Rights and Fundamental Freedoms, based on the principle of supremacy over national law it shall apply the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the views of the European Court of Human Rights contained in its judgments.

*In its resolution the Court held that "the legal regulation of the exercise of freedom of expression and information, according to which restrictions on these rights must be in accordance with international instruments on the protection of human rights and fundamental freedoms that are part of the internal legal order and with the application of the views of the European Court of Human Rights contained in its judgments, is precisely aimed at the protection of the said rights and freedoms recognised in international law and set down in the Constitution and respect for the generally accepted norms of international law, which is in accordance with the provisions of the Constitution invoked by the applicant. According to the Court, the impugned Article 2 paragraph 2 and Article 3 of the Law do not violate Article 8 paragraph 1 line 4, Amendment XXV and Article 118 of the Constitution, as stated in the application. This is for a reason that the European Convention for the Protection of Human Rights and Fundamental Freedoms is ratified by the Republic of Macedonia and thus, under Article 118 of the Constitution, it is a part of the internal legal order. Under Amendment XXV to the Constitution, the courts judge on the basis of the Constitution and laws and international agreements ratified in accordance with the Constitution. Hence, it arises that the implementation of the*

*European Convention for the Protection of Human Rights and Fundamental Freedoms and the views of the European Court of Human Rights contained in its judgments, in the proceedings for decision-making on certain issue related to the determination of liability for insult or defamation, which is conducted before the competent court in the Republic of Macedonia, is aimed at the very operationalisation of these constitutional provisions".*

As an example of the divergence between the case law of the Constitutional Court and that of the European Court of Human Rights regarding the protection of freedom of expression, we cite the Decision U.br.27/2013 (Decision of 16 April 2014) which concerned the case of removal of the journalists from the Assembly during the violence in the Assembly in December 2012. The Constitutional Court in this case did not find a violation of the freedom of expression of the journalists, that is, found that the physical removal of the journalists from the gallery of the assembly hall which had been imposed by the specific situation of escalating chaos and disorder in the hall had been intended to protect them and to ensure order in the hall, and not to disable them in the exercise of their activity of informing the public and to restrict their freedom of expression.

Contrary to the Constitutional Court, when the case came before the European Court of Human Rights, the Court found a violation, that is, held that the violent removal of the journalists from the hall by the security service had amounted to a violation of the freedom of expression, that is, freedom of imparting information. The European Court of Human Rights in this same case also found a violation of Article 6 of the Convention on grounds that there had been no public hearing in the proceedings before the Constitutional Court (*Selmani and Others v. "the Former Yugoslav Republic of Macedonia"*, Application no. 67259/14).

On the other hand, examples can be given when the Constitutional Court took a similar position as the European Court of Human Rights in similar cases. Thus, in the case U.br.57/2019 the first-instance acts of regular courts punishing lawyers acting as defence counsels in criminal proceedings for violation of the rules at hearings, and second-instance acts upholding those acts, were annulled. The application for protection of freedoms and rights submitted to the Constitutional Court by the lawyers contains allegations of violation of freedom of thought and public expression of thought with the adopted court acts. The Court found a violation of this right, taking into account the case law of the European Court in the case of *Morice v. France*, which held that the question of safeguarding the freedom of expression of lawyers as a precondition for preserving the independence of the profession they perform is the basis for the functioning of the justice system.

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

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

- Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

Answer: In the national catalogue, the right to privacy is governed by the following provisions of the Constitution of the Republic of North Macedonia:

Article 25 of the Constitution

Every citizen is guaranteed the respect and protection of the privacy of personal and family life, dignity and reputation.

Article 26 of the Constitution

The inviolability of the home is guaranteed. The right to inviolability of the home may be restricted only by a court decision in cases of the detection or prevention of criminal offences or the protection of people's health.

Amendment XIX of the Constitution guarantees the freedom and inviolability of correspondence and all other forms of communication. Only on the basis of a court decision, under the conditions and in a procedure established by law, can there be a departure from the right to the inviolability of correspondence and all other forms of communication, if it is necessary to prevent or detect criminal offences, conduct criminal proceedings or when the interests of the security and defence of the Republic require that. The law is adopted by a two-third majority vote of the total number of Representatives in the Assembly.

Based on these constitutional provisions, the Law on Electronic Communications and the Law on Interception of Communications were adopted in the Republic of North Macedonia. The provisions of these laws have been repeatedly assessed by the Constitutional Court in proceedings for abstract control of norms. What the Constitutional Court especially insists on in the analysis of the legal provisions governing the matter of interception of communications in relation to constitutional provisions protecting privacy is the necessity of clarity and precision of the legal provisions governing the powers of national authorities to monitor communications: *"The provisions governing the area of interception must be sufficiently precise and predictable, shall not allow for improvisation and interpretation in order not to be a threat to monitor everyone to whom this law can be applied and shall not interfere unconstitutionally and unlawfully with the respect of the right to the freedom of correspondence and freedom of communication of the citizens. More specifically, the legislation concerning the implementation of measures to monitor communications should include a crystal clear idea of the circumstances and conditions under which a public authority is entitled to resort to the use of this measure, the manner in which the interception is conducted, the cases in which interception of communications is justified, the authority issuing the order for interception of communications. Everything else moves in the direction of unlimited power and is in contradiction with the principle of the rule of law".* (Decision U.br.139/2010 of 15 December 2010 of the Constitutional Court annulling several provisions of the Law on Electronic Communications.)

In the decision in this case, the Court invoked also the relevant provisions from the international catalogues of human rights, that is, Article 17 of the International Covenant on Civil and Political Rights, Articles 1 and 12 of the Universal Declaration

of Human Rights and Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, pointing out that the interpretation of the relevant constitutional provisions should rely on the general principles of law enshrined in the Convention and interpreted in the case law of the European Court of Human Rights in Strasbourg (cases of *Lordachi and Others v. Moldova*, *Weber and Saravia v. Germany*, etc.) in which case law special emphasis is put on the need for clarity, precision and predictability of statutory norms.

In this case the Constitutional Court held that "*due to the vagueness of the expressions used, the lack of further regulation of the conditions and procedure in which there may be an exception to the guaranteed constitutional right to privacy, there is a real threat of self-willed and arbitrary interference of public authorities with the private life and correspondence of the citizens which may adversely affect the honour and reputation of the citizens without it to have a real ground in the Constitution and laws. For this reason, the impugned provisions cannot be interpreted as provisions guaranteeing fundamental rights and freedoms of the individual and citizen, recognised in international law and laid down in the Constitution as a fundamental value of the constitutional order of the Republic of Macedonia*".

#### II.IV. Freedom of religion

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

**Answer:** In the national catalogue, freedom of religion is guaranteed under Article 19 of the Constitution of the Republic of North Macedonia, which guarantees freedom of religion. The right to express religious belief freely and publicly, individually or with others, is guaranteed. The Macedonian Orthodox Church, the Islamic Religious Community in Macedonia, the Catholic Church, the Evangelical Methodist Church, the Jewish community and other religious communities and religious groups are separate from the state and are equal before the law. The Macedonian Orthodox Church, the Islamic Religious Community in Macedonia, the Catholic Church, the Evangelical Methodist Church, the Jewish community and other religious communities and religious groups are free to establish religious schools and social and charitable institutions, under a procedure defined by law.

Freedom of religion, as an aspect of freedom of belief, conscience, thought and public expression of thought, under Article 54 of the Constitution cannot be restricted.

In the jurisprudence of the Constitutional Court concerning this right stands out the Decision U.br.202/2008 of 15 April 2009 which repealed the religious education in primary schools. In its Decision the Constitutional Court specifically referred to the principle of neutrality and the separation of the state from the religious matters and indicated that: *"Article 19 and Amendment VII of the Constitution promote the freedom of confession, but at the same time establish the principle of separation of the state and the religious communities, that is, the principle of secularity. Freedom of confession, in the opinion of the Court, unavoidably contains in itself the principles that everyone is free, without anybody's influence, to determine his/her religious belief, to accept or not certain religion or to accept another religion, or not to accept any religion whatsoever, to profess or not his/her religion, to take part or not in religious sermons, etc. In this context, the state, on its part, pursuant to the principle of separation from the religious communities, must maintain its neutrality and must not interfere in the issues on religion, that is, religious communities and groups, incite the determination for a certain religion or religion in general, or obstruct the expression of religion, or impose religious conformism or request implementation of religious activities as socially desirable conduct. The Court found that the noted constitutional amendment also resolves, in a principled manner, the issue about religious education (religious instruction, religious teaching) which is left to be the subject of decision and sphere of concern of religious communities and religious groups, within the frameworks of the freedoms to establish religious schools for these purposes.*

*The Court assessed that the contested provision of Article 26 of the Law provides an opportunity to introduce a subject in primary education in which certain religion is studied, which makes introduction into the rules under which the member of certain religious confession -- or as it is called religious teaching, religious lesson or, most often, religious instruction -- should conduct. Thereby, the Court bears in mind that the manner of implementation of the contested provision, in all respects, also coincides with this conclusion. Such form of religious education, deriving as a possibility from the law, exceeds the academic and neutral character of the teaching, which is otherwise the characteristic of the public, state education and involves the state in the organisation of such religious teaching, vis-à-vis the noted principle of separation of the state and the church, and in this context the freedom of the religious communities to establish religious schools. Hence, the Court found that the contested provision of the Law is not in accordance with Article 19 and Amendment VII of the Constitution".*

Freedom of religion has been the subject-matter in several cases brought before the Constitutional Court on the basis of requests for protection of freedoms and rights, which concerned registration of religious communities or rejection of their registration, which according to the applicants constituted a violation of their freedom of religion. The Court so far has not found a violation of freedom of religion: in the case U.br.118/2010 (Decision of 15 December 2010) the Court rejected the request for protection of rights and freedoms filed by a representative of the Orthodox Ohrid Archdiocese, because of the refusal of its registration.

In the case U.broj.24/2012 (Decision of 20 November 2012) the Constitutional Court decided on the request of a group of people who believed that the refusal of registration of the Bektashi Religious Community had violated their freedom of

religion and the right to equality. In its decision-making the Constitutional Court invoked the provisions of Articles 9 and 14 of the European Convention on Human Rights and the universal instruments such as the Universal Declaration of Human Rights (Article 18) and Articles 18 and 26 of the International Covenant on Civil and Political Rights. In this case, in assessing the justification for the different treatment, the Constitutional Court also referred to the views of the Human Rights Committee stated in its *General Comment No. 18*.

The Constitutional Court dismissed the application, finding that the refusal of registration in the present case had been for reasons provided by law, that is, that the name and official insignia of any new church, religious community and religious group should be different from the names and official insignia of already registered churches, religious communities and religious groups, as the identification of the applicant for registration with another religious entity that is already registered may mislead the public, that is, bring the believers into confusion, which also represents a violation of their religious feelings.

However, in both these cases, which were later lodged with the European Court of Human Rights, the European Court found a violation of the freedom of religion because of the refusal of national authorities to register the aforementioned religious communities (case *Bektashi Community and Others v. Republic of Macedonia* (Applications nos. 48044/10, 75722/12, and 25176/13), *Case of Orthodox Ohrid Archdiocese (Greek-Orthodox Ohrid Archdiocese of the Pec Patriarchy v. Republic of Macedonia)* (Application no.3532/07).

#### II.V. Prohibition of discrimination

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

**Answer:** The right to equality is guaranteed by Article 9 of the Constitution of the Republic of North Macedonia which reads: "Citizens of the Republic of North Macedonia are equal in their freedoms and rights, regardless of gender, race, colour of skin, national and social origin, political and religious beliefs, property and social status. Citizens are equal before the Constitution and the law."

According to the case law of the Constitutional Court of the Republic of North Macedonia, the right to equality of citizens and non-discrimination is an important element of the principle of the rule of law. The rule of law means that the laws apply equally to all without any privileges for certain individuals or groups. The Constitutional Court in its constitutional jurisprudence has found violation of the principle of the rule of law when the legal norms have unduly put certain categories of citizens into a privileged position compared to other citizens in terms of exercising

the same rights (for instance, the right to work, right to a pension, right to salary, access to work, etc.).

In this regard, in its Decision U.br.58/2010 of 29 September 2010 the Constitutional Court indicated the following: "*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 laws and, second, that the law applies equally to all citizens by the state authorities. In other words, the right to equality before the law means protecting citizens from any kind of discrimination in the enjoyment of rights and the fulfillment of the obligations.*

*The constitutional principle of equality obliges the legislator in the regulation of the relations to perceive the principle of equality in a concrete and not an abstract way through the rule that the equal should be treated equally, and the unequal unequally*".

A more relevant decision in which the Constitutional Court affirmed the right to equality and non-discrimination is the Decision U.br.191/2005 of 12 April 2006, with which the Constitutional Court annulled provisions of the Law on the Representatives in the Assembly which had foreseen more favourable and privileged conditions for acquiring pension for the Representatives in the Assembly of the Republic.

Unlike proceedings for abstract control of norms in which the Constitutional Court has in many cases intervened and repealed discriminatory provisions in laws and bylaws, in the proceedings on requests for protection of freedoms and rights, the Constitutional Court has so far in only one case found a violation of the right to equality and non-discrimination. In the case mentioned above<sup>9</sup>, Decision U.br.116/2017 of 27 June 2018, in addition to a violation of freedom of expression the Constitutional Court also found discrimination on the basis of political affiliation. Referring, *inter alia*, to the provision of Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Constitutional Court found that taking physical force by police officers, putting handcuffs and arresting only members of certain political party participating in a peaceful protest together with others, constituted discrimination on the basis of political affiliation.

## II.VI. Right to liberty

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

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<sup>9</sup> See answer to the question under II.II on Freedom of expression.

**Answer:** The right to liberty is guaranteed by Article 12 of the Constitution of the Republic of North Macedonia, which reads: "The liberty of the individual is inviolable. No person's liberty may be restricted except by a court decision and in cases and procedures determined by law. A person summoned, apprehended or deprived of liberty shall immediately be informed of the reasons for the summons, apprehension or deprivation of liberty and about his/her rights defined by law and shall not be asked to make a statement. A person has the right to an attorney in police and court procedures. A person deprived of liberty shall be brought promptly, and not later than 24 hours from the moment of deprivation of liberty, before a court to decide without delay on the legality of the deprivation of liberty. Detention until bringing indictment may last, by court decision, for a maximum period of 180 days from the date of detention. After the indictment, the detention is extended or determined by the competent court in cases and procedure utrdeni law. Persons detained may, under the conditions determined by law, be released from custody to conduct their defence".

According to this constitutional provision, the conditions under which the freedom of the individual may be restricted are defined by law, whereby it is necessary to emphasise that the restriction of freedom may be imposed only by a court in a procedure prescribed by law.

The grounds for detention are set out in the Criminal Procedure Code, Article 165 which provides: (1) If there is a reasonable suspicion that a person has committed a crime, and if detention is required for an unobstructed conduct of the criminal proceedings, detention may be imposed against that person if: 1) the person is hiding, if his or her identity cannot be established, or if there are other circumstances indicating that the person may flee; 2) there is a justified fear that the person will hide, manipulate or destroy the evidence of the crime or if particular circumstances indicate that he or she will hinder the criminal proceedings by influencing witnesses, expert witnesses, accomplices or persons who have been covering up the crime; 3) special circumstances justify the fear that he or she may re-offend or complete the attempted crime or commit the crime he or she has been threatening with; or 4) the defendant who has been duly summoned obviously tries to avoid appearing during the main hearing, or if the court has tried on two occasions to properly summon the defendant whilst all the circumstances indicate that the defendant is obviously avoiding receiving the summons.

Given that detention is deemed to constitute the strictest measure to ensure the presence of the defendant in the criminal proceedings, because it restricts the freedom as a fundamental human right that is inextricably linked to human personality, the Constitutional Court has always had a very careful approach when making a decision on the constitutionality of the provisions of the Criminal Procedure Code relating to detention, which have on several occasions been the subject-matter of analysis and constitutional control. In this context, we would mention the **Decision U.br.34/2005** of 31 May 2006 concerning the deprivation of liberty and the right to presumption of innocence. With this decision the Constitutional Court repealed the provisions on mandatory detention for criminal offences that entail life imprisonment. The Court held that with the requirement for the court to impose detention measure for these criminal offences, only due to the severity of the sentence of life imprisonment, the judge was denied on the basis of his or her free judicial conviction

and comprehensive and careful assessment of the facts and evidence to assess whether there were grounds for imposing the detention set out in the Criminal Procedure Code. In the reasoning of the Decision, the Constitutional Court pointed out that the provision of mandatory detention denied 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 imperative norm the legislator obliged the court to only formally impose a ruling on detention. The establishment of an obligation for the court to impose a compulsory detention measure, only because the Code required it imperatively, meant that the legislator was the one, and not the court, that opted for the detention measure for specific crimes. For these reasons, the Constitutional Court held that this provision violated the constitutional principle of the rule of law, division of powers and the right to presumption of innocence.

From the international catalogues for human rights in this case the Constitutional Court invoked the provisions of Article 5 and Article 6 § 2 (presumption of innocence) of the European Convention on Human Rights.

International human rights catalogues were also applied in assessing the constitutionality of the sentence of life imprisonment. In the case **U.br.28/2008**, the Constitutional Court held the view that the imposition of life imprisonment was not incompatible with the constitutional provisions, for a reason that the law provided a possibility for parole and pardon, so that the person convicted to life imprisonment would not in advance be denied any possibility, that is, chance for release from further serving of the sentence and gaining again freedom. In the above decision, the Constitutional Court invoked the provisions of Article 3 and Article 5 § 1 of the European Convention on Human Rights, quoted and analysed a number of other international instruments, such as: the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights, the Rome Statute of the International Criminal Court, the Standard Minimum Rules for the Treatment of Prisoners, and recommendations of the Council of Europe related to penitentiary system.

The Constitutional Court also directly referred to the case law of the European Court of Human Rights (cases *Leger v. France*, *Kafkaris v. Cyprus*, *Stanford v. UK*) and applied the same criteria applied by the European Court of Human Rights in Strasbourg, which are the criterion for reducibility of the sentence, that is, whether the person convicted to this penalty had prospects for release or not. The Constitutional Court of the Republic of Macedonia held that: "With the mere fact that person sentenced to this punishment may seek parole, under conditions specifically provided for in the Criminal Code, that is, after serving 15 years in prison, it appears that the convict for this punishment is not in advance deprived of any possibility, that is, chance for release from further serving of the sentence". For these reasons it holds that life imprisonment sentence is in accordance with the Constitution.