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Questionnaire

Reply by the Constitutional Court of "The former Yugoslav Republic of Macedonia"

A. Court description

Unless your Court has already provided a description for the CODICES database (www.CODICES.coe.int), we kindly invite you to prepare a short presentation of your Court. This will allow the member courts to get to know each other better. Please briefly set out your Court's composition and competences under the headings below:

Introduction
I. Basic texts
II. Composition, procedure and organisation
III. Jurisdiction/powers
IV. Nature and effects of judgments
Conclusion

- The description of the Constitutional Court of the Republic of Macedonia with basic data about the basic texts, composition, procedure, organization, jurisdiction and effects of judgments has already been provided in the CODICES database.

B. Social integration

1. Challenges of social integration in a globalised world

1.1. What challenges has your Court encountered in the past, for example in the field of asylum law, taxation law or social security law?

The Constitution of the Republic of Macedonia expressly defines the Republic of Macedonia as a social state – Article 1 of the Constitution stipulates that the Republic of Macedonia is a sovereign, independent, democratic and social state. This provision is specified in Article 8 of the Constitution which defines the fundamental values of the constitutional order of the Republic of Macedonia, and *inter alia* it defines the basic freedoms and rights of the individual and citizen recognised in international law and defined by the Constitution, and the principles of humanism, social justice, and solidarity as the fundamental values.

Further specification of the principles of social state, social justice and solidarity are the economic, social and cultural rights which are regulated in the special part of the Constitution, whereby the right to social security and social insurance are expressly envisaged in Article 34 of the Constitution. Article 35 of the Constitution of the Republic of Macedonia defines that the Republic provides for the social protection and social security of citizens in accordance with the principle of social justice. The Republic guarantees the right of assistance to citizens who are infirm and unfit for work. The Republic provides for particular protection for disabled persons and conditions for their involvement in the life of the society.

Within this Chapter of the Constitution the following other rights are also guaranteed: right to ownership of property (Article 30), right to ownership of property of foreigners (Article 31), right to work, free choice of employment, protection at work and material assistance during temporary unemployment, right to appropriate remuneration, right to leave (Article 32), obligation to pay tax and other public contributions (Article 33), particular social rights to veterans, war invalids and members of their families (Article 36), right to establish trade unions (Article 37), right to strike (Article 38), right to health care (Article 39), particular care for the family (Article 40), right of the individual freely to decide on the procreation of children (Article 41), particular protection of mothers, children and minors (Article 42), right to a healthy environment (Article 43), right to education (Article 44).

The Constitution of the Republic of Macedonia does not define the concept of the social state (Article 1) and the principles of humanism, social justice and solidarity. The specification of these principles is left for the legislator, and not to the judicial and constitutional court authority. However, in its specification the legislator is restricted by the principle of a social state and social justice, the limits of which are defined by the Constitutional Court through the interpretation of these concepts in its decisions deciding on the agreement of the laws with these constitutional principles.

In its **Decision U.br.103/2010** of 22 December 2010, the Court pointed that: *„the proclamation of the said constitutional principles derives from the social character of the state, and the types of rights for social security and employment, manner, procedure and conditions for the exercise of these rights are left to be regulated by the legislative power... As a way to provide social justice the Constitution proclaims and defines the right to material assistance during temporary unemployment. However, under which conditions, to what extent, for how long and how this right will be exercised is not within the domain of the constitutional regulation. It is left to be governed by law and collective agreements".*

The right to social security has been interpreted by the Constitutional Court in a lot of decisions in the field of pension and disability insurance, health and social care, labour relations, etc.

Thus, with its **Decision U.br.84/2008** of 3 December 2008 the Constitutional Court repealed Article 79 of the Law on Employment and Insurance in Case of Unemployment ("Official Gazette of the Republic of Macedonia", nos.37/1997, 25/2000, 101/2000, 50/2001, 25/2003, 37/2004, 4/2005, 50/2006, 29/2007 and 102/2008) which envisaged cutting down the length of the pecuniary remuneration of an unemployed person if he/she had additional incomes. Invoking the social character o the state, the principles of the rule of law, humanism, social justice and solidarity, and the principle of equality of citizens and the constitutionally guaranteed right to material assistance during temporary unemployment the Court found that the legal provisions are unclear and imprecise for a reason that: "*there is no stipulation of the period for which the time for receiving the assistance may be reduced and there are no more specific criteria on the basis of which the competent body shall decide thereof. Due to the absence of these more specific conditions, that is, criteria, the contested provision leaves a wide room for the competent body, that is*

the Agency for Mediation in Employment to determine its scope, that is to decide whether this legal possibility shall apply at all to a concrete case, and to determine the reduction of the time for receiving the pecuniary assistance, which according to the Court creates a danger of arbitrariness, which is in contradiction with the principle of the rule of law guaranteed by the Constitution".

In the past few years, laws and regulations relating to health, namely health care and health insurance were often subject to assessment before the Constitutional Court. In this context should, in particular, be mentioned the decisions of the Constitutional Court finding that the right to the so-called basic package of health services that are covered by the Health Insurance Fund should be exercised by the citizens in any health institution, and that it should not be conditioned upon the fact whether the health institution has made a contract with the Fund or not. Acting on the initiative of the Ombudsman , with its Decision U.br. 45/2006 of 11 July 2007 the Constitutional Court of the Republic of Macedonia repealed Article 1 of the Law Amending the Law on Health Insurance ("Official Gazette" no.84/2005) which envisaged that if the insured person uses basic health services in a health facility that has not made a contract with the Fund the costs are paid by the insured person.

This legal regulation, according to the Court, "*represents conditioning of the right to health care exclusively to the circumstance whether a contract has been concluded or not with a certain health institution, instead of the conditioning to depend on whether the health instittuion has provided a basic health service for which the insured person has taken aside funds managed by the Fund. According to the Court, this questions the constitutionally and legally guaranteed right of the citizens of the Republic of Macedonia to health care and the right freely, of their own choice, to determine in what kind of a health institution they will exercise their right to health insurance. According to the assessment of the Court, with this concept of the legislator insurees are impeded in the exercise of one of the fundamental rights to choose on their own a doctor whom they trust the most and from whom they expect fair and above all professional competent health care. Otherwise, the choice of the insuree will depend mostly on his/her solvency, in which case the principle of equality of citizens before the Constitution and laws, set out in Article 9 of the Constitution, is questioned*".

Following the adoption of the Decision of the Constitutional Court, in certain period the insurees using services from the basic package of health services in health institutions irrespective of whether the Fund has concluded a contract with these health institutions paid the costs to these institutions in full, and then they applied for remuneration of the funds from the Fund in an amount that the Fund recognises for such a service.

Later on, with the change in the Law on Health Insurance, the legislator conditioned again, in an indirect way, in other provisions of the Law, the exercise of the health services from the basic package that are covered by the Fund with the circumstance whether the Fund has concluded or not a contract with the health institutions providing the service. Therefore, these changes in the Law were again before the Constitutional Court, which repealed them with its **Decision U.br.185/2009** of 27 January 2010. The Court found that: "*health care based on insurance is no longer exercised under the conditions provided for by law, but under an additional requirement, as a discretionary right of the Health Insurance Fund. Therefore, the Court finds that not only does the challenged provision violate the right of choice of doctor by the users of health services, but it essentially violates the constitutionally stipulated legal level of regulation of the rights and obligations in health insurance".*

Laws relating to the pension and disability insurance quite frequently come before the Constitutional Court, which has been repeatedly been confronted with the question whether the legislator may regulate the right to a pension for certain categories of

insured persons (Representatives in the Assembly of the Republic of Macedonia, authorised officials in the Ministry of the Interior, etc.) by separate laws in a way which largely differs from the way this matter is regulated for all citizens pursuant to the Law on Pension and Disability Insurance as *lex generalis*, that is, to what extent the specific laws may regulate economic and social rights for certain categories of insured persons in a different way, that is, under different and more favourable conditions and whether it is a violation of the constitutional principle of equality and prohibition of discrimination.

In connection with this issue, in its **Decision U.br.58/2010** of 29 September 2010, the Court presented its stance that: "*The existence of the Law on Labour Relations and the Law on Pension and Disability Insurance, as lex generalis, which govern labor relations and rights in the area of pension and disability insurance, according to the Court, is not an obstacle for the legislator within its constitutional powers (Article 68, paragraph 1, line 2 of the Constitution) to further regulate with other laws certain issues in this area, and that, in itself, does not constitute a violation of the constitutional principle of equality (Article 9 of the Constitution) and the rule of law (Article 8 paragraph 1, line 3 of the Constitution). However, separate, different regulation, that is further regulation of these issues must be based on justifiable reasons and be in acceptable correlation with the general principles of regulation of these issues in the appropriate field, that is, without reasonable grounds not to single out the insurees from the group they belong to, in order not to question the provision of Article 1 of the Constitution of the Republic of Macedonia defining the Republic of Macedonia as a democratic and social state which may indirectly reflect on other constitutional principles relating to equality, the rule of law and social justice".*

In the said decision, the Court repealed the provisions of the Law on Internal Affairs which envisaged more favorable conditions for the acquisition of a pension for the authorised officials in the Ministry of the Interior, noting that they are placed in a privileged position compared to other authorised officials and other citizens without the existence of justified grounds for that, contrary to the constitutional principle of equality of citizens and the violation of the principle of the rule of law.

Similarly, with its **Decision U.br.191/2005** of 12 April 2006 (CODICES MKD-2006-1-001) the Court repealed a number of provisions from the Law on Representatives ("Official Gazette of the Republic of Macedonia", no.84/2005) envisaging the right to a pension for the Representatives in the Assembly of the Republic of Macedonia under privileged conditions. See in more detail about this Decision in the answer to Question 3.1. below.

In the area of taxes and public fees, the stance of the Court articulated in many decisions is that the obligation to pay the tax, and the tax items (bonds, base, tax rate, tax incentives and exemptions) can be determined only by law of the Assembly, and not by a bylaw of the Government. With its **Decision U.br.179/1999** of 26 January 2000, the Court repealed a provision of the Law on Amending the Law on Excise ("Official Gazette of RM" nos.78/93, 70/94, 14/ 95, 42 / 95, 71/ 96, 5/97, 36/97, 7/98, 63/98, 39/99, 43/99) which envisaged authorisation for the Government to determine excise duties on oil derivatives.

In this area, significant are also those decisions of the Constitutional Court in which it argued that the circumstance if a person realises his/her tax obligations, that is whether or not he/she pays taxes must not be a condition for the exercise of some other rights, such as for instance the right to work or the right to form a company, and that it is contrary to the Constitution for the citizens to be required to submit proof of paid taxes in the exercise of their rights.

With its **Decision U.br.153/2008** of 11 February 2009, the Constitutional Court repealed Article 29 paragraph 2 item 3 of the Law on Trade Companies ("Official

Gazette of the Republic of Macedonia" nos.28/2004, 84/2005, 25/2007 and 87/2008) which envisaged that a company may not be founded, among others, people who have not paid taxes and contributions which they are required to pay by law. The Court, considering that everyone has a constitutional obligation to settle public duties and that within the method of payment of public fees there are legal mechanisms for their implementation, found that "*the stipulation of such a restrictive requirement – a person who has not paid taxes and contributions he/she is required to pay by law may not found a trade company – means exceeding the permitted threshold and going out of the appropriate legal mechanisms. This limitation on the possibility of founding a trade company leads to a condition that the meeting of the obligations of the person in a status affects the exercise of his/her rights in another status, which is not allowed by the Constitution, and to reduction in the scope of the right to work and the availability of each job to everyone under equal conditions.*"

Of the cases in this area, we single out also the **Decision U.br.236/2006** of 2 May 2007, with which the Constitutional Court repealed Article 4 paragraph 3 of the Law on Registration of Cash Payments ("Official Gazette of the Republic of Macedonia" nos.31/2001, 42/2003, 47/2003, 40/2004, 70/2006 and 126/2006). Aimed at improving the fiscalisation and eliminating "gray economy" this Law introduced several measures including the exemption from the obligation of the buyer to pay the price of the good or service unless he is issued a fiscal receipt. The Court found this measure to be disputable from the perspective of the principles of the rule of law, legal protection of property and freedom of the market and entrepreneurship.

Although the Court found the stated objectives of the law to be legitimate, it expressed doubt as to the constitutionality of the specific measures the legislator envisaged for their achievement. The Court pointed out that "*it is undisputed that the state has the constitutional authority to determine its policy in market rules and tax policy and to determine appropriate measures for their implementation ... the state also has a constitutional right to introduce new measures, despite the existing ones, but it cannot also result in consequences for the usual way of behaviour of citizens when they are participants in market relations based on the established regulations ... In introducing new measures the legislator must find a balance between the general interests of the community to realise the intention for fiscalisation of the state and collect the projected taxes and the guaranteed rights of the citizen to be an equal participant in legally regulated and sustainable market relations, with respect to the ratio between what is received and given. It is certain that such a balance in this case is not achieved with the role imposed on citizens, rather than on the state and its organs, to be controllers of those who do not comply with fiscal and tax legislation.*"

In a later decision the same year **U.br.49/2007** of 19 September 2007, the Court found to be unconstitutional and repealed the provision of the said law which envisaged a fine for the buyer if he/she failed to take a fiscal receipt when purchasing goods or services. The Court found that not having a fiscal receipt may only result in difficulties for the citizens in achieving possible civil claims or obligations of legal proof of lawfully acquired ownership of goods, but there is no other justification or another legitimate purpose, in particularly since grey economy cannot be combated through the possession of a fiscal receipt. The Court noted that the state may not sanction citizens for any action that does not have the character of illegal and immoral behavior of citizens participating in the established market relationships and that these measures and sanctions are contrary to the principle of the rule of law.

1.2. How were issues of social integration or conflict transformed into legal issues?

Social issues become legal issues when the state regulates certain social and economic rights by legal norms. As noted above, constitutional principles of a social state, social justice and solidarity, as abstract principles find their concretisation in the laws governing social rights, such as the right to pension and disability insurance, laws on social and health care and social and health insurance, labor relations laws, tax laws etc., which is within the competence of the legislative power that is the Parliament. Thereby, the position of the Constitutional Court which is expressed in many decisions is that the conditions and criteria for the exercise of the rights of the citizens may be defined only by law (an act of the Parliament), and not by a bylaw (ex. a Government act or an act of the Minister). In this context, with its Decision U.br.99/2006 of 10 January 2007 the Constitutional Court repealed Article 29, paragraph 2 in the part "amounty, criteria" of the Law on Social Care ("Official Gazette of the Republic of Macedonia" nos.50/1997, 16/2000, 17/2003, 65/2004, 62/2005 and 111/2005). In this Decision the Court expressed its stance that the criteria for the exercise of social assistance and the level of social assistance may be determined only by law, not by a bylaw. According to the Court: "*The exercise of the right to social assistance as a form of social assistance provided by the Republic to citizens who are able to work but are materially unsecured pursuant to the principle of social justice may be guaranteed only if the criteria for the exercise of this right and the amount of financial assistance within which framework the concrete material assistance of the user of this right are determined by law. This in particular because the right to social security, through the forms of provision of social welfare, enters the body of fundamental freedoms and rights of the individual and citizen defined by the Constitution of the Republic of Macedonia. In this regard, according to the Court the determination of the circle of beneficiaries of the right to social assistance and the determination of the frames within which the amount of the funds for financial assistance can range are crucial elements that determine the right to social welfare and as such can only be stipulated by law. Without the determination of these elements it derives that the right to social assistance is only declaratively specified in the Law and that there is absence of the conditions required for its exercise, which may question the constitutionally guaranteed right to social security of citizens."* The Court also found that the power of the Government of the Republic of Macedonia to determine the criteria and the amount of social welfare, without any legal framework for the exercise of this right, is not in the function of development, that is, operationalisation of the legal provisions for the purposes of their enforcement, but means interference of the executive branch in the legislative one, as a result of which the Court found a violation of the constitutional principle of separation of powers. (See CODICES-MKD-2007-1-001)

In view of the legal provisions themselves, the Constitutional Court requires them to be clear and precise to avoid arbitrariness in the application of the norm and not to question the very exercise of the right. For example, with its **Decision U.br.84/2008** of 3 December 2008 the Constitutional Court repealed Article 79 of the Law on Employment and Insurance in Case of Unemployment ("Official Gazette of the Republic of Macedonia" nos.37/1997, 25/2000, 101/2000, 50/2001, 25/2003, 37/2004, 4/2005, 50/2006, 29/2007 and 102/2008) which stipulated shortening of the duration of pecuniary assistance to an unemployed person if he/she received additional incomes. The Court repealed the impugned provisions as vague and imprecise pointing out that: "*since from the said provisions of the Law it is unclear whether the person will have his/her right to financial assistance ceased or only the time of receiving the same will be shortened, it follows that this norm makes the constitutionally guaranteed right to social security and social insurance uncertain and arbitrary, leaving it to be exercised not on the basis of the Law (as stipulated in Article 34 of the Constitution) , but on the basis of the will of the body applying the provision in specific cases.*"

From what has been noted it can be concluded that the social issues become constitutional-legal issues when the laws governing these sphere come before the Constitutional Court in a procedure for appraisal of their constitutionality, that is, when a doubt arises that in the normative regulation of social and economic rights the legislator has exceeded, that is, stepped out of the constitutional norms and principles.

1.3. Is there a trend towards an increase in cases on legal issues relating to social integration? If so, what were the dominant questions before your Court in the past and what are they at present?

The analysis of the statistical data on received cases from the social sphere (labor relations, pension and disability insurance, health insurance and social care) in relation to the total number of cases received for the past five years does not show an increasing trend, but rather there is a decreasing trend of the number of cases (in 2009 cases from this field amounted to 18.28% compared to the total number of cases, in 2010 - 17.4%, in 2011 - 17.38%, in 2012 - 15.13%, and in 2013 that number was the lowest and was 13.53%). It is characteristic that the laws in the area of labor relations and pension and disability insurance are constantly present and subject to analysis, that is, appraisal of constitutionality before the Constitutional Court, and due to the reforms in the field of health and social care these laws are more often contested before the Constitutional Court.

2. International standards for social integration

2.1. What are the international influences on the Constitution regarding issues of social integration/social issues?
2.2. Does your Court apply specific provisions on social integration that have an international source or background?
2.3. Does your Court directly apply international instruments in the field of social integration?
2.4. Does your Court implicitly take account of international instruments or expressly refer to them in the application of constitutional law?
2.5. Has your Court ever encountered conflicts between the standards applicable on the national and on the international level? If so, how were these conflicts solved?

The constitutional-legal basis for the application of international agreements in the field of human rights are the following provisions of the Constitution of the Republic of Macedonia (1991): Amendment XXV of the Constitution which provides that: The courts are autonomous and independent. Courts judge on the basis of the Constitution and laws and international treaties ratified in accordance with the Constitution. Article 118 of the Constitution stipulates that: International agreements ratified in accordance with the Constitution are part of the internal legal order and may not be changed by law . Article 8 of the Constitution, which lays down the fundamental values of the constitutional order of the Republic of Macedonia, *inter alia*, sets forth as fundamental values the fundamental rights and freedoms of the individual and citizen, recognized in international law and defined in the Constitution (Article 8 paragraph 1 line 1) and observance of generally accepted norms of international law (Article 8, paragraph 1, line 11).

From the said provisions it arises that in addition to the Constitution and laws international treaties are an integral part of the internal legal order, that is, the source of law and courts apply them in accordance with the constitutional provision of Amendment XXV in exercising their functions. International treaties as part of the internal order are automatically incorporated into the internal legal order of the Republic of Macedonia and 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 expressly stipulate the competence of the Constitutional Court in terms of international treaties, it does not assess the conformity of international treaties with the Constitution, nor does it appraise the conformity of laws with international traties.

Hence, the Constitutional Court does not apply international treaties directly, but indirectly. The Constitutional Court uses and regularly quotes them in its decisions or resolutions dealing with issues related to human freedoms and rights as an additional argument for the constitutionality or legality of the act being the subject of appraisal.

In the so far constitutional case-law the Constitutional Court of the Republic of Macedonia in a number of cases has applied, that is, quoted international sources of law, most often the European Convention for the Protection of Human Rights and Fundamental Freedoms, and also the universal human rights documents such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights[1], the European Social Charter[2], the conventions of the International Labour Organization. Aiming at protecting the environment and human health, and invoking Article 12 of the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on 16 December 1966, which defines the right of everyone to meet the highest attainable standard of physical and mental health, as well as the Preamble to the Constitution of the World Health Organization that the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being irrespective of race, religion, sex, belief, economic and social status, in May 2003 the World Health Organization adopted the Framework Convention on Tobacco Control, and others.

From the international documents at regional that is European level, in the so far work in addition to the European Convention on Human Rights the Constitutional Court has also applied the following conventions: the European Convention on the Rights of the Child[3], the European Charter on Regional and Minority Languages[4], the Framework

[1] In the case **U.br.261/2008** of 16 September 2009 in the appraisal of the constitutionality of the Law Against Smoking, the Constitutional Court invoked the Covenant, and the Constitution of the World Health Organisation and the Framework Convention on Tobacco Control of the World Health Organisation, in the context of the right of everyone to meet the highest attainable standard of physical and mental health.

[2] In the case U.br.139/2005 of 21 December 2005 the Constitutional Court found that the provisions for damage compensation in case of unlawful termination of employment were in disagreement with the Constitution and invoked the provisions of the International Covenant on Economic and Social Rights and the European Social Charter in view of the right of the worker to a salary.

[3] In its Resolution **U.br.133/2004** of 9 February 2005, appraising the constitutionality of a lot of provisions in the Family Law, the Constitutional Court invoked the European Convention on the Rights of the Child in view of the powers of the Centre for Social Work for the development and special protection of the children.

[4] In the case **U.br.23/1997** the Constitutional Court invoked the provisions of a number of international documents for the protection of national minorities in connection with the right to instruction and education in the language of the nationalities at the Faculty of Pedagogy. In this case the Court considered the international documents relating to the rights of the members of the nationalities to education and the prohibition against discrimination in education, such as: The UNESCO Convention Against Discrimination in Education, adopted on 14 December 1960, and entered into force on 22 May 1962; the European Charter on Regional and Minority Languages, adopted by the Council of Europe on 5 November 1992; the Framework Convention for the Protection of National Minorities, adopted by the Council of Europe Committee of Ministers on 10 November 1994 and ratified by our state, and the CSCE Document on Human Dimension in Copenhagen, adopted on 12 June 1990.

Convention for the Protection of National Minorities, the European Social Charter[5], the European Convention on the Adoption of Children[6].

3. Constitutional instruments enhancing/dealing with/for social integration

3.1. What kind of constitutional law does your Court apply in cases of social integration – e.g. fundamental rights, principles of the Constitution ("social state"), "objective law", *Staatszielbestimmungen,* ...?

In the cases of social issues, the Constitutional Court almost always takes as a starting point the constitutional principle set out in Article 1 of the Constitution, under which the Republic of Macedonia is defined as a sovereign, independent, democratic and **social state**. As noted in the answer to the first question, this principle is abstract and it is specified in the further provisions of the Constitution. Therefore, in its decision-making on social and economic rights the Constitutional Court in particular invokes Article 35 of the Constitution, under which the Republic provides for the social care and social security of citizens in accordance with the principle of social justice. Starting from this provision, in a number of its decisions, in particular those concerning various benefits in the area of social security and social care, the Constitutional Court has indicated that not only does this obligation include a requirement for the state to regulate normatively the concrete right, but also to provide financial resources for its effective exercise: "*The care of the Republic for social security and fairness to citizens in addition to the normative function for the exercise of the right also includes provision of material and financial resources because without the realisation of this component rights would be as declaration without any value, which devises the state as a social*. (**Decision U.br.199/2008** of 18 March 2003, CODICES-MKD-2009-1-002).

The Constitutional Court invokes the principles of social justice and social solidarity in principle as a rule, and then in the analysis, depending on the particular case, that is, the right concerned, it refers to the constitutional provisions that govern that particular economic, social right. Given that most economic-social rights guaranteed by the Constitution require further concretisation in the laws passed in the Parliament, in the proceedings for abstract control of laws the Constitutional Court examines, that is, assesses whether the legislator in the legislative development and concretisation of individual rights respected the constitutional norms and principles.

In the constitutional case-law there are instances when the Constitutional Court, analyzing certain social and economic rights, has found a violation of the constitutional principle of **separation of powers**, so that this principle is also invoked by the Constitutional Court in its decisions. For example, with its **Decision U.br.99/2006** of 10 January 2007 (CODICES MKD-2007-1-001), the Constitutional Court repealed a provision of the Social Care Act which envisaged the amount and criteria for exercising the right to social assistance to be determined by the Government with its own act. The Court noted that: "*the determination of the circle of beneficiaries of the right to social assistance and the determination of the frames within which the amount of the funds for financial assistance may range are crucial elements that determine the right to social welfare and as such may be determined by law only. Without the determination of these elements it arises that the right to social assistance is only declaratively specified in the Law and there are no*

[5] In the case **U.br.139/2005**, the Court invoked the provisions of the European Social Charter in connection with the right to just remuneration.

[6] In the case **U.br.133/2004**, the Constitutional Court invoked the provisions of the European Convention for the Adoption of Children regarding the collection of data on the adopter and in view of the so-called adaptive period in adoption, and the European Convention on Citizenship regarding the inter-state adoption and the repercussions on the citizenship of the child in this type of adoption.

conditions required for its exercise, which may question the constitutionally guaranteed right to social security of citizens. Hence, the Court found that the authorisation of the Government of the Republic of Macedonia defined by the contested Article 29, paragraph 2 of the Law to determine the criteria and the level of social welfare, without any legal framework for the exercise of this right, is not in the function of development, that is, operationlisation of the legal provisions for their enforcement, but means interference of the executive power in the legislative one".

Iin the context of issues of the social sphere, the Court has also invoked the **constitutional principle of equality and prohibition of discrimination**. The Court found a violation of this principle in its **Decision U.br.199/2008** of 18 March 2009 (CODICES-MKD-2009-1-002) for the right to compensation for a living child. Namely, confronted with the "white plague" and in an effort to increase the birth rate, in 2008 the state introduced the special allowance for living children of mothers living in municipalities in which the birth rate was under 2.1 living children per woman, as one of the measures for stimulation of birth. The issue was raised before the Constitutional Court by a citizen who felt that the measure was discriminatory. The Court sustained the application and in its Decision pointed out that: "*from the challenged part of Article 24-a of the Law it arises that it actually does not provide for equal treatment of women in the exercise of the right to compensation for living children for a reason that this right is stipulated only for women-mothers who have a residence in municipalities in which the birth rate is below 2.1 living children per woman, and which is determined according to the data of the State Statistical Office of the Republic of Macedonia, published in the previous year. The Court does not find disputable the fact that the legislative power has the right to prescribe by law certain conditions, manner and means of exercising the right to health insurance and social care, and within these frameworks to define the strategy as the case is with the birth rate provided for in the contested Article 24-a of the Law, and aimed at the state running a humane population policy. However, in the regulation of the relations the legislator is obliged to prescribe equal rights for citizens regardless of which municipality they live in, excluding any differences and discrimination between people when they exercise their individual rights, thereby taking into account humanism, social justice and solidarity. In the opinion of the Court, the legal solution that only mothers with residence in municipalities in which the rise the birth rate is below 2.1 living children per woman have a right to financial assistance for living children under the disputed legal provision is limitation of the exercise of the right to health insurance for persons-mothers belonging to the municipalities not covered by the challenged legal provision which violates the principles of equality of citizens before the Constitution and laws, social justice, equal protection of mothers and children, as well as the constitutional provision on humanism, social justice and solidarity as the fundamental values of the constitutional order of the Republic of Macedonia*".

One of the most important decisions of the Constitutional Court of the Republic of Macedonia in which the Court found a violation of the constitutional principle of **equality and non-discrimination** is its **Decision U.br.191/2005** of 12 April 2006 (CODICES MKD-2006-1-001) which repealed a number of provisions from the Law on Representatives ("Official Gazette of the Republic of Macedonia" no.84/2005) which provided for a right to pension for the Representatives in the Assembly of the Republic of Macedonia under different, privileged conditions in terms of the general conditions for the eligibility of pension applicable for the other holders of public office and the citizens of the Republic of Macedonia. In this decision the Court indicated that the status and position of the Representative in the legal system of the state may not be justified reasons for departing from the general principles in this area to the extent that was provided for by this Law.

The Court found that: "*the challenged provisions of the Law by themselves and in advance cannot be contrary to the constitutional principle of equality (Article 9 of the Constitution of the Republic of Macedonia), or the principle or the rule of law (Article 8,*

paragraph 1, line 3 of the Constitution), because the legislator has established different - more favorable conditions for early retirement for this category of insurees. However, according to the Court, the conditions thus established must be based on valid reasons, be acceptable in relation to the general principles of regulation of these rights in this area, without grounds not to stand out from the group of insurees they belong to in order not to jeopardize the provision of Article 1 of the Constitution of the Republic of Macedonia which defines the Republic of Macedonia as a democratic and social state which can indirectly reflect on the other constitutional principles of equality, the rule of law and social justice .... Hence, taking into consideration what has been noted the Court found that with the challenged legal provisions the legislator defined different conditions and way of acquiring early old-age pension which basically cannot be anything other than acquiring rights under privileged conditions and apply to the Representatives only, and not to all holders of public office who are in the same social position or to all citizens without the existence of justified grounds therefor, therewith the legislator putting the citizens in an unequal position, which is in direct contravention of Article 9 of the Constitution of the Republic of Macedonia".

In the context of social issues and social rights in a number of provisions the Constitutional Court has found a violation of the constitutional principles of **the rule of law and legal certainty**, most often in cases where the legislator has provided for certain obligations for the citizen that the Constitutional Court held to be disproportionate and to represent and excessive burden on citizens.

For example, aiming at preventing and sanctioning “black” employment and the exploitation of the unemployed, a provision was introduced into the Law on Employment and Insurance in Case of Unemployment which envisaged that the unemployed person who would be employed by an employer without concluding employment contract was required to report the employer to the competent inspection authority. With its **Decision U.br.103/2010** of 22 December 2010 the Constitutional Court repealed that provision indicating that while it is a legitimate concern of the legislator to establish social discipline and prevent labor exploitation of workers by evading the obligations for the employment of workers that requirement is inconsistent with the Constitution: *"because the obligation for control of employers for the regulation of the right of persons being employed, that is, contracting for employment to a limited or unlimited time in terms of the Law on Labour Relations may be performed by competent state institutions only, that is, the State Labour Inspectorate, but in any case it could not be a requirement for the employee ... The specific way through which the legislator wanted to achieve the goal of establishing a social discipline, according to the Court, is disproportionate and also a burden on the citizen, that is, employee. The obligation established by law for the worker means a violation of the constitutional principle of* ***the rule of law and the legal certainty*** *of citizens as such obligation is not aimed at providing greater certainty in the sphere of labor relations ... According to the Court, the impugned provision also violates the* ***principle of protection of dignity****, because it stipulates that the employee actually reports on himself/herself*."

In the cases in the field of social rights, the Constitutional Court sometimes also invokes the principle of **protection of legitimate expectations and the prohibition of retroactive effect** of laws. For example, with its **Decision U.br.119/2006** of 27 June 2007, the Constitutional Court repealed the provision of the Law on Changing and Supplementing the Law on Employment and Insurance in Case of Unemployment ("Official Gazette of the Republic of Macedonia", no.50/2006) as it envisaged a retroactive application of the new law to the previously submitted requests for acquiring financial unemployment assistance, which right had been acquired on the basis of the previously applicable law.

The Court noted that the legislator has the right when changing the ergime of regulation of relations in certain area to regulate the transition from the old to the new regime, but the state should ensure that this transition takes place in a way as to not

question, or to not endanger legal certainty and already acquired rights and interests to which they relate. The Court emphasised that: "*the date of the filing of the application for the exercise of certain right, even the right concerned is the moment when the applicant acquires the right in accordance with the legal regulations that are valid and the exercise of the right concerned may not be questioned at all due to the legal changes that may occur in the meantime, and that are not more favourable for the citizens .... The contested Article 4 of the Law creates a legal situation, that is, a possibility to apply the law also to relations - applications that were filed before its entry in force, whereby the law has a retroactive effect.*"

3.2. In cases where there is access of individuals to the Constitutional Court: to what extent can the various types of constitutional law provisions be invoked by individuals?

In the Republic of Macedonia there is a direct access of the citizens to the Constitutional Court. In the procedure for abstract control of laws, pursuant to the Rules of the Constitutional Court, anyone can file a motion for initiating a procedure for appraising the constitutionality of a law and the constitutionality and legality of a regulation or other general act (*actio popularis*). Thus, neither is it required from the citizen to prove that he/she has a legal interest in bringing the issue before the Constitutional Court, nor other conditions are set, such as to be represented or to pay a court fee. In practice, most of the initiatives are submitted by citizens (80%). In the event that a citizen believes that a law or bylaw has violated the Constitution, he/she may ask the Constitutional Court to appraise the constitutionality of that regulation, thereby invoking concrete provision(s) of the Constitution he/she deems to have been violated with the regulation. Thereby, there is no restriction as to which constitutional norms can be raised - it may be the general constitutional principles and guidelines as defined in Article 8 of the Constitution as the fundamental values of the constitutional order of the Republic of Macedonia, as well as specific provisions of the Constitution pertaining to certain social, economic or other rights.

There is a direct access of citizens to the Constitutional Court also in the procedure for the protection of freedoms and rights. In the decision-making on the protection of the rights and freedoms of the individual and citizen, the Constitutional Court appreciates the individual acts (court judgment or administrative act) or actions that violated certain right or freedom of the citizens, which are safeguarded by the Constitutional Court and it may annul them if it finds that they violated any of the rights referred to in Article 110 line 3 of the Constitution (freedom of conviction, conscience, thought and public expression of thought, political association and activity, and the prohibition of discrimination on grounds of sex, race, religion, national, social or political affiliation). In these cases, citizens most often invoke the constitutional provisions which guarantee the right whose protection is required before the Constitutional Court.

3.3 Does your Court have direct competence to deal with social groups in conflict (possibly mediated by individuals as claimants/applicants?

The Constitutional Court of the Republic of Macedonia is competent to appraise the conformity of laws and by-laws with the Constitution, that is, the conflict of laws and by-laws with the Constitution, and has no direct authority to deal with conflicts between social groups, in the sense of a mediator.

However, given the legal effect of the decisions of the Constitutional Court which are final and enforceable and binding on all, and considering that with the decision that finds a law or other regulation to be unconstitutional the same is removed from the legal system, it could be said that the Constitutional Court indirectly has an impact on the resolution of the conflict between social groups, in case when the cause of such conflicts are certain provisions of the laws or regulations that are subject to appraisal before the Constitutional Court. Such would

be the case when the proceedings before the Constitutional Court is raised by, for instance, a trade union or an employers' organisation in order to appraise the constitutionality of certain provision regulating the social and economic rights of workers and for which there are conflicting opinions between the trade union and the employers' organisation.

3.4. How does your Court settle social conflicts, when such cases are brought before it (e.g. by annulling legal provisions or by not applying them when they contradict the principle of equality and non-discrimination)?

When the Constitutional Court finds that a law or by-law is contrary to the Constitution it may take two types of decisions - annulling (*ex tunc*) or repealing (*ex nunc*). Pursuanto to Article 73 of the Rules of the Constitutional Court, in the decision-making whether it shall annul or repeal a law, regulation or general act the Constitutional Court will take into account all circumstances relevant to the protection of the constitutionality and legality, and especially the severity of the violation and its nature and importance for the exercise of the freedoms and rights of citizens or for the relationships that are established based on those acts, the legal certainty, and other circumstances relevant to the decision-making.

According to Article 79 of the Rules, the decision of the Constitutional Court repealing or invalidating a law, regulation or other general act generates legal effect from the date of its publication in the "Official Gazette of the Republic of Macedonia". With the repeal, that is annulment, the act practically ceases to be valid and is no longer part of the legal system, that is, may not be the legal basis for the adoption of individual acts in the future, or for the execution of the individual acts adopted on its basis. Pursuant to Article 80 of the Rules, the execution of the final individual acts adopted pursuant to a law, regulation or other general act which was repealed or annulled by a decision of the Court may not be allowed, nor implemented, and if the execution has commenced it shall be stopped.

The legal effect, that is, effects from the decisions of the decisions of the Constitutional Court depend on the type of decision. Thus, if there is a decision of the Court annulling a law or other regulation its effect is *ex tunc*. According to this rule, such decisions of the Court have effect in the future and retroactively from the time of the adoption of the annulled law or other regulation. The consequences from the application of the annulled law or other regulation are removed by returning things to the previous state, i.e. into the situation which existed before the enactment of the law or other regulation.

In accordance with this legal effect of anulling decisions of the Constitutional Court, and for the purposes of eliminating the consequences from the application of the law or other regulation that was annulled, Article 81 paragraph 1 of the Rules of the Constitutional Court provide for that anyone whose rights have been violated by a final or effective act adopted pursuant to a law, regulation or other general act that was annulled by the decision of the Constitutional Court has a right to request from 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 of the individual act in the sense of the previous paragraph cannot remove the consequences from the application of the law, regulation or general act which was annulled with a decision of the Constitutional Court, the Court may decide to have the effects removed by means of reinstatement to the previous condition, compensation for damages, or someother way.

As an example of annulling decision we can note the **Decision U.br.77/2000** of 13 September 2000 (CODICES-MKD-2000-3-007), with which the Constitutional Court annulled the Law on Early Retirement ("Official Gazette of the Republic of Macedonia" nos.37/2000, 41/2000 and 53/2000), which envisaged early retirement of employees in state bodies as it found that the Law violated the constitutional principle of equality, that is, it

treated inequally citizens having the same social status. When the Constitutional Court initiated proceedings for the appraisal of the constitutionality of the Law, it also imposed a temporary measure stopping the enforcement of the law in order to prevent the occurrence of consequences that would be difficult to remove, given that the Law encompassed an entire category of employees in state bodies. The final decision of the Court in this case was annulling, in order to eliminate the effects that resulted from the application of the Law, that is, the employees who had gone to early retirement on the basis of this law following the final decision returned to work.

The court also may, at any stage of the proceedings until the final decision is taken, pass a resolution to stop the execution of individual acts or actions taken on the basis of a law, other regulation or general act whose constitutionality is being appraised if its execution could result in consequences difficult to be removed. Thus, through the temporary measures the application of the law for which there is a question of being unconstitutional is prevented until the final decision of the Court repealling it and putting it out of the legal order.

3.5. Can your Court act preventively to avoid social sonflict, e.g. by providing a specific interpretation, which has to be applied by all state bodies?

The Constitutional Court cannot act preemptively, given that the competence for appraising the constitutionality and legality only applies to acts that are already adopted and are part of the legal system (*a posteriori*), that is, it does not have a preliminary authority. However, given that the decisions of the Constitutional Court are final and enforceable and have an *erga omnes* effect, it means that everyone, including state authorities, are obliged to observe them. This means that the legislator is obliged to respect the views expressed in the decisions of the Constitutional Court in the normative regulation of relations, that is, in the adoption of laws and not to adopt the same norms that were previously repealed by the Constitutional Court. The courts are also obliged to observe the decisions of the Constitutional Court and in the direct application of the law to specific cases to act in line with the legal stances and interpretation of the norms by the Constitutional Court.

3.6. Has your Court ever encountered difficulties in applying these tools?

In the decision finding that the law or regulation or general act is inconsistent with the Constitution, that is, law the Constituional Court only elaborates the reasons why the act is unconstitutional or illegal, without thereby giving suggestions to the legislator, or the adopter of the act how to remove the drawbacks, or leaving a deadline within which the adopter of the act should act upon to eliminate the unconstitutionality of the act. In practice usually the legislator observes the decisions of the Constitutional Court, by amending the laws according to the legal standpoint expressed by the Constitutional Court in its decisions.

As previously indicated, neither can the Constitutional Court oblige the Assembly of the Republic of Macedonia, being the holder of the legislative power, to eliminate the drawbacks in the laws which were previously assessed by the Constitutional Court to be in contradiction with the Constitution, nor a possibility is envisaged for the Court to determine a deadline for the Assembly in this regard. The Assembly, being the legislative body, is constitutionally obliged to respect the Constitution, the laws it adopted, and the decisions of the Constitutional Court repealing or anulling a law. Even in the case when due to a repealing or annulling decision of the Constitutional Court a legal gap has occurred, the Constitutional Court cannot directly impose on the legislative authority an obligation to adopt a new law instead of the one that has ceased to be valid as a consequence of the decision of the Constitutional Court, nor indicate it what the content of the new law should be. Hence, the filling in of the legal gap that has occurred as a result of the termination of validity of the unconstitutional law is the responsibility of the legislator.

3.7. Are there limitations in the access to your Court (for example only by State powers), which prevent it from settling social conflicts?

There are no limitations in the access to the Court, given that every citizen, regardless of the legal interest and without any charge, may file an application before the Constitutional Court for the appraisal of the constitutionality of a law or regulation.

4. The role of constitutional justice in social integration

4.1. Does your Constitution enable your Court to act effectively in settling or avoiding social conflict?

As noted in the answers to the previous questions, while the Constitutional Court has no jurisdiction to resolve social conflicts, indirectly through the legal effect of its decisions it may influence the way of resolution of certain disputed issues, if a procedure is initiated before it for the appraisal of the constitutionality of certain laws or regulations that are the source, that is, cause for the dispute that is social conflict.

4.2. Does your Court *de facto* act as 'social mediator', or/and has such a role been attributed to it?

See the answer to the preceding question.

4.3. Have there been cases, when social actors, political parties could not find any agreement, they would 'send' the issue to your Court which had to find a 'legal' solution, which normally should have been found in the political arena?

Such cases are not possible because the Constitutional Court of the Republic of Macedonia has no preliminary authority to present its view on the constitutionality of draft laws, or proposed laws. It is responsible to appraise the constitutionality of laws and regulations that have already been adopted. Thus, the assumption is that by regulating certain issue by law the legislator thereby solves the conflict between social actors, so that the task of the Constitutional Court is not to assess the appropriateness, that is, adequacy or suitability of a legal solution but its conformity with the Constitution. If regarding certain sensitive issue for which there is great public interest, the views of the political parties represented in Parliament are divided and contradictory and cannot be harmonized in the procedure for the preparation and adoption of the law, it happens that immediately after the adoption of the law the political parties which are a minority in the Parliament to immediately challenge the law before the Constitutional Court. In such cases also the Constitutional Court does not appraise the suitability of the legal solutions, but its constitutionality.