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# URGENT OPINION ON THE LEGAL EFFECT AND ENFORCEMENT OF THE DECISIONS OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF NORTH MACEDONIA

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## NORTH MACEDONIA

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Based on an unofficial English translation of the Act provided by the Constitutional Court of the Republic of North Macedonia.

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## EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

Constitutional courts play a fundamental role as guardians of the Constitution, democracy, and human rights, and the effective enforcement of their decisions is a key component of the rule of law, and is essential to ensure legal certainty and maintain public trust in the constitutional order.

The Constitution of the Republic of North Macedonia grants the Constitutional Court a comparatively broad regulatory autonomy under its Article 113, allowing it to adopt its own Act governing procedural and organizational matters. While this reflects institutional independence, it also results in a framework where significant aspects of the Constitutional Court's functioning, including mechanisms to ensure the execution and enforcement of its decisions, are regulated by an internal act of the Constitutional Court rather than through detailed constitutional or legislative provisions. The *sui generis* status of the Act of the Constitutional Court of the Republic of North Macedonia adopted in 2024 (hereinafter, "the Act"), under review, may contribute to certain issues of systemic coherence within the enforcement framework, which may in turn affect the effectiveness of arrangements for ensuring the execution and enforcement of the Constitutional Court decisions.

Overall, the provisions of the Act governing the legal effects and enforcement of the decisions of the Constitutional Court of the Republic of North Macedonia provides some generally balanced and foreseeable solutions, although it could be improved through clearer, more precise and consistent, as well as detailed provisions with a view to strengthen the regulatory and institutional mechanisms for enforcing Constitutional Court decisions. At the same time, the diversity of constitutional models in the OSCE region shows that there are no uniform standards in this area and the effectiveness of enforcement mechanisms also depends largely on a number of other factors beyond formal design.

Although the Act establishes that Constitutional Court decisions are final, binding and enforceable as also provided in the Constitution, several uncertainties remain regarding their legal effects across different types of proceedings and competences. In particular, it is not explicitly provided in the Act nor in the Constitution that courts are bound by Constitutional Court decisions and required to execute them, although binding force on all legal subjects is provided in general terms. Further ambiguities exist regarding the legal effects of Constitutional Court decisions in respect of competences other than the review of constitutionality of laws, as well as the extent to which the corresponding application clause under Article 70 of the Act also covers such effects.

With respect to the execution and enforcement specifically, the Act provides a number of mechanisms, including obligations on competent authorities, some functions for monitoring execution, and the possibility for the Constitutional Court to request public authorities to ensure enforcement. However, enforcement remains largely dependent on co-operation with public authorities. Certain procedural gaps may also contribute to non-execution or non-enforcement,

including the lack of notification requirement for the decisions, the absence of clearly designated monitoring or follow-up structures or units responsible for monitoring and follow-up equipped with appropriate resources, and the practical modalities for ensuring compliance across different branches of government.

Beyond the normative framework, any reform should also take into account the broader structure of constitutional review, as well as the procedural and institutional arrangements that may affect the implementation of the Court's decisions. The effective execution and enforcement of Constitutional Court decisions require complementary institutional and other practical and programmatic measures, including raising awareness among legal professionals and the public, enhancing judicial training, improving dissemination of decisions among legal professionals, and fostering structured communication between the Constitutional Court, Parliament/relevant parliamentary committees and other public authorities. Such measures are essential to develop a sustained culture of compliance and to ensure that Constitutional Court decisions are effectively implemented in practice.

Overall, while the Act provides a basis for execution and enforcement of Constitutional Court decisions, its effectiveness depends on reinforcing institutional co-ordination, developing clearer procedures and strengthening practical implementation mechanisms. In addition, although this goes beyond the scope of the present Urgent Opinion, should it be assessed that some challenges relating to the execution and enforcement of Constitutional Court decisions may stem, among other factors, from the existing constitutional framework, and that there is a need to further reinforce the Court's role and status within the domestic legal order, certain aspects may ultimately require constitutional amendments, where appropriate, including to embed safeguards and guarantees of independence at the highest normative level.

More specifically, and in addition to what is stated above, ODIHR makes the following recommendations to further enhance the execution and enforcement of the decisions of the Constitutional Court of the Republic of North Macedonia, although acknowledging that a structured assessment of the causes of non-execution and non-enforcement would assist in identifying the most appropriate reform measures tailored to the source of implementation difficulties in North Macedonia:

A. Regarding the Legal Effect of the Decisions of the Constitutional Court:

1. To consider introducing an explicit obligation for all public authorities to take into account not only the operative part but also the legal reasoning of the Court when adopting subsequent individual or general acts; [para. 40]
2. To consider introducing an explicit statutory prohibition on the re-adoption of legal norms previously declared unconstitutional by the Constitutional Court; [para. 43]
3. To clarify the scope of Article 84 by specifying whether annulment of individual acts presupposes a demonstrated violation of rights or whether such violation is presumed as a consequence of the annulment of the underlying norm; [para. 45]

4. To clarify in Article 85, in conjunction with Article 88, that the Court may defer or suspend the legal effects of its decisions, and to introduce clear criteria guiding the exercise of this discretion in order to ensure legal certainty; [para. 53]
  5. To ensure that all adverse consequences, including violations of human rights and freedoms, of unconstitutional or unlawful norms may be appropriately remedied, irrespective of whether they take the form of individual acts or arise directly from laws or other general acts declared unconstitutional; [para. 48]
  6. To clarify that refusal by a public authority to annul an individual act adopted on the basis of a law or other general act later declared to be unconstitutional or unlawful is subject to judicial review, either explicitly within the Act or through clear cross-references to applicable procedural legislation; [para. 49]
- B. To introduce an obligation for the Constitutional Court to notify the public authority or persons responsible for the execution of its decision(s); [para. 55]
  - C. To consider strengthening the institutional framework for monitoring execution by establishing a dedicated internal unit within the Constitutional Court with clearly defined competences and adequate human and financial resources; [para. 58]
  - D. To introduce an obligation to publish findings on the monitoring of execution of Constitutional Court decisions, thereby enhancing transparency and accountability; [para. 65]
  - E. To clarify and further develop the procedural modalities through which public authorities may seek assistance in ensuring the execution of Constitutional Court decisions, and to assess whether such mechanisms should be anchored at constitutional level or in a supra-legislative instrument; [para. 63]
  - F. To consider complementing Article 91 by providing for additional legal consequences of non-enforcement of Constitutional Court decisions, including systematic publication of non-compliance findings in official and institutional channels; [para. 65] and
  - G. To consider formalizing mechanisms for systematic transmission of Constitutional Court decisions to Parliament and strengthening structured dialogue with other relevant public authorities, including parliamentary committees, including through their reflection in annual reports. [para. 71]

***These and additional Recommendations, are included throughout the text of this Opinion, highlighted in bold.***

***As part of its mandate to assist OSCE participating States in implementing their OSCE human dimension commitments, ODIHR reviews, upon request, draft and existing laws to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.***

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ANNEX: *Excerpts from the [Act of the Constitutional Court of the Republic of North Macedonia](#) related to the legal effects and enforcement of the decisions of the Constitutional Court*

## I. INTRODUCTION

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1. On 1 April 2026, the President of the Constitutional Court of the Republic of North Macedonia, sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter “ODIHR”) a request for a legal review of the Act of the Constitutional Court of the Republic of North Macedonia (hereinafter “the Act”).
2. On 10 April 2026, ODIHR responded to this request, confirming the Office’s readiness to prepare the requested legal review. At the same time, given the event on the enforcement of Constitutional Court decisions scheduled for 30 April 2026, it was agreed that priority will be given to the preparation of an urgent legal analysis of relevant provisions of the Act relating to the legal effect and enforcement of Constitutional Court decisions, with examples of good comparative practices from other OSCE participating States. ODIHR also informed that a separate legal review of the full Act will be provided at a later stage, assessing its compliance with international human rights standards and OSCE human dimension commitments.
3. Given the short timeframe for preparing this legal analysis, the present Urgent Opinion does not provide a detailed analysis of all the relevant provisions of the Act. Instead, it focuses primarily on the most concerning issues related to the enforcement of Constitutional Court decisions. The absence of comments on certain of the provisions of the Act should not be interpreted as an endorsement of those provisions. A more comprehensive and detailed analysis of the issue may be included in the forthcoming legal Opinion on the full Act, which may revisit some of the initial findings and recommendations contained in this Urgent Opinion and provide a final, more comprehensive assessment, also taking into account information gathered during the 30 April 2026 event.
4. This Urgent Opinion was prepared in response to the above request. ODIHR conducted this assessment within its mandate to assist the OSCE participating States in the implementation of their OSCE human dimension commitments.<sup>1</sup>

## II. SCOPE OF THE URGENT OPINION

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5. The scope of this Urgent Opinion covers only the issue of legal effect and enforcement of decisions taken by the Constitutional Court of the Republic of North Macedonia. Thus limited, the present Urgent Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework regulating the Constitutional Court.
6. The Urgent Opinion raises key issues and provides indications of areas of concern. In the interest of conciseness, it focuses more on those provisions that require amendments or improvements than on the positive aspects of the Act. The ensuing legal analysis is based on international and regional human rights and rule of law standards, norms and recommendations as well as relevant OSCE human dimension commitments. The Opinion also highlights, as appropriate, good practices from other OSCE participating

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<sup>1</sup> See especially *OSCE Decision No. 7/08 Further Strengthening the Rule of Law in the OSCE Area* (2008), point 4, where the Ministerial Council “[e]ncourages participating States, with the assistance, where appropriate, of relevant OSCE executive structures in accordance with their mandates and within existing resources, to continue and to enhance their efforts to share information and best practices and to strengthen the rule of law [on the issue of] independence of the judiciary, effective administration of justice, right to a fair trial, access to court, accountability of state institutions and officials, respect for the rule of law in public administration, the right to legal assistance and respect for the human rights of persons in detention [...]”.

States in this field. When referring to national legislation, ODIHR does not advocate for any specific country model; it rather focuses on providing clear information about applicable international standards while illustrating how they are implemented in practice in certain national laws. Any country example should always be approached with caution since it cannot necessarily be replicated in another country and has always to be considered in light of the broader national institutional and legal framework, as well as country context and political culture.

7. Moreover, in accordance with the *Convention on the Elimination of All Forms of Discrimination against Women*<sup>2</sup> (hereinafter “CEDAW”) and the *2004 OSCE Action Plan for the Promotion of Gender Equality*<sup>3</sup> and commitments to mainstream gender into OSCE activities, programmes and projects, the Opinion integrates, as appropriate, a gender and diversity perspective.
8. This Urgent Opinion is based on an unofficial English translation of the Act provided by the Constitutional Court, which is attached to this document as an Annex. Errors from translation may result. Should the Urgent Opinion be translated in another language, the English version shall prevail.
9. In view of the above, ODIHR would like to stress that this Urgent Opinion does not prevent ODIHR from formulating additional written or oral recommendations or comments on respective subject matters in North Macedonia in the future.

### **III. LEGAL ANALYSIS AND RECOMMENDATIONS**

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#### **1. RELEVANT INTERNATIONAL HUMAN RIGHTS STANDARDS AND OSCE HUMAN DIMENSION COMMITMENTS**

10. The essential role of constitutional courts or comparable bodies<sup>4</sup> entrusted with constitutional review in ensuring that the principles of the rule of law, democracy and human rights are observed in all state institutions has been emphasized in the *OSCE Decision No. 7/08 on Further Strengthening the Rule of Law in the OSCE Area* (2008).<sup>5</sup> As ultimate guarantors of the interpretation and observance of the Constitution of a state, constitutional courts act as guardians of the constitutional and legal order, upholders of the separation of powers and democracy, and protectors of fundamental rights. The effectiveness of constitutional adjudication constitutes a fundamental prerequisite for the existence of the rule of law, ensuring that all public authorities act in conformity with the Constitution and that the decisions of constitutional courts are binding on all branches of power. Conversely, the non-execution of Constitutional Court’s decisions may seriously undermine the authority of the Court itself and, in turn, that of the Constitution.
11. The constitutional review process is essential to guarantee the conformity of legislation and other acts of public authorities with the Constitution, but also to ensure that

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<sup>2</sup> *UN Convention on the Elimination of All Forms of Discrimination against Women* (hereinafter “CEDAW”), adopted by General Assembly resolution 34/180 on 18 December 1979. North Macedonia became a State Party to the Convention by succession on 18 January 1994.

<sup>3</sup> See *OSCE Action Plan for the Promotion of Gender Equality*, adopted by Decision No. 14/04, MC.DEC/14/04 (2004), par 32.

<sup>4</sup> It is noted that under Chapter IV of the Constitution of North Macedonia, the Constitutional Court is considered separately from courts governed by Chapter III.4, although it is considered a court within the meaning of Article 6 of the ECHR and Article 14 of the ICCPR, and other international documents, to the extent individuals may lodge constitutional complaints when considering that the law of North Macedonia applied in the final court judgment in his/her case contradicts the Constitution and the outcome of the proceedings before the Constitutional Court is decisive for the determination of an individual’s civil rights and obligations; see as a comparison, European Court of Human Rights (ECtHR), *Xero Flor w Polsce sp. z o.o. v. Poland*, no. 4907/18, 7 May 2021, paras. 187-210.

<sup>5</sup> See particular OSCE Ministerial Council Decision No. 7/08 “Further Strengthening the Rule of Law in the OSCE Area”, 8 December 2008, para. 4.

constitutions, once adopted, remain relevant to people's daily life. In this context, the effective enforcement of the Constitutional Court's decisions is a fundamental element of the rule of law and pivotal for ensuring legal certainty and maintaining public trust in the authority of the Constitutional Court.<sup>6</sup> It further ensures that constitutional adjudication produces practical legal effects within the domestic legal order.

12. While acknowledging the particular nature and specificities of constitutional adjudication, since the outcome of the proceedings before the Constitutional Court may be decisive for the determination of an individual's civil rights and obligations, key principles pertaining to judicial independence and impartiality – guaranteed in particular by Article 14 of the International Covenant on Civil and Political Rights<sup>7</sup> (ICCPR), Article 6 of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR),<sup>8</sup> and OSCE human dimension commitments<sup>9</sup> – have to be respected also when reforming legislation regulating constitutional courts. The international human rights standards and OSCE commitments relevant to the role, mandate, organization and functioning of the Constitutional Court will be further elaborated in the forthcoming ODIHR Opinion on the Act of the Constitutional Court of the Republic of North Macedonia.
13. With respect to the legal effect and enforcement of Constitutional Court decisions specifically, the European Court of Human Rights (ECtHR) held that a State is required to provide litigants with a system whereby they are able to secure the proper execution of domestic court decisions, including decisions of the Constitutional Court.<sup>10</sup> In addition, the CoE Consultative Council of European Judges (CCJE) also provided comments and guidance with respect to the enforcement of judicial decisions more generally, noting that the very notion of an “independent” tribunal implies that its power to give a binding decision may not be subject to approval or ratification, or the decision altered in its content, by a non-judicial authority, including executive authority and that the effective enforcement of a binding judicial decision is a fundamental element of the rule of law and is essential to ensure the trust of the public in the authority of the judiciary.<sup>11</sup> As underlined by the CCJE, the legal provisions governing the independence of courts should be drafted and construed in such a way that they call for prompt enforcement of judicial decisions with no interference by other powers of the State.<sup>12</sup>

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6 With respect to the enforcement of judicial decisions in general, see CoE Consultative Council of European Judges (CCJE), [Opinion n°13 \(2010\)](#) on the role of Judges in the enforcement of judicial decisions, Section VII.

7 International Covenant on Civil and Political Rights, United Nations, General Assembly, resolution 2200A (XXI), adopted on 16 December 1966. North Macedonia became a State Party following succession on 18 January 1994.

8 Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter “ECHR”), Council of Europe, signed on 4 November 1950, entered into force on 3 September 1953. North Macedonia ratified the ECHR on 10 April 1997.

9 See OSCE Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 5 June-29 July 1990, paras. 5 and 5.12, whereby OSCE participating States committed to ensure “*the independence of judges and the impartial operation of the public judicial service*” as one of the elements of justice, “*which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings*”; OSCE Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow, 10 September-4 October 1991, whereby participating States further committed to “*respect the international standards that relate to the independence of judges [...] and the impartial operation of the public judicial service*” (para. 19.1) and to “*ensure that the independence of the judiciary is guaranteed and enshrined in the constitution or the law of the country and is respected in practice*” (para. 19.2); see also OSCE Ministerial Council Decision No. 7/08 on Further Strengthening the Rule of Law in the OSCE Area, Helsinki, 4-5 December 2008, which called upon OSCE participating States “*to honour their obligations under international law and to observe their OSCE commitments regarding the rule of law at both international and national levels, including in all aspects of their legislation, administration and judiciary*”, as a key element of strengthening the rule of law in the OSCE area. See also ODIHR, Warsaw Recommendations on Judicial Independence and Accountability, 2023; and ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia, 2010.

10 See e.g., CoE, European Court of Human Rights (ECtHR), [García Mateos v. Spain](#), no. 38285/09, para. 44.

11 With respect to the enforcement of judicial decisions in general, see CoE Consultative Council of European Judges (CCJE), [Opinion n°13 \(2010\)](#) on the role of Judges in the enforcement of judicial decisions, Section VII.

12 With respect to the enforcement of judicial decisions in general, see CoE Consultative Council of European Judges (CCJE), [Opinion n°13 \(2010\)](#) on the role of Judges in the enforcement of judicial decisions, Section VII. See also CCJE, [Opinion n°18 \(2015\)](#) on the position of the judiciary and its relation with the other powers of state in a modern democracy, para. 11, which notes: “*Although the task of deciding cases according to the law is entrusted to the judiciary, the public relies on the executive to enforce judicial decisions. Shortcomings in the enforcement of judicial decisions undermine judicial authority and question the separation of powers*”.

14. Other useful reference documents of a non-binding nature issued by are also of relevance to this Urgent Opinion,<sup>13</sup> in particular the reports and opinions pertaining to constitutional justice of the European Commission for Democracy through Law (Venice Commission).<sup>14</sup>
15. Overall, the jurisdiction and institutional design of constitutional courts or other similar constitutional adjudication mechanisms in Europe vary considerably, and depend on many national factors, including *inter alia* the very function and jurisdiction exercised by such a body, but also the legal, constitutional and political culture and traditions of the given country. In particular, the rules governing the execution and enforcement of constitutional court decisions are not uniformly regulated and, in some instances, are not expressly provided for at all. Consequently, there are no clear common standards on the execution of decisions of constitutional courts in the OSCE region.<sup>15</sup>

## **2. BACKGROUND AND DOMESTIC LEGAL FRAMEWORK**

16. Chapter IV of the Constitution of the Republic of North Macedonia defines the role, composition and jurisdiction of the Constitutional Court (Articles 108-113). Pursuant to Article 110 of the Constitution, it is competent to review the conformity of laws with the Constitution, and of collective agreements and other regulations with the Constitution and laws; to protect certain individual freedoms and rights;<sup>16</sup> to decide on conflicts of competence among State authorities and between State bodies and units of local self-government; to determine the responsibility of the President of the Republic; and to review the constitutionality of the programmes and statutes of political parties and associations, as well as other matters provided by the Constitution. The Constitution further guarantees the independence of judges of the Constitutional Court, including through rules on incompatibility, immunity and conditions for termination of office (Article 111). The Constitutional Court has the power to repeal or invalidate laws and other acts that are not in conformity with the Constitution or laws, and its decisions are final and binding (Article 112). According to Article 113 of the Constitution, “[t]he mode of work and the procedure of the Constitutional Court are regulated by an enactment of the Court”.
17. On the basis of the above-mentioned Article 113 of the Constitution, on 27 May 2024, the Constitutional Court adopted the Act of the Constitutional Court of the Republic of North Macedonia (hereinafter “the Act”), which entered into force on 1 September 2024, thereby repealing the Rules of Procedure of the Constitutional Court adopted in 1992, as later amended. The Act regulates matters concerning the mode of operation of the Constitutional Court, including its functional and financial independence, administrative

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13 See e.g., Council of Europe, Recommendation CM/Rec(2010)12 of the Committee of Ministers to Member States on Judges: Independence, Efficiency and Responsibilities, 17 November 2010, paras. 46 and 49, which among others expressly states that “[t]he authority taking decisions on the selection and career of judges should be independent of the executive and legislative powers” and that “[s]ecurity of tenure and irremovability are key elements of the independence of judges”. See also the [opinions](#) of the Consultative Council of European Judges (CCJE), an advisory body of the Council of Europe on issues related to the independence, impartiality and competence of judges, particularly CCJE, Opinion no. 3 (2002) on the Principles and Rules Governing Judges’ Professional Conduct, in particular Ethics, Incompatible Behaviour and Impartiality, 19 November 2002; see also CCJE, Opinion no. 1 (2001) on Standards Concerning the Independence of the Judiciary and the Irremovability of Judges, 23 November 2001; Magna Carta of Judges, 17 November 2010, par 13; and Opinion no. 18 (2015) on the Position of the Judiciary and its Relation with the Other Powers of State in a Modern Democracy, 16 October 2015.

14 See legal opinions on constitutional justice, Venice Commission, as well as the [Compilation of Venice Commission Opinions, Reports and Studies on Constitutional Justice](#) (Updated), 7 December 2022, CDL-PI(2022)050. See also Venice Commission, Updated Rule of Law Checklist, CDL-AD(2025)002, 16 December 2025.

15 See e.g., Venice Commission, Spain - Opinion on the law of 16 October 2015 amending the Organic Law No. 2/1979 on the Constitutional Court, CDL-AD(2017)003-e, para. 15.

16 i.e., those “relating to the freedom of conviction, conscience, thought and public expression of thought, political association and activity as well as to the prohibition of discrimination among citizens on the ground of sex, race, religion or national, social or political affiliation” (Article 110, third indent).

autonomy, publicity in its work, internal organization, the acts of the Court, their legal effect and enforcement, the rights and duties of the President of the Court and the judges arising from the performance of their functions, as well as the procedures before the Court through which its competence is exercised and other matters related to its operations (Article 1 of the Act). The 2025 Rule of Law Report on North Macedonia noted the improvements brought by the Act compared to the Rule of Procedure, though underlying that the Judicial Strategy 2024-2028 includes the strengthening of the role of the Constitutional Court as a general objective, including through a potential reform of the constitutional framework of the Court.<sup>17</sup>

18. Chapters V (Articles 81-84) and VI (Articles 85-91) of the Act of the Constitutional Court regulate the legal effect and enforcement of decisions taken by the Court. Article 81 of the Act provides that the decisions of the Constitutional Court are final, executive and legally binding on all legal subjects.<sup>18</sup> A decision to repeal a law or regulation or other general act takes effect once this decision is published in the Official Gazette (Article 82). The final individual acts adopted on the basis of the repealed law and repealed or annulled regulation or other general act may not be enforced or implemented and if enforcement has already commenced, it shall be halted (Article 83). Anybody whose rights have been violated by a final and binding act based on the annulled law, regulation or other general act has the right to request the annulment of that individual act within five years from the date of publication of the decision in the Official Gazette (Article 84).
19. The enforcement of the Constitutional Court decisions is regulated by Articles 85 to 91 of the Act. According to Article 85 of the Act, the obligation to enforce the decisions commences from the date of their publication in the Official Gazette and decisions shall be executed without any delay. The Constitutional Court, by official duty, monitors the enforcement and may request data and information from any person regarding the measures taken to implement the decisions (Article 86). Moreover, any person with a legal interest may request the enforcement of the decisions (Article 87). The Constitutional Court may, at its discretion, specify the manner and deadline for enforcement in its decision or adopt a separate resolution on the method of enforcement (Article 88). The Act obliges the adopter of the repealed or annulled act to enforce the decision and, in the case of a violation of fundamental rights and freedoms stipulated in Article 110 (3) of the Constitution, the body that adopted the act or undertook the action prohibited by the Court's decision (Article 89). The Constitutional Court is authorized to request public authorities to ensure the enforcement of its decision, if necessary (Article 90). Last, but not least, the Court may issue a separate resolution establishing the non-enforcement of its decision and shall notify the competent public prosecutor as well as the authority which appointed or elected the head of the authority or body that has not enforced the decision of the Court (Article 91).
20. In addition, the Act also introduced a new procedure whereby when initiating the review of the conformity of laws and other acts with the Constitution, the Court may, at its discretion, grant the adopters of the contested acts a deadline of no more than six months to amend the act in accordance with the reasoning of the Court expressed in a resolution (Article 36 (2)). If the adopters fail to comply within the deadline set by the Court, the proceedings will continue (Article 36 (3)). It is noted that Article 13 of the Act also introduced a new prerogative for the Court to monitor the implementation of constitutionality, legality, and the freedoms and rights of individuals and adopt, at its

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<sup>17</sup> See European Commission, [2025 Rule of Law Report - Country Chapter on the rule of law situation in North Macedonia](#), 8 July 2025, SWD(2025) 930 final, p. 18.

<sup>18</sup> It is noted that the English translation of the Act translates the expression "*pravni subjekti*" in Macedonian language as "legal entities", a formulation which conveys a narrower meaning than the original term; accordingly, the present Urgent Opinion employs the term "legal subjects" to more accurately reflect the original meaning.

discretion, a special report indicating the need for measures to ensure the realization and protection of rights and freedoms of individuals, to be submitted to the competent authority.

### 3. GENERAL COMMENTS

21. At the outset, it is noted that the respective jurisdiction and institutional setting of the various constitutional courts in Europe vary greatly, including with respect to the rules on the execution of constitutional court judgments, where such rules exist at all, and there are no strict standards or common practices on the execution of such judgments.<sup>19</sup> At the same time, the effective enforcement of the Constitutional Court's decisions is a fundamental element of the rule of law and pivotal for ensuring legal certainty and maintaining public trust in the authority of the Constitutional Court.<sup>20</sup>

#### 3.1. Legal Framework Governing the Legal Effects and Enforcement of the Constitutional Court's Decisions

22. Given the substantive scope of the Act as stated in Article 113 of the Constitution – to regulate the working modalities and procedural matters, the Act may be compared to similar instruments in other jurisdictions where it is common, and generally considered necessary for the preservation of institutional independence, that constitutional courts adopt their own rules of procedure or internal regulations. It is however less common for the Constitution to regulate a constitutional court or similar bodies only in relatively concise terms and to leave a broad range of institutional and procedural matters to be governed exclusively by an act adopted by the Court itself, without further legislative elaboration, such as through an organic or constitutional law. In many systems, such internal rules coexist with, or are complemented by, a legislative framework that defines key aspects of the Constitutional Court's composition, modalities of appointment of the Constitutional Court's judges, legal effects of the decisions, modalities of enforcement, as well as organization and functioning.<sup>21</sup> By contrast, Article 113 of the Constitution of the Republic of North Macedonia confers this regulatory power directly on the Court, thereby granting it a comparatively wide degree of autonomy in shaping its own procedural and organisational framework.
23. From a hierarchical perspective, the Act derives its authority directly from the Constitution, given that it is adopted by the Constitutional Court in the exercise of an explicit constitutional mandate. At the same time, within the existing constitutional framework, the Act, as a normative instrument of the Constitutional Court, may not be subject to modification, extension or restriction by acts of Parliament, which confers to it a *sui generis* supra-legislative status, binding primarily within the framework of constitutional adjudication.

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19 See e.g., Venice Commission, Spain - Opinion on the law of 16 October 2015 amending the Organic Law No. 2/1979 on the Constitutional Court, [CDL-AD\(2017\)003-e](#), para. 15.

20 With respect to the enforcement of judicial decisions in general, see CoE Consultative Council of European Judges (CCJE), [Opinion n°13 \(2010\)](#) on the role of Judges in the enforcement of judicial decisions, Section VII.

21 See e.g., Venice Commission, North Macedonia - Opinion on the Seven Amendments to the Constitution of "The former Yugoslav Republic of Macedonia" concerning, in particular, the Judicial Council, the Competence of the Constitutional Court and Special Financial Zones, [CDL-AD\(2014\)026](#), paragraph 80, which notes: "In most European countries constitutional provisions on constitutional courts are further developed in separate laws or constitutional laws. On the contrary, in the Republic there is no special law on the CC. Article 113 of the Constitution stipulates that 'the working methods and the procedures before the Constitutional Court are regulated by an act of the Court'. The only legal act regulating activities and powers of the CC is currently the Rules of Procedure of 1992. The Venice Commission finds this situation quite irregular. In the opinion of the Commission, it would be useful to adopt a separate law on the CC that would regulate issues relating to the status of its judges, basic conditions for the institution of proceedings before the CC, legal effects of the CC's judgments, etc. Reference to such law should be inserted in the Constitution, which means that a new paragraph should be added to Article 113 correspondingly. It is understood, however, that the adoption of any such law must not affect the power of the CC to regulate its own working methods and to develop the rules of procedure in the Rules of Court."

24. Given that Articles 108-113 of the Constitution are relatively concise and do not provide for further regulation in other organic law, the Court has elaborated various aspects of its functioning in the Act itself. Though the constitution-makers made the choice to entrust the Constitutional Court with broad prerogatives and autonomy in determining its own procedural and organizational arrangements, this results in a framework in which significant elements of the Court's functioning are governed by internally adopted rules, which, while grounded in the Constitution, are not subject to prior legislative approval or other kind of external review. It should be assessed whether this institutional configuration may, among other factors, contribute to possible challenges relating to the execution or enforcement of the Constitutional Court's decisions.
25. In this context, the absence in the Constitution and in the Act of more precise and detailed provisions governing, in particular, the execution of the Constitutional Court's decisions may give rise to practical challenges in their implementation. As noted above, the effective enforcement of binding judicial decisions constitutes a fundamental element of the rule of law, and the legal framework should be designed and interpreted so as to ensure the prompt execution of such decisions, without interference from other branches of State power.<sup>22</sup> At the same time, as noted by the Venice Commission, while enforcement of the decisions of the Constitutional Court must be ensured, execution should not fall within the remit of the Constitutional Court itself, which also lacks the institutional means to compel execution, but rather it should be incumbent upon the competent state authorities to give full effect to such decisions.<sup>23</sup>
26. In light of the above, while the legal framework governing the legal effects and enforcement of the Constitutional Court's decisions provides some generally balanced and foreseeable solutions, **it could be improved through clearer, more precise and consistent, as well as detailed provisions with a view to strengthen the regulatory and institutional mechanisms for enforcing Constitutional Court decisions.** At the same time, addressing the difficulties relating to the execution and enforcement of Constitutional Court decisions in North Macedonia should not be limited to amending the relevant legal provisions alone. **Any reform should also take into account the broader structure of constitutional review, as well as the procedural and institutional arrangements that may affect the implementation of the Court's decisions.** Should it be assessed that some challenges relating to the execution and enforcement of Constitutional Court decisions may stem, among other factors, from the existing constitutional framework, and that there is a need to further reinforce the Court's role and status within the domestic legal order, certain aspects may ultimately require constitutional amendments, where appropriate, including to embed safeguards and guarantees of independence at the highest normative level. It is understood that a potential reform of the constitutional framework is already envisaged in the Judicial Strategy 2024-2028 with a view to further strengthening the role of the Constitutional Court. **Pending such reforms, amendments to the Act, even if not fully addressing the potential underlying structural issues, may nonetheless contribute to improving the current framework if accompanied with complementary institutional and other practical and programmatic measures** (see Sub-Section 5.5. *infra*).
27. Although this issue goes beyond the scope of the present Urgent Opinion, should amendments to the Constitution be foreseen in the future, **consideration could be given**

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22 With respect to the enforcement of judicial decisions in general, see CoE Consultative Council of European Judges (CCJE), [Opinion n°13 \(2010\)](#) on the role of Judges in the enforcement of judicial decisions, Section VII. See also CCJE, [Opinion n°18 \(2015\)](#) on the position of the judiciary and its relation with the other powers of state in a modern democracy, para. 11, which notes: "Although the task of deciding cases according to the law is entrusted to the judiciary, the public relies on the executive to enforce judicial decisions. Shortcomings in the enforcement of judicial decisions undermine judicial authority and question the separation of powers".

23 See e.g., CoE, Venice Commission, Spain - Opinion on the law of 16 October 2015 amending the Organic Law No. 2/1979 on the Constitutional Court, [CDL-AD\(2017\)003-e](#), para. 53.

**to strengthening the legal framework governing the execution of Constitutional Court decisions through more detailed regulation, either at the constitutional level or by means of an organic law, in which latter case the Constitution should expressly provide for such legislative elaboration.** More generally, it is also noted that the individual complaint mechanism for the protection of freedoms and rights has a very limited substantive scope (only those rights and freedoms listed in Article 110 of the Constitution), which may considerably weaken the role of the Constitutional Court as a protector of human rights and freedoms in the context of direct individual complaint mechanism; however, this issue likewise falls beyond the scope of the present Urgent Opinion, as it would require constitutional amendments. Should constitutional reform be undertaken, the constitution-makers should consider the introduction of a full constitutional complaint mechanism, covering all constitutional rights and freedoms beyond those currently be mentioned in Article 110 of the Constitution.<sup>24</sup>

### **3.2. Need for a Structured Assessment of the Causes of Non-Execution**

28. Generally, instances of non-enforcement of constitutional court decisions may arise for a variety of reasons, which may be of a technical nature, capable of being addressed within the existing framework, or of a political nature, potentially requiring broader institutional adjustments, including constitutional or legislative reform.
29. Comparative practice illustrates that cases of non-execution of Constitutional Court decisions declaring legal acts unconstitutional may be grouped into several principal categories. These include, first, a lack of correlation between the legal effects of a Constitutional Court decision and the time required to remedy the unconstitutional situation, particularly where existing legal situations cannot be easily reversed, thereby generating practical difficulties requiring transitional measures or accompanying procedures, notwithstanding efforts by courts to modulate the temporal effects of their decisions. Second, inaction on the part of the legislature following a finding of unconstitutionality may lead to legislative vacuums where repealed provisions are not replaced, leaving certain legal situations unresolved, whether due to the complexity or perceived ambiguity of the decision or to other political considerations. Third, resistance on the part of authorities responsible for implementation, including partial or formal compliance without substantive effect, may arise from various public bodies, including, in some instances, ordinary courts. Fourth, tensions or conflicts between constitutional powers may occur, particularly where a decision substantially alters the content of legislation and is perceived by the legislature as encroaching upon its prerogatives. Fifth, non-execution may result from the absence of effective follow-up mechanisms, including insufficient procedural or institutional arrangements and monitoring tools to ensure compliance. Finally, technical complexity arising from the need to amend or align a range of legal acts, including secondary legislation and administrative or judicial decisions, may hinder implementation, particularly where ensuring coherence across the legal system proves difficult.
30. These considerations should be borne in mind when reforming the Act and when envisaging possible institutional mechanisms and other measures aimed at enhancing the execution and enforcement of Constitutional Court decisions. In addition, **a structured assessment of the causes of non-execution and non-enforcement may assist in identifying appropriate reform measures tailored to the source of implementation difficulties in North Macedonia.**

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<sup>24</sup> See e.g., Venice Commission, *Revised Report on individual Access to Constitutional Justice*, CDL-AD(2021)001-e, para. 207.

### 3.3. Other Comments on Articles 13 and 36 (2) of the Act

31. As noted above, Article 13 of the Act introduces a new prerogative for the Court to monitor the implementation of constitutionality, legality, and the protection of fundamental rights, and to adopt special reports addressed to competent authorities indicating the need for measures to ensure the realization and protection of individual rights and freedoms. While this function may aim at strengthening the effectiveness of constitutional fundamental rights guarantees, including through a potentially preventive approach capable of addressing shortcomings at an early stage and thereby reducing the need for constitutional adjudication, this new responsibility to signal flaws and gaps in legislation may give rise to some concerns.
32. It is understood that such a function is being exercised outside the framework of constitutional adjudication, which may call into question its compatibility with the Court's role as an impartial constitutional arbiter. By commenting on legal issues that may later become subject of its review as part of constitutional adjudication, this could cast doubt on the judicial impartiality of the Constitutional Courts if its members involved in the implementation of such task are subsequently called upon to determine a constitutional dispute over the interpretation of the legislation or norms at issue.<sup>25</sup> By identifying and assessing issues of constitutionality and protection of fundamental rights in the absence of a formal case or controversy, the Court may be perceived as pre-judging matters that could subsequently come before it, thereby potentially affecting its impartiality. Moreover, the absence of a clearly defined procedure and limits to this competence may create a risk of politicization.
33. In addition, framing this prerogative in broad terms could be understood as requiring the Court to engage in a general and proactive monitoring of the legal order, which may prove burdensome and detract from the effective exercise of its core adjudicative functions. This type of responsibility is rare in comparative practice. In the OSCE region, only a very few participating States grant a somewhat similar monitoring role to their constitutional review institution. In Croatia and Montenegro, the Constitutional Court is tasked with monitoring the enforcement of constitutionality and legality and must notify the legislature of any instances of unconstitutionality and illegality it identifies.<sup>26</sup> In its Opinion on the 2008 draft law on the Constitutional Court of Montenegro, the Venice Commission recommended that the Constitutional Court should not have a general task of monitoring constitutionality and legality, arguing that this responsibility draws the Constitutional Court into the political arena.<sup>27</sup> In many countries, the responsibility to identify and signal flaws in the legal order falls under the mandate of the attorney general office or a similar institution. These institutions provide legal advice to the government and government agencies, and typically do not have adjudicative functions.
34. In light of the above, it is recommended to reconsider assigning such functions to the Constitutional Court, while limiting the Court's role to follow-up on the implementation of its own decisions.
35. Article 36 (2) of the Act introduces a mechanism whereby, upon initiating constitutional review proceedings, the Court may grant the author of a contested act a six-months deadline to align the act with the Court's reasoning set out in a resolution. By allowing the relevant authorities time to remedy potential identified shortcomings, this mechanism may contribute to preventing normative gaps that could adversely affect the protection

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25 See e.g., ODIHR, [Opinion on Two Bills of the Republic of Poland on the Constitutional Tribunal](#) (as of 24 July 2024), para. 28. See also, for the purpose of comparison, ECtHR, *McGonnell v. the United Kingdom*, no. 28488/95, 8 February 2000, para. 55.

26 See [Constitution of the Republic of Croatia](#), Article 125; [Constitutional Act on the Constitutional Tribunal of the Republic of Croatia](#), Article 104; [Constitution of Montenegro](#), Article 149; and [Law on the Constitutional Court of Montenegro](#), Article 112.

27 See [Opinion on the Draft Law on the Constitutional Court of Montenegro](#), Venice Commission, 24 October 2008, para. 80.

of rights and freedoms. At the same time, such a mechanism may give rise to some issues with respect to legal clarity, consistency, and foreseeability.

36. First, the use of a resolution as the vehicle for such a determination appears problematic. Under the Act, resolutions are intended to govern procedural matters and should not address the substance of a case (see Article 73 of the Act). However, the indication that an act should be amended “*in accordance with the reasoning of the Court*” appears to entail a preliminary assessment of its (potential) unconstitutionality, which may blur the distinction between procedural resolutions and substantive decisions of the Court. Second, Article 36 (2) does not elaborate the conditions, criteria and other modalities governing its use, which may affect legal certainty and the consistent application of this mechanism. In addition, the legal nature and effects of such a resolution remain unclear. It is not specified whether the reasoning contained therein is binding, either on the addressee or on the Court itself in subsequent proceedings. Uncertainty also arises as to whether such reasoning may be relied upon in other cases or produce effects beyond the specific proceedings at issue. Third, this mechanism may give rise to some concerns with regard to the Court’s impartiality. By expressing a substantive view on the constitutionality of an act prior to a final decision, the Court may be perceived as pre-judging the outcome of the case and potentially future similar cases, particularly if the proceedings continue following non-compliance with the deadline. In light of these considerations, **it would be advisable to clarify the scope, conditions and legal effects of this mechanism, including their binding force and their relationship to the Court’s final decisions.**

#### 4. LEGAL EFFECT OF THE DECISIONS OF THE CONSTITUTIONAL COURT

37. The Act distinguishes between annulment and repeal of legal acts, reflecting comparative constitutional practice. This allows the Constitutional Court to determine the temporal effects of its decisions, either *ex nunc* for repeal (i.e., with the impugned act ceasing to have effect only for the future) or *ex tunc* for annulment (i.e., retroactive invalidation whereby the act is deemed never to have existed nor produced legal effects). While this distinction is common from a comparative perspective, the determination of such effects is not always left entirely to the discretion of a constitutional court. In this regard, Article 74 of the Act appears to confer a broad margin of discretion on the Constitutional Court in choosing between annulment and repeal based on an assessment of all circumstances, including the gravity of the violation, its nature and significance for the violations of rights and freedoms, legal certainty and other relevant circumstances.
38. It is noted that Part V of the Act, and especially Article 82, regulates only the legal effects of decisions concerning the repeal or annulment of laws and other regulations, whereas no specific provisions address the legal effects of decisions adopted in the exercise of the Court’s other constitutional competences. This limited scope may give rise to a degree of legal uncertainty. Although Article 70 of the Act provides for the corresponding application of the procedural rules governing review of constitutionality to cases in which the Constitutional Court exercises its other competences,<sup>28</sup> it remains open to question whether this provision also extends to the legal effects of decisions adopted in those other areas. By contrast, the legal framework governing the enforcement of decisions of the

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28 Article 70 of the Act provides: “*The provisions of this Act concerning the proceeding for reviewing the conformity of laws with the Constitution, the conformity of other regulations and collective agreements with the Constitution and laws, and the conformity of the programmes and statutes of political parties and associations of citizens with the Constitution apply correspondingly to procedures for the protection of freedoms and rights established in Article 110, Indent 3 of the Constitution; the revocation of immunity, determination of answerability, and determination of the applicability of the conditions for the cessation of the office of the President of the Republic; the resolution of conflict of competence; and the revocation of immunity and determination of the permanent incapacity to perform the office of a judge of the Constitutional Court, unless otherwise provided by this Act.*”

Constitutional Court appears to refer to decisions in general terms, thereby suggesting that it applies to all decisions adopted in the exercise of the Constitutional Court's various competences. This should be clarified.

#### 4.1. Final and Binding Force of Constitutional Court Decisions

39. Article 81 of the Act explicitly establishes the binding nature, finality and enforceability of Constitutional Court decisions, thereby reflecting Article 112 of the Constitution which provides that such decisions are final and enforceable. Article 81 of the Act further provides that they are binding on all legal subjects, encompassing both public authorities and private persons. No right of appeal lies against these decisions, and they are to be enforced upon their publication. The principle of finality is thus firmly grounded in the applicable framework, aligning with comparative practice as observed for many constitutional courts, and constitutes a clear and foreseeable rule.
40. With respect to the entities or persons bound by such decisions, it is not explicitly provided that courts are also bound by such decisions, although they may fall under the notion of "public authorities". Domestic practice varies greatly in terms of the scope of entities explicitly mentioned to be bound by constitutional court decisions.<sup>29</sup> At the same time, it is essential that courts cannot call into question the powers conferred on a constitutional court to give final and binding judgments on individual applications as this would otherwise run counter to the fundamental principles of the rule of law and legal certainty and severely limit individuals' right to access effective remedies for the human rights violation.<sup>30</sup> Unless it is clear in the North Macedonian context that courts are encompassed by the notion of "public authorities" responsible for implementing the Court's decisions, it would be advisable **that the applicable legal framework, ideally the Constitution or relevant provisions in the respective procedural code, makes it clear that all courts of general jurisdiction are bound by and shall execute the decisions of the Constitutional Court and follow the constitutional interpretation provided by the Court**<sup>31</sup> (see also Sub-Section 5.3 on other measures to enhance enforcement). Moreover, **an explicit obligation for the public authorities to take into account the legal reasons of the decision of the Constitutional Court when they adopt a new individual act is a positive element that could be considered.**<sup>32</sup> Often, the problems with other courts result from the fact that they follow the operative part but not the reasoning of the Constitutional Court.
41. Article 82 regulates the legal effects of decisions repealing a law, regulation or other general act, which produce effects *ex nunc* (as distinct from annulment with *ex tunc* effects, i.e., retroactive invalidation), which commence upon their publication in the Official Gazette. This implies that individual acts adopted on the basis of a repealed general norm are not affected and remain, in principle, legally valid, unless the Court would provide otherwise. This approach is grounded in considerations of legal certainty and the practical impossibility of fully restoring a prior legal situation in all cases.

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29 While Slovenian legislation does not explicitly specify the addressees of constitutional court decisions, Article 31 (1) of the [Act on the Constitutional Court of the Republic of Croatia](#) explicitly provides that every individual or legal person shall obey the decisions and rulings of the Constitutional Court; Article 190 of the [Constitution of the Republic of Poland](#) provides that judgments of the Constitutional Tribunal shall be of universally binding application; Article 94 (4) of the [Basic Law for the Federal Republic of Germany](#) provides that the decisions of the Federal Constitutional Court shall be binding upon the constitutional organs of the Federation and of the *Länder*, as well as on all courts and those with public authority.

30 See e.g., ECtHR, [Şahin Alpay v. Turkey](#), no. 16538/17, 20 March 2018, para. 118.

31 See e.g., Venice Commission, [Revised Report on individual Access to Constitutional Justice](#), CDL-AD(2021)001-e, paras. 163-164. See also e.g., European Union-Council of Europe Joint Project, [Road Map for Better Application of Judgments of The Turkish Constitutional Court 2023-2025](#), p. 13.

32 See e.g., Venice Commission, [Montenegro - Opinion on the Draft Law on the Constitutional Court](#), CDL-AD(2008)030, para. 71. From a comparative perspective, in [Germany](#), the Federal Constitutional Court itself also assumes in its established case-law that the binding effect extends to the essential reasoning of its decision (BVerfGE 1, p. 14 [at p. 37]).

42. Article 83 clarifies that final individual acts adopted on the basis of a repealed *or annulled* law or other general act, may not be enforced or implemented. It is noted that Article 83 effectively assimilates repeal and annulment for the purposes of individual legal situations, thereby reducing the distinction between *ex nunc* and *ex tunc* effects in this context. It follows from the wording of the provision that no new legal effects may be derived from such acts following the repeal or annulment of the underlying norm and that if enforcement started, it should be halted. While this may reflect what is also done in other countries,<sup>33</sup> such an approach may raise issues in terms of the stability and predictability of the legal order.
43. Finally, and although this may require amending the Constitution, it may also be advisable **to consider including a clear prohibition on overruling the decisions of the Constitutional Court by adopting a legal regulation that has been already declared unconstitutional.**<sup>34</sup>

## 4.2. Remedial Mechanism

44. Article 84 aims to further protect individuals whose rights have been violated by individual acts adopted on the basis of a law or other general act subsequently *annulled* by the Constitutional Court. Under this provision, even where the individual act has already produced legal effects, the person concerned may request its annulment from the competent public authority, which adopted the contested individual act, within a period of five years from the date of publication of the decision in the Official Gazette. The scope of the provision is not expressly limited to the rights referred to in Article 110 (3) of the Constitution, which suggests that it may extend to all fundamental rights and freedoms guaranteed by the Constitution, and potentially other legal rights, although this should be clarified to avoid legal uncertainty.
45. It is noted that this provision *only refers to annulment* thereby enabling the reconstitution of legal situations affected by the unconstitutional or unlawful act annulled by the Constitutional Court while this would not appear an option in case of repealed acts, which may raise questions as to the completeness of the provision. Furthermore, **the provision may be open to differing interpretations as to whether the annulment of an individual act is dependent on a demonstrated violation of rights, or whether such a violation is presumed as a consequence of the annulment of the law or general act and would benefit from clarification to enhance legal certainty.**
46. The annulment of individual acts based on annulled provisions may be sought within five years of publication of the decision. This significantly exceeds the shorter time limits found in comparative practices and may raise concerns regarding legal certainty. A rigid application of an *ex tunc* effect could potentially have serious implications for society and could result in a heavy burden on the state budget if numerous cases have to be reopened.<sup>35</sup> To limit this risk, certain limitations to *re-examination or re-opening* could

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33 For instance, in **Germany**, Section 79(2) of the German [Act on the Federal Constitutional Court](#) foresees that non-appealable decisions based on a legal provision which was annulled pursuant to Section 78 shall remain unaffected and execution of such a decision is not permissible.

34 See Venice Commission, [Updated Rule of Law Checklist](#), CDL-AD(2025)002, 16 December 2025, Part II.G.IV and para. 149. See e.g., Article 60 (5) of the Constitutional Law of the Republic of Tajikistan “On the Constitutional Court of the Republic of Tajikistan” according to which the “*Re-adoption of acts that contradict a decision of the Constitutional Court of the Republic of Tajikistan is prohibited. When such acts are adopted, they will not have legal force*”.

35 See e.g., Venice Commission, [Compilation of Venice Commission Opinions, Reports and Studies on Constitutional Justice](#) (Updated), 7 December 2022, CDL-PI(2022)050, Section 8.2.

however be applied, for instance to respect the rights of *bona fide* third parties in civil cases and the principle of *no reformatio in peius*<sup>36</sup> in criminal cases.<sup>37</sup>

47. In addition, it should be underscored that an individual act adopted on the basis of a law or other general act later declared to be unconstitutional or unlawful may give rise to harmful or adverse consequences without necessarily constituting a violation of fundamental rights or freedoms. In such cases, **Article 84 of the Act could be expanded so that its scope goes beyond situations involving violations of fundamental rights and other legal rights, to encompass more broadly adverse legal consequences resulting from the individual acts. At the same time, such an extension may require corresponding amendments to the relevant rules of civil, administrative or criminal procedure to regulate the conditions and modalities under which such remedies may be sought.**
48. Furthermore, the Act currently does not address circumstances where the violation of rights and freedoms, or other adverse consequences, arise directly from the application of general acts themselves, rather than individual acts adopted on the basis of an unconstitutional law or general act. In this regard, comparative solutions provide for the possibility of seeking the removal of adverse consequences not only in respect of individual acts but also where such consequences arise directly from a repealed or annulled general norm.<sup>38</sup> Where such consequences cannot be effectively remedied through this mechanism, the affected individual should be entitled to seek compensation before a competent court. Introducing a more comprehensive framework along these lines could enhance the effectiveness of constitutional review **by ensuring that all adverse consequences, including violations of human rights and freedoms, of unconstitutional or unlawful norms may be appropriately remedied, irrespective of whether they take the form of individual acts or arise directly from laws or other general acts declared unconstitutional.**
49. While it may be inferred that in case of refusal by the public authority to annul the individual act, **the claimant retains the possibility of seeking judicial review**, it would be advisable **to specify this in the legislation itself or cross-reference relevant legislation that provides for such a remedy.**
50. Finally, it is generally considered cost-effective to envisage, when individual acts are found to be unconstitutional as a result of the correct application of an unconstitutional normative act, the possibility for the Court to open a separate proceeding to assess the constitutionality of the said normative act.<sup>39</sup>

## 5. EXECUTION OF THE DECISIONS OF THE CONSTITUTIONAL COURT

### 5.1. Immediate Enforceability of Constitutional Court Decisions

51. Article 85 of the Act regulates the commencement of enforceability of Constitutional Court decisions from the date of their publication in the Official Gazette and provides that such decisions shall be executed without delay. This formulation appears somewhat redundant, as immediate applicability and enforceability are ordinarily inherent consequences of entry into force through official publication. This may suggest an

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<sup>36</sup> i.e., that a person should not be placed in a worse position as a result of the appeal or re-opening.

<sup>37</sup> See e.g., ODIHR, *Opinion on Two Bills of the Republic of Poland on the Constitutional Tribunal* (as of 24 July 2024), para. 114. See also e.g., Venice Commission, *Revised Report on individual Access to Constitutional Justice*, CDL-AD(2021)001-e, para. 165.

<sup>38</sup> See for instance, in **Slovenia**, Article 46 of the *Act on the Constitutional Court of the Republic of Slovenia*.

<sup>39</sup> See e.g., Venice Commission, *Revised Report on individual Access to Constitutional Justice*, CDL-AD(2021)001-e, paras. 166-167.

intention on the part of the drafters to reaffirm an already established principle rather than to introduce a distinct normative requirement.

52. Although perhaps not an issue in North Macedonia, it is essential to ensure that the publication of the decisions in the Official Gazette is automatic or that the Court has full control over the publication.<sup>40</sup>
53. It is further noted that Article 88 envisages the possibility for the Constitutional Court to determine time limits for the execution of its decisions. In this respect, it would be advisable to specify this possibility more clearly at the outset in Article 85 in order to acknowledge that exceptions to immediate enforceability may arise and to underline the Court's ability to defer or suspend the legal effects of its decisions where appropriate. Comparative practice shows that such mechanisms may enhance flexibility and help avoid legal uncertainty or gaps that could arise from the immediate enforceability and removal of a norm.<sup>41</sup> In this context, the introduction of clear and reasonable time frames for compliance may contribute to more effective implementation. Although the effect of Constitutional Court decisions should ideally be governed at the constitutional level, and in so far as the issue is currently solely regulated in the Act, it is recommended **to specify in Article 85 that the legal effects of the decisions of the Constitutional Court may be deferred or suspended, while providing clear and reasonable time frames for execution.** The provision could also **specify criteria to guide the Court's discretion in deciding on such deferral or suspension,** in order to ensure legal certainty and avoid leaving this matter entirely to the Court's unfettered discretion.

## 5.2. Body or Institutional Mechanism in Charge of the Execution

54. In situations where the Constitutional Court annuls or repeals legislative or executive acts infringing the rights and freedoms protected under Article 110 (3) of the Constitution, the responsibility for implementation lies with the authority that adopted the unconstitutional or unlawful act (Article 89 of the Act). This reflects the principle of parallelism of forms and competencies: the same authority that enacted the defective measure is responsible for remedying it in conformity with constitutional requirements.
55. It is noted that the Act does not specifically mention that the decisions of the Constitutional Court, once adopted, should be notified to the relevant public authority or persons for execution.<sup>42</sup> The organs and persons which have an obligation to execute decisions of the Court need to be notified so that they are aware of their obligation and can fulfil this obligation in an efficient and speedy manner.<sup>43</sup> Such notification can help removing doubts as to which authority or person is responsible to execute a decision and thus avoid positive or negative conflicts of competence in the execution.<sup>44</sup> While acknowledging that publication in the Official Gazette already ensures formal and public notification, **it is recommended to supplement the Act by introducing an obligation**

40 See e.g., Venice Commission, Poland - Opinion on the Act on the Constitutional Tribunal, [CDL-AD\(2016\)026](#), paras. 79-82.

41 For instance, Article 190 (3) of the [Constitution of Poland](#) provides that "*the Constitutional Tribunal may specify another date for the end of the binding force of a normative act. Such time period may not exceed 18 months in relation to a statute or 12 months in relation to any other normative act. Where a judgment has financial consequences not provided for in the Budget, the Constitutional Tribunal shall specify date for the end of the binding force of the normative act concerned, after seeking the opinion of the Council of Ministers*"; Article 161 of [Constitution of Slovenia](#) provides that the abrogation of an unconstitutional law takes effect immediately or within a period of time determined by the Constitutional Court and this period of time may not exceed one year; Article 62 of the [Constitution of France](#) provides that "A provision declared unconstitutional on the basis of article 61-1 shall be repealed as of the publication of the said decision of the Constitutional Council or as of a subsequent date determined by said decision".

42 For instance, in [Romania](#), Article 18 (2) of the [Law on the Organisation and Operation of the Constitutional Court](#) provides that "*The decision by which the unconstitutionality of the law has been established shall also be notified to the Presidents of the two Chambers of Parliament and to the Prime-Minister*".

43 See e.g., Venice Commission, Spain - Opinion on the law of 16 October 2015 amending the Organic Law No. 2/1979 on the Constitutional Court, [CDL-AD\(2017\)003-e](#), para. 33.

44 See e.g., Venice Commission, Spain - Opinion on the law of 16 October 2015 amending the Organic Law No. 2/1979 on the Constitutional Court, [CDL-AD\(2017\)003-e](#), para. 33.

**for the Constitutional Court to notify the public authority or persons responsible for the execution of its decision(s).** Such an additional targeted notification could serve as a useful complement to facilitate timely and effective implementation.

### 5.3. Determination of the Manner of Execution of the Constitutional Court Decisions

56. As noted above, Article 88 of the Act grants the Constitutional Court the authority, at its discretion, to specify the manner and deadline for the enforcement of its decisions or to adopt a separate resolution on the method of enforcement. This provision confers significant powers on the Constitutional Court, enabling it to tailor the modalities of enforcement to the specific context of each case, including the nature, author, and consequences of the impugned act. The possibility for the Court to determine the manner and time limits for execution is consistent with comparative practice.<sup>45</sup> However, the introduction of a separate resolution for this purpose is rather uncommon and may raise concerns regarding its legal basis and the risk of modifying the substance of the original decision even though in the event of non-execution, the initial decision should in any case remain the applicable framework for implementation. Therefore, it is recommended to re-assess whether it is necessary to enact a separate resolution with regard to the manner and deadline for enforcement, and if retained, ensuring in all cases that the substance of the initial decision is not modified.
57. Although this would go beyond the scope of the Act, a number of other prerogatives of the Constitutional Court could be usefully added to strengthen the execution of Constitutional Court decisions, although acknowledging that this would require constitutional amendments, including **the ability for the Constitutional Court to refer the case to the last instance ordinary court where the unconstitutionality lies only in the unconstitutional interpretation of the law by that court and when there is no need to gather and examine further evidence, or the possibility to annul the ordinary court decision that had been taken in violation of a fundamental right.**<sup>46</sup>

### 5.4. Monitoring of the Execution of the Constitutional Court's Decisions

58. Article 86 provides for the monitoring of the enforcement of the Court's decisions by the Constitutional Court itself, while vesting the Court with a power of inquiry with respect to any information or data relevant to their implementation. Article 112 of the Act specifies that the Secretary of the Constitutional Court "*monitors the implementation of the decisions of the Constitutional Court and reports to the Court thereon*". While this competence is framed as a monitoring function rather than an enforcement power *stricto sensu*, it forms part of the general responsibilities of the Secretary General. However, in the absence of a designated, dedicated internal unit or body responsible for its operationalization equipped with adequate human and financial resources, or of an external institution or body entrusted with comparable functions and capacities, such a general role is unlikely, in itself, to ensure the effectiveness of the monitoring mechanism.

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45 For instance, applicable legislation foresees that Constitutional Courts may designate which body is authorized to execute the decision – as is the case in Croatia, Slovenia and Germany as well as in what manner (Croatia, Slovenia) or method (Germany in individual cases) the execution should be made; see Article 31 of the [Constitutional Act on the Constitutional Court of the Republic of Croatia](#); Article 40 of the [Constitutional Court Act of the Republic of Slovenia](#); Section 35 of the German [Act on the Federal Constitutional Court](#).

46 See e.g., Venice Commission, *Türkiye - Opinion on the law on the establishment and rules of procedure of the Constitutional Court*, CDL-AD(2011)040, paras. 81-82.

59. From a comparative perspective, some jurisdictions have established some form of structured mechanisms, either within the Constitutional Court itself<sup>47</sup> or through external bodies, to ensure effective oversight of the implementation or enforcement of constitutional court decisions. Consideration could be given to specifying a dedicated unit or entity within the Court responsible for carrying out this monitoring function, with clearly defined competences, while ensuring the allocation of adequate human and financial resources. Such arrangements could strengthen the Court's capacity to identify the nature and extent of non-compliance and to facilitate appropriate remedial action in cases of persistent failure to comply.
60. To enhance transparency and accountability, **the Act could further require that the findings of any monitoring concerning the execution and enforcement of Constitutional Court decisions be made available to the public and to relevant institutions.**<sup>48</sup>

## 6. INSTITUTIONAL MECHANISM AND PROCEDURE/MODALITIES FOR SUPPORTING THE ENFORCEMENT OF THE DECISIONS OF THE CONSTITUTIONAL COURT

### 6.1. Body or Institutional Mechanism for Ensuring Enforcement

61. Article 87 provides that any person with a legal interest may request the enforcement of decisions of the Constitutional Court. While this may appear self-evident, it reflects a deliberate emphasis by the drafters on preventing situations of non-enforcement, and the broad standing granted to interested persons underscores a clear concern to ensure the practical effectiveness of the Court's decisions. At the same time, the provision lacks clarity as to the notion of "legal interest" and it remains unclear who is entitled to assert such an interest and which authority is competent to determine its existence. **Article 87 should be clarified in this respect to enhance legal certainty.**
62. Article 90 further provides that "*[i]f necessary, the Constitutional Court requests public authorities to ensure the enforcement of its decisions*". It thereby provides an institutional mechanism for securing compliance, albeit indirectly, in case the decisions are not executed *ex officio* by the competent public authorities as per Article 89 of the Act. Hence, the Court itself is not endowed with autonomous enforcement powers; rather, it must rely on co-operation from public authorities entrusted with the exercise of state power. This is aligned with comparative practices, based on the acknowledgment that in a system of separation of powers, the division of competences of adjudicating on the one hand, and of executing its results, strengthens the system of checks and balances as a whole, and in the end, also the independence of the Constitutional Court.<sup>49</sup> As noted by the Venice Commission, the ability for a Constitutional Court to seek the assistance of any public administration or public authority to ensure the execution of its decisions is a positive feature, noting that a constitutional court does have the practical means to force office-holders to comply with its decisions.<sup>50</sup>

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47 For instance, in April 2020, the Constitutional Court of Türkiye established a specialized unit within its Registry, the "Directorate of Judgments", which is responsible for monitoring the execution of the Constitutional Court judgments and carrying out studies to ensure fulfilment of the duty of informing the General Assembly on this matter; see European Union-Council of Europe Joint Project, [Road Map for Better Application of Judgments of The Turkish Constitutional Court 2023-2025](#), p. 6.

48 See e.g., European Union-Council of Europe Joint Project, [Road Map for Better Application of Judgments of The Turkish Constitutional Court 2023-2025](#), p. 6.

49 See e.g., Venice Commission, Spain - Opinion on the law of 16 October 2015 amending the Organic Law No. 2/1979 on the Constitutional Court, [CDL-AD\(2017\)003-e](#), para. 38.

50 See e.g., Venice Commission, Spain - Opinion on the law of 16 October 2015 amending the Organic Law No. 2/1979 on the Constitutional Court, [CDL-AD\(2017\)003-e](#), para. 43.

63. At the same time, questions arise as to the practical modalities available to public authorities to seek enforcement and ensure compliance by other branches of government. In particular, **it may be questionable to have the organization of such enforcement mechanisms fall within the scope of the Act and the Constitutional Court's competence, whereas these matters may instead need to be addressed at the constitutional level, or in a supra-legislative act to which the Constitution would expressly refer. Accordingly, while Article 90 serves a legitimate purpose, it should be reconsidered with a view to ensure both the effectiveness of enforcement and the coherence of the institutional framework.**

## **6.2. Determination of Non-Enforcement of Decisions of the Constitutional Court**

64. Article 91 establishes a follow-up mechanism in cases of non-enforcement. It authorizes the Constitutional Court to adopt a separate resolution formally acknowledging the failure to implement one of its decisions. Such a resolution may be transmitted to the public prosecutor, potentially triggering criminal proceedings, as well as to the competent authority responsible for enforcement. This provision equips the Constitutional Court with a procedural tool to address non-compliance, combining declaratory authority with the possibility of activating external enforcement mechanisms by requesting the public prosecution to take action in order to get its decision(s) implemented. It thereby reinforces the Court's role in safeguarding the effectiveness of its decisions. It is understood that the burden of enforcement would in this case shift to the prosecution service and to the ordinary judiciary, which is welcome.<sup>51</sup>
65. At the same time, **it may also be advisable to explicitly provide in the Act other possible legal consequences of failure to enforce a decision of the Constitutional Court, such as the publication of the resolution on the website of the Constitutional Court, possibly also in the Official Gazette, and in the annual report of the Constitutional Court.**<sup>52</sup>

## **7. OTHER MEASURES TO ENHANCE THE EXECUTION AND ENFORCEMENT OF THE CONSTITUTIONAL COURT'S DECISIONS**

66. It is noted that even if the normative framework would appear to provide for relatively comprehensive provisions and institutional mechanisms aimed at ensuring the execution (and enforcement) of Constitutional Court decisions, such arrangements, taken alone, may not suffice to guarantee their full effectiveness in practice and additional measures should be considered to strengthen their execution and enforcement.
67. In particular, awareness-raising activities should be undertaken with regard to the content and effects of Constitutional Court decisions, notably targeting legal professionals, including lawyers, judges and prosecutors at all levels, but also the general public.<sup>53</sup> While Article 92 of the Act establishes a framework for ensuring the publicity of the work of the Constitutional Court, including informing the public through the media, allowing access to proceedings, organizing press conferences, and publishing collections

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51 See e.g., Venice Commission, Spain - Opinion on the law of 16 October 2015 amending the Organic Law No. 2/1979 on the Constitutional Court, [CDL-AD\(2017\)003-e](#), para. 66.

52 See e.g., in **Montenegro**, Article 86 of the Rules of Procedure of the Constitutional Court which provides: "(1) *If the Constitutional Court's decision orders the period of time, manner or the authority that has to enforce the decision thereof, in compliance with Article 52, paragraph 3 of the Law, and if its orders are not executed, the Constitutional Court shall pass a statement declaring that the orders from the decision of the Constitutional Court have not been executed.* (2) *The statement referred to in paragraph 1 of this Article is submitted to the Government of Montenegro and published in the Official Gazette of Montenegro and on the web page of the Constitutional Court.*

53 See e.g., European Union-Council of Europe Joint Project, [Road Map for Better Application of Judgments of The Turkish Constitutional Court 2023-2025](#), p. 7.

- of decisions, such measures appear rather limited in scope and do not reflect a broader and more proactive communication and awareness-raising strategy. While this may go beyond the strict scope of the Act and could instead be embedded in a communication strategy or other strategic instruments of the Court, the development of more comprehensive provisions for systematic outreach should be envisaged. They could aim, *inter alia*, at explaining the Court's institutional role and mandate, promoting awareness of its case-law among legal professionals, and informing the public about the status of implementation of its decisions. In turn, this could help contributing to fostering a culture of compliance with Constitutional Court decisions and generating broader societal demand for the effective implementation of Constitutional Court decisions.
68. In addition, strengthening the capacity of judges of courts of general jurisdiction, as well as prosecutors and lawyers, to rely on and ensure the effective execution of such decisions is essential.<sup>54</sup>
69. Although going beyond the scope of the Act and of the present Urgent Opinion, the introduction of other provisions in Rules of Procedure of the government and of the parliament may also be useful to enhance the execution and enforcement of constitutional court decisions. For instance, the Rules of Procedure of the Government could specifically provide that materials to be discussed at the Government sessions may include proposals for measures to be undertaken for the enforcement of the Constitutional Court's decisions.<sup>55</sup>
70. Consideration may also be given to institutionalizing the practice of communicating Constitutional Court decisions to the Parliament, thereby reinforcing legislative awareness and facilitating any necessary follow-up action.<sup>56</sup> The institutionalization of a more structured and systematic dialogue between the Constitutional Court and the competent parliamentary committee on human rights could also be considered,<sup>57</sup> although this may require adjustments of the parliamentary rules of procedure. In this regard, it may also be beneficial for the said parliamentary committee to highlight significant Constitutional Court decisions in its annual reports, thereby strengthening parliamentary oversight and contributing to the effective implementation of the Court's decisions.
71. More generally, although potentially going beyond the scope of the Act, the effective dissemination of Constitutional Court rulings and their easy accessibility to the public, legal professionals and the legislature, coupled with targeted education and capacity development, dialogue and co-operation with judicial and other stakeholders, and the prompt handling of cases involving repeated violations, would further strengthen execution and enforcement.<sup>58</sup> In this context, **the involvement of parliamentary committees, ombudspersons and other national human rights institutions may play a supportive role in promoting compliance.**

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54 See e.g., European Union-Council of Europe Joint Project, [Road Map for Better Application of Judgments of The Turkish Constitutional Court 2023-2025](#), p. 14.

55 See e.g., Article 34 of the Rules of Procedure of the Government of Montenegro, which states that: "*materials to be discussed and decided upon at the Government sessions are submitted in the form of proposals for measures to be undertaken for the enforcement of decisions of the Constitutional Court of Montenegro*" (Article 34 para. 1 item 7).

56 See e.g., European Union-Council of Europe Joint Project, [Road Map for Better Application of Judgments of The Turkish Constitutional Court 2023-2025](#), p. 7.

57 See e.g., European Union-Council of Europe Joint Project, [Road Map for Better Application of Judgments of The Turkish Constitutional Court 2023-2025](#), pp. 7-8.

58 See e.g., European Union-Council of Europe Joint Project, [Road Map for Better Application of Judgments of The Turkish Constitutional Court 2023-2025](#), p. 8.

## 8. RECOMMENDATIONS RELATED TO THE PROCESS OF REFORMING THE ACT AND BROADER CONSTITUTIONAL AND LEGAL FRAMEWORK GOVERNING THE CONSTITUTIONAL COURT

72. The issue of execution and enforcement of Constitutional Court decisions is of a systemic nature and extends beyond the internal organization and functioning of the Constitutional Court, as it directly involves multiple branches of power and a wide range of public authorities at national, regional and local levels that may have to implement such decisions. Addressing shortcomings in this area therefore requires a comprehensive and coherent policy and legislative approach, avoiding fragmented or ad hoc amendments to the existing legal framework. In particular, any reform in this field should be guided by an overarching policy reflection on the respective roles and responsibilities of all actors involved in the implementation of Constitutional Court decisions, with a view to ensuring legal certainty, institutional co-ordination and dialogue and the effectiveness of constitutional adjudication.
73. OSCE commitments<sup>59</sup> and the ODIHR Guidelines on Democratic Lawmaking for Better Laws (2024) underline the importance of evidence-based, open, transparent, participatory and inclusive lawmaking process, offering meaningful opportunities to all interested stakeholders to provide input throughout the lawmaking process.<sup>60</sup> With respect to any reform of the Constitutional Court, it is essential that the process conducted in an open, transparent and inclusive manner, involving broad consultations with all relevant stakeholders, including civil society organizations and the general public. At the same time, given that the execution of Constitutional Court decisions may require action by the executive, the legislature, the judiciary, as well as other public authorities and administrative bodies, these actors should also be meaningfully involved in the reform process. Such consultations should aim to identify practical challenges in the implementation of decisions, clarify institutional competences, and foster a shared understanding of the legal and operational implications of any proposed reform.
74. Broad consensus and inter-institutional dialogue are of particular importance in this field, as the effectiveness of any enforcement or monitoring mechanism ultimately depends on the willingness and capacity of the competent authorities to comply with and give effect to Constitutional Court decisions. Engaging all branches of power and relevant public authorities in the design of the legal framework may contribute to strengthening ownership of the reform, enhancing compliance, and preventing future conflicts or ambiguities in its application.
75. Public consultations constitute a means of open and democratic governance as they lead to higher transparency and accountability of public institutions, and help ensure that potential controversies are identified before a law or amendments are adopted.<sup>61</sup> Consultations on draft legislation and policies, in order to be effective, need to be inclusive and to provide relevant stakeholders with sufficient time to prepare and submit recommendations on draft legislation; an adequate and timely feedback mechanism should also be provided whereby public authorities should acknowledge and respond to contributions.<sup>62</sup> To guarantee effective participation, consultation mechanisms should

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59 OSCE participating States have committed to ensure that legislation will be “*adopted at the end of a public procedure, and [that] regulations will be published, that being the condition for their applicability*” (1990 [Copenhagen Document](#), para. 5.8); and that “[l]egislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives” (1991 [Moscow Document](#), para. 18.1).

60 See [ODIHR Guidelines on Democratic Lawmaking for Better Laws](#) (2024), in particular Principles 5, 6, 7 and 12. See also Venice Commission, Updated Rule of Law Checklist, [CDL-AD\(2025\)002](#), 16 December 2025, Part II.A.6.

61 See [Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes](#) (from the participants to the Civil Society Forum organized by ODIHR on the margins of the 2015 Supplementary Human Dimension Meeting on Freedoms of Peaceful Assembly and Association), Vienna 15-16 April 2015.

62 See [ODIHR Guidelines on Democratic Lawmaking for Better Laws](#) (2024), Principle 7.

allow for input at an early stage, from the initial policymaking phase and throughout the process,<sup>63</sup> meaning not only when the draft is being prepared but also up until adoption. Given the sensitivity and importance of reforming the Constitutional Court, it is fundamental that all voices are heard, even those that may be critical of the proposed initiatives with a view to address the issues being raised and achieve broad political consensus and public support within the country about such a reform. Ultimately, this tends to improve the implementation of laws once adopted, and enhance public trust in public institutions in general.

76. Finally, it would be advisable to accompany any legislative amendments with a thorough assessment of their practical implications, including the resources required for their effective implementation. This is particularly relevant where new or strengthened monitoring or enforcement mechanisms are envisaged, whether within the Constitutional Court or involving other bodies. Ensuring that such mechanisms are supported by adequate human and financial resources will be key to their effectiveness in practice

*[END OF TEXT]*

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<sup>63</sup> *Ibid.* Principle 7.