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OPINION ON THE ACT OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF NORTH MACEDONIA

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

The Constitution of the Republic of North Macedonia grants the Constitutional Court the power to regulate its own mode of work and procedure, with no requirement for the legislature to elaborate certain aspects of the Constitutional Court through legislation, thereby granting the Court a comparatively broad regulatory autonomy in shaping its own procedural and organizational framework. While this approach may have been defined by intention to enhance institutional independence, it also results in a framework where significant elements of the Constitutional Court's structure, functioning and organization 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, among other factors, to possible challenges concerning certain competencies exercised by the Constitutional Court and the execution or enforcement of its decisions by other state institutions.

Generally, core elements of Constitutional Court's powers, organization, procedure should be defined by the Constitution and further be elaborated in primary legislation adopted in line with constitutional requirements. It is noted that the Constitution of the Republic of North Macedonia is silent about legislation, which would further elaborate constitutional provisions relating to the Constitutional Court, nor is such legislation currently in force. This arrangement is unusual in comparative practice. It is therefore for the national authorities of the Republic of North Macedonia and the Constitutional Court to assess whether constitutional amendments would be required for such primary legislation to be enacted, or whether adoption of the legislation elaborating on organization, powers and fundamental aspects of constitutional procedure would, in principle, be compatible with the requirements of the Constitution. Meanwhile, recognizing that the Act is the only normative document, which operationalizes constitutional provisions pertinent to the Constitutional Court, the present Opinion highlights certain issues and offers recommendations addressing deficiencies of the Act with a view to enhance constitutional judicial review, efficiency and independence of the Constitutional Court.

Overall, the Act establishes a comprehensive framework governing proceedings before the Constitutional Court, as well as its internal organization and functioning. Nevertheless, certain aspects would benefit from greater clarity and further elaboration, including the timeframe applicable to constitutional review proceedings, the grounds and procedure for rejecting initiatives requesting constitutional review, the legal effects and enforcement of the court's decisions, and the criteria for deciding whether to lift a judge's immunity.

The Act goes beyond merely regulating the working modalities and procedural matters of the Constitutional Court as provided under Article 113 of the Constitution, for instance by regulating standing rights, imposing obligations on

individuals as part of its proceedings, and granting additional prerogatives that do not appear among the competences of the Court listed in the Constitution. While these provisions may have been intended to fill gaps in the constitutional and legislative framework to ensure both the functioning of the Court and effectiveness of the constitutional review system more broadly, they raise questions concerning the constitutional allocation of powers and principle of separation of powers.

At the same time, the Act does not regulate certain important matters. Notably, it contains no provisions governing the disciplinary liability of Constitutional Court judges or the procedures applicable in disciplinary proceedings, leaving an important aspect of judicial accountability unaddressed.

The present Opinion should be read together with the findings and recommendations from the *ODIHR Urgent Opinion on the Legal Effect and Enforcement of Decisions of the Constitutional Court of North Macedonia* published on 29 April 2026, which offered analysis of and recommendations with respect to the legal effects of the decisions of the Constitutional Court (section V of the Act), and the enforcement of the decisions of the Constitutional Court (section VI of the Act). Therefore, these important elements of constitutional judicial review are not covered in the present Opinion.

More specifically, and in addition to what is stated above, ODIHR makes the following recommendations to improve the Act in line with OSCE commitments and other international standards:

- A. To undertake a comprehensive assessment of potential institutional vulnerabilities in the current constitutional framework governing the Constitutional Court with a view to: identifying possible areas for strengthening constitutional safeguards by regulating key features of the Constitutional Court and of the constitutional review system that are currently unregulated in the Constitution, including standing rights in constitutional proceedings, the mandatory age requirements for Constitutional Court judges, and the procedure for nominating candidates for all Constitutional Court judge positions; regulating in more details the organization and functioning of the Constitutional Court and the constitutional procedure by means of primary legislation adopted by qualified majority; reflecting all the Court's prerogatives at the constitutional level, providing that there is broad consensus that they be retained; assessing whether adoption of such primary legislation is, in principle, compatible with the requirements of the Constitution currently in force; [paras. 31, 33 and 35]
- B. Regarding the jurisdiction of the Constitutional Court:
 1. To reconsider the Constitutional Court's authority 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 provided under Article 13 of the Act; [para. 44]

2. To clarify the scope, conditions, grounds and legal effects of the interpretative resolutions adopted pursuant to Article 36 (2), including the main purpose of the resolutions, its potential impact on the constitutional rights of individuals and relationship to the Court's final decisions. [para. 47]
- C. To assess the practical operation of the Constitutional Court's self-referral authority, including its implications for the balance between State powers and the effective functioning of constitutional review, and whether on this basis, it should be retained at all or its grounds, scope and procedure be strictly defined or considerably reduced. Should there be broad consensus that such a power should be retained in light of the domestic context, it would be preferable for its scope and legal basis to be addressed within the constitutional framework rather than exclusively through the Act; [para. 62]
- D. To remove "offensive allegations" from the grounds for rejecting an initiative for constitutional review proceeding under Article 24 (2), while defining clearly which situations fall under the ground of "procedural obstacles" under Article 38, and allowing the Constitutional Court to reject initiatives that obviously do not raise question of constitutionality or legality; [paras. 78 and 79]
- E. To prescribe a time limit for the Constitutional Court to adopt its final decisions in constitutional review proceedings, while allowing for extensions in duly justified cases where the complexity of the case so requires; [para. 86]
- F. To define the criteria for deciding whether to lift a judge's immunity to ensure that Constitutional Court judges only benefit from functional immunity in the exercise of their lawful functions; [para. 105] and
- G. To introduce provisions regulating the disciplinary liability of Constitutional Court judges, clearly and narrowly defining the acts or omissions constituting disciplinary offences along with proportionate sanctions, and disciplinary procedure providing fair trial guarantees to the Constitutional Court judge concerned, in line with applicable international standards; [para. 109]

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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I. INTRODUCTION

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. Given the event on the enforcement of Constitutional Court decisions scheduled on 30 April 2026, it was agreed that priority would 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. Accordingly, the *ODIHR Urgent Opinion on the Legal Effect and Enforcement of Decisions of the Constitutional Court of North Macedonia*¹ (hereinafter “the 2026 ODIHR Urgent Opinion”) was published on 29 April 2026, and presented and discussed at the event held on 30 April 2026 in Skopje. ODIHR also informed that a separate legal review of the full Act would be provided at a later stage.
3. The present Opinion assesses the compliance of the full Act with international human rights standards and OSCE human dimension commitments. It should be read together with the findings and recommendations from the 2026 ODIHR Urgent Opinion.
4. This 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.²

II. SCOPE OF THE OPINION

5. The scope of this Opinion covers the Act submitted for review. Thus limited, the present Opinion does not constitute a full and comprehensive review of the entire legal framework regulating the Constitutional Court.
6. The 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 absence of comments on certain of the provisions of the Act should not be interpreted as an endorsement of those provisions.
7. 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 States in this field. When referring to national legislation, ODIHR does not advocate for any specific country model; it rather focuses on providing

1 [Urgent Opinion on the Legal Effect and Enforcement of Decisions of the Constitutional Court of North Macedonia](#), ODIHR, 29 April 2026.

2 See especially [Decision No. 7/08 Further Strengthening the Rule of Law in the OSCE Area](#), OSCE Ministerial Council, 8 December 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 [...]”.

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 should always be considered in light of the broader national institutional and legal framework, as well as the country's context and political culture.

8. Moreover, in accordance with the *Convention on the Elimination of All Forms of Discrimination against Women*³ (hereinafter “CEDAW”) and the *2004 OSCE Action Plan for the Promotion of Gender Equality*⁴ and commitments to mainstream gender into OSCE activities, programmes and projects, the Opinion integrates, as appropriate, a gender and diversity perspective.
9. This Opinion is based on an unofficial English translation of the Act provided by the Constitutional Court. Errors from translation may result. Should the Opinion be translated in another language, the English version shall prevail.
10. In view of the above, ODIHR would like to stress that this 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

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

11. The essential role of constitutional courts, or comparable institutions empowered with constitutional judicial 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).⁵ 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. In particular, the constitutional review process is essential to guarantee the compliance of legislation and other acts of public authorities with the Constitution, to ensure that all public authorities act in conformity with the Constitution, and to ensure that constitutions, once adopted, remain relevant to people's daily life.
12. From a comparative perspective, there is no single or “best model” for judicial review of constitutionality. The powers and competences of constitutional courts depend on variety of factors, including *inter alia* the legal, constitutional and political culture and traditions of the given country. Constitutional choice of functions and jurisdictions of the courts may also determine mode of selection and appointment of its judges (members).

3 [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.

4 See [OSCE Action Plan for the Promotion of Gender Equality](#), adopted by OSCE Ministerial Council, Decision No. 14/04, MC.DEC/14/04, 7 December 2004, para. 32.

5 See particular [Decision No. 7/08 “Further Strengthening the Rule of Law in the OSCE Area”](#), OSCE Ministerial Council, 8 December 2008, para. 4.

13. While acknowledging the particular nature and specificities of constitutional adjudication, key principles pertaining to judicial independence and impartiality have to be respected also when reforming acts regulating constitutional courts.⁶ The independence of the judiciary is a fundamental principle and an essential element of any democratic state based on the rule of law.⁷ The principle of judicial independence is also crucial to respecting the principle of the separation of powers and upholding international human rights standards.⁸ Specifically, this independence means that both the judiciary as an institution, but also individual judges must be able to exercise their professional responsibilities without being subject to internal or external pressure when adjudicating or influenced or fearful of arbitrary disciplinary investigations and/or sanctions by the executive or legislative branches or other external sources. Judicial independence is also essential to engendering public trust and credibility in the justice system in general, in that everyone is treated equally before the law and seen as being treated equally, and that no one is above the law. Public confidence in the courts, especially constitutional courts, as being independent from political influence is vital in a democratic society that respects the rule of law.

1.1. Independence of the Judiciary

14. At the UN level, the independence and impartiality of the judiciary are guaranteed by Article 14 of the *International Covenant on Civil and Political Rights*⁹ (hereinafter “the ICCPR”). The institutional relationships and mechanisms required for establishing and maintaining an independent judiciary are outlined in the *UN Basic Principles on the Independence of the Judiciary*,¹⁰ and have been further elaborated upon in the *Bangalore Principles of Judicial Conduct*.¹¹ An international understanding of the practical requirements of judicial independence continues to be shaped by the work of international bodies, including the UN Human Rights Committee and the UN Special Rapporteur on the Independence of Judges and Lawyers. In *General Comment No. 32 on Article 14 of the ICCPR*, the UN Human Rights Committee specifically provided that States should ensure “the actual independence of the judiciary from political interference by the executive branch and legislature” and “take specific measures guaranteeing the independence of the judiciary, protecting judges from any form of political influence in their decision-making through the constitution or adoption of laws, and establishing clear procedures and objective criteria for the appointment, remuneration, tenure,

6 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.

7 See [Resolution on the Independence and Impartiality of the Judiciary, Jurors and Assessors, and the Independence of Lawyers](#), UN Human Rights Council, A/HRC/29/L.11, 30 June 2015. As stated in the [OSCE Copenhagen Document](#) 1990, para. 2, “the rule of law does not mean merely a formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, but justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression”; See also the [Updated Rule of Law Checklist](#), European Commission for Democracy Through Law of the Council of Europe (hereinafter the “Venice Commission”), December 2025, para. 101.

8 See [Decision No. 12/05 on “Upholding Human Rights and the Rule of Law in Criminal Justice Systems”](#), OSCE Ministerial Council, 6 December 2005.

9 [International Covenant on Civil and Political Rights \(ICCPR\)](#), UN General Assembly, resolution 2200A (XXI), adopted on 16 December 1966. North Macedonia became a State Party to the ICCPR by succession on 18 January 1994.

10 [Basic Principles on the Independence of the Judiciary](#), UN General Assembly, resolution 40/32, adopted on 29 November 1985, and resolution 40/146, adopted on 13 December 1985.

11 The [Bangalore Principles of Judicial Conduct](#) were adopted by the Judicial Group on Strengthening Judicial Integrity, which is an independent, autonomous, not-for-profit and voluntary entity composed of heads of the judiciary or senior judges from various countries, as revised at the Round Table Meeting of Chief Justices in the Hague (25-26 November 2002), and endorsed by the UN Economic and Social Council in resolution 2006/23 of 27 July 2006. See also [Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct](#), prepared by the Judicial Group on Strengthening Judicial Integrity, 2010.

promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them".¹²

15. As a member of the Council of Europe (CoE), North Macedonia is also bound by the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR),¹³ particularly its Article 6, which provides that everyone is entitled to a fair and public hearing "by an independent and impartial tribunal established by law". In accordance with the case-law of the European Court of Human Rights (ECtHR), proceedings before a constitutional court can come within the scope of Article 6.1 of the ECHR when the outcome is decisive for the determination of an applicant's civil rights and obligations, even if they deal with question being referred for a preliminary ruling or following a constitutional appeal with respect to the protection of constitutional rights and freedoms, being lodged against judicial decisions, or when it concerns an appeal lodged against a law affecting a person's rights as specified in the national legal system.¹⁴ To determine whether a body, including the constitutional court, can be considered an "independent tribunal" according to Article 6 (1) of the ECHR, the ECtHR considers various elements, *inter alia*, the manner of appointment of its members and their term of office, the existence of guarantees against outside pressure, whether appointees are free from influence or pressure when carrying out their adjudicatory role, even the *appearance of independence* may be of a certain importance.¹⁵ Other useful reference documents of a non-binding nature issued by CoE bodies are also of relevance,¹⁶ in particular the reports and opinions pertaining to constitutional justice of the European Commission for Democracy through Law (hereinafter the "Venice Commission")¹⁷ and the opinions of the Consultative Council of European Judges (CCJE).¹⁸
16. As North Macedonia has European Union (EU) candidate status,¹⁹ EU treaties, the EU *acquis*, as well as the case law of the Court of Justice of the European Union (hereinafter "CJUE") are also of relevance. Article 47 of the *EU Charter of Fundamental Rights*²⁰ reflects the ECHR's fair trial requirements pertaining to "an independent and impartial tribunal previously established by law". In that respect, the CJEU has held that "[the]

12 [General Comment No. 32 on Article 14 of the ICCPR: Right to Equality before Courts and Tribunals and to Fair Trial](#), UN Human Rights Committee, 23 August 2007, para. 19.

13 [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.

14 See *Xero Flor w Polsce sp. z o.o. v. Poland*, European Court of Human Rights (ECtHR), no. 4907/18, 7 May 2021, paras. 188-191, and ECtHR case-law referred therein.

15 See e.g., *ibid.* paras. 268-269; *Campbell and Fell v. the United Kingdom*, ECtHR, nos. 7819/77, 7878/77, 28 June 1984, para. 78. See also *Olujić v. Croatia*, ECtHR, no. 22330/05, 5 May 2009, para. 38; *Oleksandr Volkov v. Ukraine*, ECtHR, no. 21722/11, 25 May 2013, para. 103; *Morice v. France*, ECtHR, no. 29369/10, 23 April 2015, para. 78; on the relation of the judiciary with other branches of power, see e.g., *Baka v. Hungary*, ECtHR, no. 20261/12, 23 June 2016, para. 165; *Ramos Nunes de Carvalho e Sá v. Portugal*, ECtHR, nos. 55391/13, 57728/13 and 74041/13, 6 November 2018, para. 144; *Guðmundur Andri Ástráðsson v. Iceland* [GC], ECtHR, no. 26374/18, 1 December 2020, paras. 243-252. See also *Incal v. Turkey* [GC], ECtHR, no. 22678/93, 9 June 1998, para. 71, where the ECtHR held that "[e]ven appearances may be of a certain importance [since] [w]hat is at stake is the confidence which the courts in a democratic society must inspire in the public and above all, as far as criminal proceedings are concerned, in the accused (...)".

16 See e.g., *Recommendation CM/Rec(2010)12 on Judges: Independence, Efficiency and Responsibilities*, Council of Europe, Committee of Ministers, 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".

17 See *legal opinions on constitutional justice*, Venice Commission, as well as the *Compilation of Venice Commission Opinions, Reports and Studies on Constitutional Justice*, Venice Commission, CDL-PI(2022)050. See also *Report on Judicial Appointments*, Venice Commission, CDL-AD(2007)028-e, 22 June 2007; *Report on the Independence of the Judicial System – Part I: The Independence of Judges*, Venice Commission, CDL-AD(2010)004, 16 March 2010; and *the Updated Rule of Law Checklist*, CDL-AD(2025)002, December 2025.

18 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, are available at <http://www.coe.int/t/dghl/cooperation/ccje/textes/Avis_en.asp>; see particularly *Opinion no. 3 (2002) on the Principles and Rules Governing Judges' Professional Conduct, in particular Ethics, Incompatible Behaviour and Impartiality*, CCJE, 19 November 2002; see also *Opinion no. 1 (2001) on Standards Concerning the Independence of the Judiciary and the Irremovability of Judges*, CCJE, 23 November 2001; *Magna Carta of Judges*, 17 November 2010; and *Opinion no. 18 (2015) on the Position of the Judiciary and its Relation with the Other Powers of State in a Modern Democracy*, CCJE, 16 October 2015.

19 North Macedonia applied for EU membership in March 2004, and was granted candidate status in December 2005. See European Commission, *Enlargement and Eastern Neighbourhood*, North Macedonia.

20 [Charter of Fundamental Rights of the European Union](#), European Parliament, Council and Commission, 2000/C 364/01.

guarantees of independence and impartiality require rules, particularly as regards the composition of the body and the appointment, length of service and the grounds for abstention, rejection and dismissal of its members, in order to dispel any reasonable doubt in the minds of individuals as to the imperviousness of that body to external factors and its neutrality with respect to the interests before it”.²¹ The CJEU also held that “the concept of independence presupposes, in particular, that the body concerned exercises its judicial functions wholly autonomously, without being subject to any hierarchical constraint or subordinated to any other body and without taking orders or instructions from any source whatsoever, and that it is thus protected against external interventions or pressure liable to impair the independent judgement of its members and to influence their decisions”.²² Moreover, pursuant to Article 19.1 sub-paragraph 2 of the Treaty on European Union (hereinafter “TEU”),²³ EU Member States are to provide remedies sufficient to ensure effective legal protection for individuals in the fields covered by EU law. In that respect, the CJEU held that the “*requirement that courts be independent, which is inherent in the task of adjudication, forms part of the essence of the right to effective judicial protection and the fundamental right to a fair trial, which is of cardinal importance as a guarantee that all the rights which individuals derive from EU law will be protected and that the values common to the Member States set out in Article 2 TEU, in particular the value of the rule of law, will be safeguarded*”.²⁴

17. OSCE participating States have also 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*” (1990 Copenhagen Document).²⁵ In the 1991 Moscow Document,²⁶ 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). Moreover, in its *Decision No. 7/08 on Further Strengthening the Rule of Law in the OSCE Area* (2008), the OSCE Ministerial Council also 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.²⁷ More detailed guidance is also provided by the *ODIHR Warsaw Recommendations on Judicial Independence and Accountability*²⁸ and the *ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia*.²⁹

21 See e.g., *H. & D. v Refugee Applications Commissioner*, CJEU, C-175/11, 31 January 2013, para. 97.

22 See *Associação Sindical dos Juizes Portugueses v. Tribunal de Contas* [GC], CJEU, C-64/16, 27 February 2018, para. 44.

23 See the consolidated versions of the [Treaty on European Union](#), OJ C 326, 26 October 2012. Article 2 of the Treaty on European Union states: “*The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.*”

24 See e.g., *European Commission v. Republic of Poland*, CJEU, C-619/18, 24 June 2019, para. 58.

25 [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.

26 [OSCE Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE](#), Moscow, 10 September-4 October 1991.

27 [OSCE Ministerial Council Decision No. 7/08 on Further Strengthening the Rule of Law in the OSCE Area](#), Helsinki, 4-5 December 2008.

28 [Warsaw Recommendations on Judicial Independence and Accountability](#), ODIHR, 2023.

29 [Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia](#), ODIHR, 2010.

1.2. Legal Effect and Enforcement of Constitutional Court Decisions

18. With respect to the legal effect and enforcement of Constitutional Court decisions specifically, the 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.³⁰ In addition, the CoE 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.³¹ 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.³²
19. The Updated Rule of Law Checklist of the Venice Commission provides further generic guidance regarding the legal effect and enforcement of constitutional court decisions. In particular, it provides that constitutional court decisions “*must be binding on all public authorities including state and local self-government bodies, their officials, as well as natural and legal persons, and implemented in good faith*”. The Venice Commission further explains that when adopting new acts, state authorities should take into account the legal reasoning developed by the constitutional court in its decisions. Accordingly, when a constitutional court has declared a law unconstitutional, the legislature should not subsequently enact a new law with an identical content of the invalidated law.³³
20. From a comparative perspective, 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.³⁴

2. BACKGROUND AND DOMESTIC LEGAL FRAMEWORK

21. Chapter IV of the Constitution of the Republic of North Macedonia regulates the status, composition and jurisdiction of the Constitutional Court (Articles 108-113).³⁵ The Constitutional Court consists of nine judges serving a single non-renewable term of nine years (Article 109). As per Article 68 of the Constitution, the Constitutional Court judges are elected by the Assembly (i.e., the country’s unicameral legislature). Two candidates are to be nominated by the President of the Republic (Article 84) and two candidates by the Judicial Council (Article 105).³⁶ Of the nine judges, six are elected by an absolute

30 See e.g., *García Mateos v. Spain*, ECtHR, no. 38285/09, 19 February 2013, para. 44.

31 With respect to the enforcement of judicial decisions in general, see *Opinion n°13 (2010)* on the role of Judges in the enforcement of judicial decisions, CCJE, Section VII.

32 With respect to the enforcement of judicial decisions in general, see *Opinion n°13 (2010)* on the role of Judges in the enforcement of judicial decisions, CCJE, Section VII. See also *Opinion n°18 (2015)* on the position of the judiciary and its relation with the other powers of state in a modern democracy, CCJE, 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*”.

33 See *Updated Rule of Law Checklist*, Venice Commission, CDL-AD(2025)002, December 2025, para. 149.

34 See e.g., Spain - Opinion on the law of 16 October 2015 amending the Organic Law No. 2/1979 on the Constitutional Court, Venice Commission, *CDL-AD(2017)003-e*, 13 March 2017, para. 15.

35 Republic of North Macedonia, *Constitution of the Republic of North Macedonia*, adopted on 17 November 1991, with amendments through January 2019.

36 Article 68 of the *Constitution* provides that the Assembly elects constitutional court judges and selects, appoints and dismisses other holders of public and other office determined by the Constitution and law, but does not explicitly provide that the Assembly nominates five candidates for constitutional court judges. The Rules of Procedure of the Assembly also do not explicitly mandate the Assembly, nor elaborate the modalities, to nominate the five candidates by the Assembly.

majority vote of the Assembly, while three judges are elected by a double-majority vote, requiring both a majority vote of all MPs and a majority vote of all MPs belonging to minority communities (Article 109 as amended by Amendment XV of the Constitution of North Macedonia). The Constitution provides a single eligibility requirement, namely that candidates must be “*outstanding members of the legal profession.*” (Article 109). The President of the Constitutional Court is elected by the judges of the Constitutional Court from among their ranks for a non-renewable three-year term (Article 109). The Constitution further guarantees the independence of judges of the Constitutional Court through rules on incompatibility, immunity and conditions for termination of office (Article 111).³⁷

22. Pursuant to Article 110 of the Constitution, the Constitutional Court 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,³⁸ to decide on conflicts of competence among State authorities and between central State bodies and units of local self-government; to determine the responsibility of the President of the Republic (see also Articles 82, 83 and 87); 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 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).
23. 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”. On this basis, on 27 May 2024, the Constitutional Court adopted 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 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 European Commission 2025 Rule of Law Report on North Macedonia noted the improvements brought by the Act compared to the 1992 Rules 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.³⁹

3. GENERAL COMMENTS ON THE OVERALL LEGAL FRAMEWORK REGULATING THE CONSTITUTIONAL COURT

24. The legal framework regulating the Constitutional Court consists of Chapter IV of the Constitution, which sets out the broad parameters concerning the composition and

³⁷ Under Article 111 of the Constitution, Constitutional Court judges are prohibited from holding any other public office, exercising another profession, or being members of a political party. Constitutional Court judges enjoy immunity, and decisions regarding the lifting of such immunity is vested exclusively in the Constitutional Court itself. Furthermore, they are exempt from compulsory service in the armed forces. The mandate of a Constitutional Court judge may be terminated only in three circumstances prescribed in the Constitution, namely upon resignation, upon conviction for a criminal offence resulting in an unconditional prison sentence of at least six months, or in cases of permanent incapacity to perform his/her duties as determined by the Constitutional Court (Article 111).

³⁸ 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).

³⁹ See [2025 Rule of Law Report - Country Chapter on the rule of law situation in North Macedonia](#), European Commission, SWD(2025) 930 final, 8 July 2025, p. 18.

jurisdiction of the Constitutional Court (see paras. 21-23 *supra*), as well as the Act under review adopted by the Constitutional Court itself. It is noted that the Constitution is silent about the adoption of legislation elaborating further the constitutional provisions relating to the Constitutional Court, nor is any such legislation currently in force. This arrangement is unusual in comparative practice.⁴⁰ In most OSCE participating States with a specialized constitutional court, the legal framework regulating such court typically consists of three normative layers: first, constitutional provisions enacted by the constituent power, which often define the court's composition, jurisdiction, and the categories of persons or institutions entitled to initiate proceedings before the court; second, legislation enacted by the legislature, which further elaborate and operationalize the constitutional provisions related to the constitutional court; and third, rules of procedure adopted by the constitutional court itself regulating procedural aspects of constitutional review proceedings and the court's internal organization and functioning.⁴¹ Nevertheless, comparative practice shows that there is important variation regarding the extent to which constitutional courts are regulated at the constitutional level and in the scope of issues that are deferred to be regulated through legislation.

25. Given the substantive scope of the Act as stated in Article 113 of the Constitution, i.e., 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,⁴² that constitutional courts adopt their own rules of procedure or internal regulations. It is however unusual and potentially problematic to leave a broad range of institutional and procedural matters to be governed exclusively by an act adopted by the Court itself, while regulating only broader aspects in a Constitution, without further legislative elaboration, such as through an organic or a constitutional law.⁴³ In many systems, such internal rules coexist with, and complement, a constitutional and legislative framework that regulates key aspects of the Constitutional Court, including its jurisdiction and standing rules, its composition and modalities of selection of the Constitutional Court's judges, the status of constitutional court judges and rules for their dismissal, legal effects of the court's decisions and

40 Within the OSCE region, only Bosnia and Herzegovina has a similar arrangement where the legal framework regulating the constitutional court consists of constitutional provisions and rules of procedure adopted by the constitutional court itself, without legislation regulating certain aspects of the Constitutional Court. See [Constitution of Bosnia and Herzegovina](#), Article VI.2.b and [Rules of the Constitutional Court of Bosnia and Herzegovina](#).

41 Among the 57 OSCE participating States, 38 have established a specialized constitutional court or similar institution. Of these 38 States, 31 provide in their constitution for the adoption of a legislation regulating some aspects of the constitutional court ([Albania](#), Article 81.2.a; [Armenia](#), Article 167.3; [Azerbaijan](#), Article. 130.V and VII; [Belarus](#), Article. 116; [Belgium](#), Article 142; [Bulgaria](#), Article. 152, [Czechia](#), Article 88.1; [France](#), Articles 61.1 and 63; [Georgia](#), Articles 59.2 and 60.7; [Germany](#), Article 94.2, [Hungary](#), Article 24.9; [Italy](#), Article 137; [Kazakhstan](#), Article 72.7; [Kyrgyzstan](#), Article 97.7; [Latvia](#), Article 85, [Liechtenstein](#), Article 104.1; [Lithuania](#), Article 102; [Luxembourg](#), Article 95ter.4; [Moldova](#), Article 135.2; [Mongolia](#), Article 64.3; [Poland](#), Article 197; [Portugal](#), Articles 222.6 and 224.1; [Romania](#), Articles 142.5 and 146.1; [Russian Federation](#), Articles 125.4 and 128.3; [Serbia](#), Article 175; [Slovakia](#), Articles 129.8, 130.2 and 140; [Slovenia](#), Article 162; [Spain](#), Article 165; [Tajikistan](#), Article 84; [Ukraine](#), Article 153; and [Uzbekistan](#), Article 109). Four States provide in their constitution for the adoption of both legislation on the constitutional court by the legislature and separate rules of procedure adopted by the constitutional court itself ([Andorra](#), Articles 95.2 and 104; [Austria](#), Article 148; [Croatia](#), Article 127; and [Türkiye](#), Article 149). Only two OSCE participating States provide in their constitution exclusively for the adoption of rules of procedure by the constitutional court itself, without requiring the adoption of implementing legislation to regulate certain aspects of the constitutional court ([Bosnia and Herzegovina](#), Article VI.2.b; and [North Macedonia](#), Article 113). In the 31 OSCE participating States where the constitution requires that certain aspects of the constitutional court be regulated through legislation, but does not explicitly provide for the adoption of rules of procedure by the constitutional court itself, such legislation on the constitutional court typically mandates the Constitutional Court to adopt its own rules of procedure.

42 See [Updated Rule of Law Checklist](#), Venice Commission, CDL-AD(2025)002, December 2025, para. 134, which provides “*The Rules of Procedure should be drafted by the constitutional court itself, as an expression of the Court's autonomy within the limits of the constitution (and the law on the Constitutional Court, where appropriate); the Constitutional Court should have the possibility to modify them in the light of experience without the intervention of the legislator.*”

43 See, for example, [Constitution of Albania](#), Article 81.2.a; [Constitution of Belgium](#), Articles 4 and 142; [Constitution of France](#), Articles 57, 61-1 and 63; [Constitution of Kazakhstan](#), Article 72.7; [Constitution of Kyrgyzstan](#), Article 97.7; [Constitution of Romania](#), Articles 142.5 and 146.1; [Constitution of Russian Federation](#), Articles 108.2, 125.4 and 128.3; [Constitution of Spain](#), Article 165, [Constitution of Tajikistan](#), Article 84. See also [Constitution of Croatia](#), Article 127, which provides that certain aspects of the constitutional court must be regulated through a constitutional act adopted according to the procedure applicable to constitutional amendments; and [Constitution of Italy](#), Articles 137 and 138, which provide that certain aspects of the constitutional court must be regulated by constitutional law (i.e., adopted according to the procedure applicable to constitutional amendments) and that other aspects are regulated by ordinary legislation.

modalities of enforcement, as well as some aspects of the court's organization and functioning.⁴⁴ By contrast, Article 113 of the Constitution of the Republic of North Macedonia confers the power to regulate the mode of work and the procedure directly on the Court, with no requirement for the legislature to elaborate certain aspects of the Constitutional Court through legislation, thereby granting the Court a comparatively wide degree of autonomy in shaping its own procedural and organizational framework.

26. 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 (Article 113). 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 repeal by acts of Parliament, which confers to it a *sui generis* supra-legislative status, binding primarily within the framework of constitutional adjudication.
27. Beyond the fact that the extant normative arrangement is unusual in comparative practice, it raises three main observations and related concerns.

3.1. Scope of Constitutional Entrenchment of the Constitutional Court

28. First, the Constitution regulates the composition, jurisdiction, status of judges and guarantees of tenure, as well as effects of the Constitutional Court's decisions, in a broad and concise manner (see paras. 20-23 *supra*), but leaves unregulated certain key aspects that are critical both to safeguarding the independence of the Court and ensuring the effective functioning of the constitutional review system more broadly. Notably, although the Constitution requires the President of the Republic and the Judicial Council each to propose two candidates for election as Constitutional Court judges by the legislature (Articles 84, 105 and 109), it does not specify which authority is competent to propose candidates for the remaining five constitutional court judge positions. Furthermore, while the Constitution provides that Constitutional Court judges serve a single non-renewable term of nine years, it does not regulate the age limit of constitutional court judges. Indeed, the Constitution does not set a maximum age for becoming a judge nor establishes a mandatory retirement age. Moreover, the Constitution does not define the categories of persons or institutions entitled to initiate the different types of proceedings before the Court.
29. In light of experiences observed in other countries,⁴⁵ these omissions in the constitution may create institutional vulnerabilities for the Constitutional Court. Constitutionalization tends to provide a higher degree of protection against such unilateral changes through legislation, or by judges of the constitutional court themselves where such matters are

44 See e.g., 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, Venice Commission [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."

45 See e.g., [Designing Resistance. Democratic Institutions and the Threat of Backsliding](#), International IDEA 2023, pp. 99-113, which provides some examples of common techniques that have been used to weaken the judiciary, as part of a broader strategies to undermine legal safeguards for democracy, including, among others, lowering of the judicial retirement age (the fact that judicial retirement age is set by statute may enable a new legislative majority to lower judicial retirement age in order to remove judges and create vacancies for politically aligned appointees in the judiciary), changing judicial appointment procedures (for instance, changing the rules governing the composition of the parliamentary committee responsible to nominate candidates to constitutional court judge positions to rely on proportional representation v. a system where each party that had seat in parliament were represented in the committee), and restricting access to courts (for instance, abolishing *actio popularis*, a mechanism that allows anyone to seek abstract *ex post* constitutional review of laws and regulations).

deferred to internal rules of procedure, given the broader political consensus generally required for constitutional amendments. In recent years, several States in the OSCE region and beyond have proactively engaged in constitutional reforms to address vulnerabilities in their constitutional frameworks and strengthen constitutional safeguards of their respective judiciaries, drawing lessons from democratic backsliding that have happened elsewhere.⁴⁶

30. Although constitutions should not seek to be exhaustive, it is generally recommended that fundamental features of the Constitutional Court and the constitutional review system – including its powers, composition, jurisdiction, the status of judges and guarantees of tenure, the parties entitled to appeal and the constitutional principles governing the Court’s activities, etc.⁴⁷ – be entrenched at the constitutional level, in order to protect them against possible attempts of unilateral modification by incumbent governing majorities. At the same time, the precise scope of constitutional entrenchment should be adapted to the specific constitutional and political context of each State.
31. In light of the foregoing, **a comprehensive assessment of potential institutional vulnerabilities in the current constitutional framework could be undertaken, based on which a reform of the constitutional framework governing the Constitutional Court may be initiated with a view to strengthening constitutional safeguards by regulating certain key features of the Constitutional Court and of the constitutional review system that are currently left to infra-constitutional regulation, including standing rights in constitutional proceedings, mandatory age retirement for constitutional court judges, and the procedure for nominating candidates for all constitutional court judge positions.** It is understood that a potential reform of the

⁴⁶ For example, in **Germany**, the federal parliament adopted constitutional amendments in December 2024 to strengthen the constitutional protection of the Federal Constitutional Court, by elevating most of the existing provisions of the Federal Constitutional Court Act (hereinafter “FCCA”) – a federal law which can be amended by a simple majority in the Bundestag (the lower house of parliament) without the approval from the Bundesrat (the upper house) – to a constitutional status, thereby making them more difficult to amend and better protecting the Court from potential political interference; the constitutional amendments entrench the Court’s two senate (panel) structure, each with 8 judges; limit the term of constitutional court judges to one non-renewable term of 12 years; sets a mandatory retirement age of 68; provides that constitutional court judges remain in office until a successor is appointed; protect the court autonomy in determining its internal rules of procedure; and clarifies the court’s status as an autonomous and independent federal court whose decisions are binding on federal and lander constitutional bodies, all courts and public authorities. Regarding the selection procedure for constitutional court judges, prior to the reform, the Constitution simply provided that half of the judges are elected by the Bundestag and the other half by the Bundesrat, with the amendments now specifying that each of the chambers of the Parliament elects half of the composition of each of the two senates; at the same time, the amendments did not constitutionalize the existing requirement under the FCCA that judges must be elected by a two-thirds majority vote in the respective chamber, meaning that a simple majority in the Bundestag would still be able to adjust the election threshold through amendments to the FCCA; at the same time, the reform introduced in the Constitution a new mechanism to overcome deadlock in election of constitutional court judges: if either legislative chamber fails to elect a judge by the required majority within the timeframe provided by the FCCA, the other legislative body may elect the judge in question (see [Constitution of Germany](#), as amended on 22 March 2025, Articles 93 and 94; see [Constitutional Resilience. Fixing the Roof While the Sun is Shining](#), International IDEA, in *Annual Review of Constitution Building 2024*, 6 October 2025, pp. 8-9). In **Norway**, the legislature adopted constitutional amendments on 21 May 2024 to strengthen the constitutional protection of the judiciary, based on recommendations from the Courts Commission, appointed in 2017 under the Ministry of Justice to identify areas where the judiciary could be vulnerable to political interference; these amendments established a mandatory retirement age of 70 for judges (Article 90); introduced a cap limiting the maximum number of Supreme Court judges to 21, in addition to the already existing constitutional minimum of 4 (Article 88); enshrined the court structure in the Constitution, explicitly including district courts, courts of appeal and the Supreme Court, whereas previously only the Supreme Court and the Court of Impeachment were mentioned in the Constitution (Article 87); constitutionalized the existing practice regarding judicial appointments whereby judges must be nominated by an independent council – the Judicial Appointments Board – prior to formal appointment by the King (Article 90); and added a provision making the state responsible for ensuring the independent administration of the judiciary (Article 91) (see [Constitution of Norway](#), as amended in May 2024, Articles 87, 88, 90 and 91; see [Constitutional Resilience. Fixing the Roof While the Sun is Shining](#), International IDEA, in *Annual Review of Constitution Building 2024*, 6 October 2025, pp. 11-12).

⁴⁷ See e.g., [Updated Rule of Law Checklist](#), Venice Commission, CDL-AD(2025)002, December 2025, para. 134, where the Venice Commission recommends that “in jurisdictions with a specialised Constitutional Court, the composition of the court, its jurisdiction, the status of the judges and the guarantees of their tenure, the parties entitled to appeal as well as the constitutional principles on which the activity of the constitutional court is to be based should be entrenched at the constitutional level.” See also e.g., [Designing Resistance. Democratic Institutions and the Threat of Backsliding](#), International IDEA, 2023, p.72 which “proposes the following as a basic ‘checklist’ of considerations for constitution review commissions – that is, issues which may require some form of protection to place them beyond the reach of one-time majorities: (...) the Judiciary: rules for selecting judges; rules for dismissing judges; the size of the apex court responsible for judicial review; judicial tenure (including specification of retirement ages); jurisdiction and standing rules of apex courts; salaries and budget.”

constitutional framework is already envisaged in the Judicial Strategy 2024-2028 with a view to further strengthening the role of the Constitutional Court.

3.2. Absence of Primary Legislation on the Constitutional Court

32. Given that Articles 108-113 of the Constitution are relatively concise and do not require for further regulation in implementing legislation, the Constitutional 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 “mode of work and the procedure”, this concise deferral appears to have been interpreted broadly, as to cover all aspects not covered by the Constitution. This result in a framework in which significant elements of the Court’s structure, functioning and organization 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. Generally, the legislator should have a power to regulate the issues related to overall functioning and powers of the Court, while respecting the existing constitutional requirements, principles of rule of law and independence of justice. It should be assessed to what extent the normative configuration currently in force in North Macedonia may contribute, among other factors, to possible challenges concerning the acceptance of certain competencies exercised by the Constitutional Court and the execution or enforcement of its decisions by other state institutions.
33. In this context, **it is recommended to consider strengthening the legal framework governing the Constitutional Court through more detailed regulation by means of primary legislation. Core elements governing powers, organization and procedure should preferably be provided by the Constitution itself or be elaborated in a law adopted with qualified majority of the Assembly, with the Constitution expressly providing for such legislative elaboration. At the same time, it is for the national authorities and the Constitutional Court itself to assess whether constitutional amendments would first be required for such legislation to be enacted, or assess whether adopting such legislation would be compatible with the requirements of the Constitution.**

3.3. Scope of the Act

34. Third, the Act goes beyond merely regulating the working modalities and procedural matters of the Constitutional Court as provided under Article 113 of the Constitution, for instance by regulating standing rights and imposing obligations on individuals as part of its proceedings.⁴⁸ While these provisions may have been intended to fill gaps in the constitutional and legislative framework to ensure both the functioning of the Court and effectiveness of the constitutional review system more broadly, they raise questions concerning the constitutional allocation of powers and principle of separation of powers.
35. The Act also grants the Constitutional Court with certain prerogatives that seem to follow from the broad interpretation of the competences listed in Article 110 of the Constitution, which defines the Court’s jurisdiction, i.e., the power to initiate proceedings *ex officio*⁴⁹ (Articles 12 and 23 (4), see also Sub-Section 6.2 *infra*), to monitor the implementation of constitutionality, legality and fundamental rights and issue special reports to the

⁴⁸ The Act grants to ‘any person’ the right to submit a request to initiate a constitutional review proceeding before the Court (Article 23 (1)), and imposes obligation on everyone to provide information to the Court (Article 6) and to participate in a consultative discussion during preliminary proceeding when summoned by the Court (Article 28 (4)).

⁴⁹ The Act empowers the Constitutional Court to trigger proceedings on its own initiative (*ex officio*), thereby allowing the Court, without any request from an applicant, to independently initiate proceedings to review the constitutionality of a law, the constitutionality and legality of a regulation or other general act, or the constitutionality of a programme or statute of a political party or association (Articles 12 and 23(4)).

competent authorities⁵⁰ (Articles 12 and 13, see Sub-Section 4.1 *infra*), and to afford the authors of contested acts an opportunity to amend them before constitutional review is completed⁵¹ (Articles 12 and 36 (2)-(3), see Sub-Section 4.2 *infra*). By expanding the Court's own competences in this manner, the Act raises concerns regarding compliance with the principle of separation of powers, as well as effectiveness of such competences. **The competences of the Constitutional Court should be provided in the Constitution,⁵² and any expansion of the Court's powers should ordinarily be introduced through the constitutional amendment procedure set out in Section VIII of the Constitution. Accordingly, in the context of any future constitutional reform process, and should there be broad consensus that the Constitutional Court should retain some of these prerogatives, they should instead be provided at the constitutional level through the prescribed amendment procedure.**

RECOMMENDATION A.

To undertake a comprehensive assessment of potential institutional vulnerabilities in the current constitutional framework governing the Constitutional Court with a view to: identifying possible areas for strengthening constitutional safeguards by regulating certain key features of the Constitutional Court and of the constitutional review system that are currently unregulated in the Constitution, including standing rights in constitutional proceedings, the mandatory age requirements for Constitutional Court judges, and the procedure for nominating candidates for all Constitutional Court judge positions; regulating in more details the organization and functioning of the Constitutional Court and the constitutional procedure by means of primary legislation adopted by qualified majority; reflecting all the Court's prerogatives at the constitutional level, providing that there is broad consensus that they be retained; assessing whether adoption of such primary legislation is, in principle, compatible with the requirements of the Constitution currently in force.

4. JURISDICTION OF THE CONSTITUTIONAL COURT

36. Article 9 of the Act reflects the competences of the Constitutional Court enumerated in Article 110 of the Constitution (see para. 22 *supra*) and in overall are consistent with the role of the Constitutional Court in protecting constitutionality and legality under Article 108 of the Constitution.
37. In addition to reviewing the constitutionality of laws, the Constitutional Court is competent to review the constitutionality and legality of a comparatively broad range of normative acts, including regulations (i.e., administrative acts of the executive power) and collective agreements (Article 110 of the Constitution, and Article 9 of the Act). While it is relatively common in Central and South-Eastern Europe for constitutional courts to exercise jurisdiction over the compliance of executive acts with both the Constitution and statutes,⁵³ such broad competence should be accompanied by adequate procedural rules, and sufficient human capacity and financial resources, in order to enable

50 The Act empowers the Constitutional Court to monitor the implementation of constitutionality, legality, and the freedoms and rights of individuals and adopt, at its 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 (Articles 12 and 13).

51 The Act provides for a new prerogative 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 up to six months to amend the act in accordance with the reasoning of the Court expressed in a resolution (Articles 12 and 36 (2)); if the adopters fail to comply within the deadline set by the Court, the proceedings will continue (Article 36 (3)).

52 [The Updated Rule of Law Checklist](#), CDL-AD(2025)002, Venice Commission, December 2025, para. 134.

53 See, e.g., [Constitution of Croatia](#), art. 125; [Constitution of Czech Republic](#), art. 87.1.b; [Constitution of Poland](#), art. 188.3; [Constitution of Montenegro](#), art. 149.2; ; [Constitution of Serbia](#), art. 167.3; [Constitution of Slovakia](#), art. 125.1.b; [Constitution of Slovenia](#), art. 160.

the Court to discharge its functions efficiently and within a reasonable time. In countries with a separate system of administrative courts, the judicial review of legality of executive acts typically falls within the jurisdiction of administrative courts.

38. The Constitutional Court is also competent to protect certain individual freedoms and rights through individual constitutional complaint mechanism (see Sub-sections 4.3 and 7.2 *infra* for an in-depth analysis of this competence).
39. Besides constitutional review and the protection of certain constitutional rights, the Constitutional Court also has several competences aimed at safeguarding the separation of powers and the constitutional allocations of responsibilities between the different branches and levels of government. In this regard, the Constitutional Court adjudicates conflicts of competence among State authorities and between central State bodies and units of local self-government (Article 110 of the Constitution and Articles 9 and 67 of the Act), as well as proceedings concerning the responsibility and the cessation of office of the President of the Republic (Article 110 of the Constitution and Articles 9, 60, 61 and 62). Such competences are very common in comparative practices.
40. Nevertheless, certain elements of the Court's jurisdiction warrant further comments, in particular the additional prerogatives introduced by the Act (Articles 13 and 36 (2) of the Act), as well as the Court's role in the protection of human rights.

4.1. Monitoring the Implementation of Constitutionality, Legality and Freedoms and Rights (Article 13)

41. As noted above, Article 13 of the Act defines the Court's task 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.
42. 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 Constitutional 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 Court 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.⁵⁴ 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.

⁵⁴ See e.g., [Opinion on Two Bills of the Republic of Poland on the Constitutional Tribunal](#) (as of 24 July 2024), ODIHR, para. 28; and [Comparative Note on the Applicable Standards and Regulation of Recusals and Self-recusals of Judges](#), ODIHR, 15 December 2025 para. 65. See also, for the purpose of comparison, [McGonnell v. the United Kingdom](#), ECtHR, no. 28488/95, 8 February 2000, para. 55; and [Procola v. Luxemburg](#), ECtHR, no. 14570/89, 28 September 1995, para. 45, where the Court concluded that, when four members of the Conseil d'État carried out both advisory and judicial functions in the same case, "the mere fact that certain persons successively performed these two types of function in respect of the same decisions is capable of casting doubt on the institution's structural impartiality"; the Court noted that in the specific case, the applicant had legitimate grounds for fearing that the members of the judicial body had felt bound by the opinion previously given, and that "[t]hat doubt in itself, however slight its justification, is sufficient to vitiate the impartiality of the tribunal in question"

43. 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.⁵⁵ 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.⁵⁶ In case if the task of the Court would be, as part of the monitoring, to analyse and report on main trends related to human rights protection exclusively based on analysis of its own case-law, this should be clearly spelled out. Furthermore, this should not be an obligation but rather a discretion of the Court. In many countries, the responsibility to identify and signal flaws in the legal order falls under the mandate of the attorney general office, Ombudspersons or a similar institution, which provide legal advice to the government and government agencies, and typically do not have adjudicative functions.
44. In light of the above, **it is recommended to reconsider assigning such tasks to the Constitutional Court, while possibly limiting the Court's prerogative to monitoring the implementation of its own decisions.**

4.2. Interpretative resolutions (Article 36 (2))

45. 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-month 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 of rights and freedoms.⁵⁷ At the same time, such a mechanism may give rise to some issues with respect to legal clarity, consistency, and foreseeability.
46. First, the use of a resolution as the vehicle for such a determination appears problematic. 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. Such resolutions should not blur the distinction between procedural resolutions and substantive final position of the Court on the matter, even if they are adopted when assessing admissibility of the case. This mechanism, which presumably may contribute to economy of proceedings, could offer a possibility of remedying in a timely manner potential conflict with the Constitution (especially in cases of conflicts of competencies). At the same time, the six months suspension of the constitutional review proceeding, if abused by authorities, may protect the contested act as well as the negative effects of unconstitutional infringement of the rights. It is therefore important to ensure that the mechanism, if retained, does not result or lead to weakening of remedies for constitutional rights violations.
47. 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. Uncertainty also arises as to whether such reasoning may be relied upon in other cases or

55 In the OSCE region, only a very few participating States grant a somewhat similar monitoring role to their constitutional review institution, for instance in **Croatia** and in **Montenegro**, where 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; see [Constitution of the Republic of Croatia](#), Article 125, and [Constitutional Act on the Constitutional Court of the Republic of Croatia](#), Article 104; [Constitution of Montenegro](#), Article 149, and [Law on the Constitutional Court of Montenegro](#), Article 112.

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

57 [Interpretative Decisions of the Constitutional Court of North Macedonia in the Functions of Protecting Human Rights and Freedoms](#), Kostadinovski, D, in *Balkan Social Science Review* 25 December 2025, p. 56.

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 and conditions of this mechanism, grounds and legal effects of the resolutions adopted pursuant to Article 36 (2), including the main purpose (aim) of the resolutions, the criteria the Court should apply when granting the suspension of the proceeding, its potential impact on the constitutional rights of individuals (litigants in the case) and relationship to the Court's final decisions.**

RECOMMENDATION B.

1. To reconsider the Constitutional Court's authority 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 provided under Article 13 of the Act.
2. To clarify the scope, conditions, grounds and legal effects of the interpretative resolutions adopted pursuant to Article 36 (2), including the main purpose of the resolutions, its potential impact on the constitutional rights of individuals and relationship to the Court's final decisions.

4.3. Protection of Freedoms and Rights (Section III.2 of the Act)

48. Article 50 of the Constitution provides that every citizen may invoke the protection of freedoms and rights determined by the Constitution before the regular courts, as well as before the Constitutional Court. Article 110, indent 3, of the Constitution partially reflects this remedy in the jurisdiction of the Constitutional Court by providing that the Constitutional Court "*protects the freedoms and rights of the individual and citizen relating to the freedom of conviction, conscience, thought and public expression of thought, political association and activity as well as the prohibition of discrimination among citizens on the ground of sex race, race, religion or national, social or political affiliation*". While Article 50 provides that this protection mechanism extends to all constitutionally guaranteed rights and freedoms, Article 110 limits the scope of protection to a narrowly defined set of rights and freedoms. This individual complaint mechanism for the protection of freedoms and rights before the Constitutional Court is further elaborated in Articles 53-59 of the Act. Notably, Article 53 (1) of the Act retains the same restrictive scope as Article 110 of the Constitution.
49. The individual complaint mechanism for the protection of freedoms and rights has thus 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. While constitution-makers may have had reasons in 1991, when the Constitution was enacted, to limit this protection to only certain constitutional rights, this limitation is at odds with comparative constitutional review mechanisms allowing all fundamental rights to be protected by the Constitutional Court in the same manner.⁵⁸

⁵⁸ As a comparison, a somewhat comparable situation existed in Belgium: when the Constitutional Court (then called the *Court of Arbitration*) was established by constitutional amendments in 1980, its jurisdiction was initially limited to reviewing the compliance of

50. In light of these considerations, and although this issue falls beyond the scope of the present Opinion, **should constitutional reform be undertaken, the constitution-makers should consider the introduction of a full constitutional complaint mechanism, covering all constitutional rights and freedoms, and not only those currently mentioned in Article 110 of the Constitution.**⁵⁹

5. COMPOSITION OF THE CONSTITUTIONAL COURT

51. Although this issue likewise goes beyond the scope of the present Opinion, as it would require constitutional amendment, the composition of the Constitutional Court and the procedure for the selection of constitutional court judges warrant several observations.
52. As mentioned in Sub-Section 3.1, the Constitution does not specify which authority is competent to propose candidates for five (out of nine) Constitutional Court judge positions, beyond the two nominations by the President of the Republic (Article 84 of the Constitution) and by the Judicial Council (Article 105 of the Constitution) respectively.⁶⁰ **For legal certainty purposes, it is recommended that the authorities competent to nominate candidates for all Constitutional Court judge positions be specified in the Constitution.**
53. Pursuant to Article 109 of the Constitution, as amended in 2001, of the nine constitutional court judges, six are elected by an absolute majority vote of the Assembly, and three judges are elected by a double-majority vote, requiring both a majority vote of all MPs and a majority vote of all MPs belonging to minority communities.⁶¹ Neither the Constitution, nor the rules of procedure of the Assembly, specify which authority is competent to nominate candidates for these three positions subject to the double majority requirement. It is unclear whether one candidate is to be nominated respectively by the President of the Republic, the Judicial Council, and the Assembly's Committee on Elections and Appointments, or whether the Assembly retains discretion to determine which among all nominated candidates must be elected through the double-majority vote. This ambiguity creates legal uncertainty with respect to an important constitutional safeguard introduced as part of post-conflict political settlement.⁶² **This should be clarified either in the Constitution or in a law adopted with qualified majority.**
54. Importantly, the election of six of the nine judges to the Constitutional Court by an absolute majority vote of the Assembly raises concerns. Given that all nine judges of the Constitutional Court are elected by the Assembly and that the Constitution does not require for their term of office to be staggered, this means that the incumbent majority party can unilaterally appoint at least six judges (i.e., two-thirds) of the Constitutional Court whose mandates expire during the Assembly's term and thereby fundamentally

laws and regulations with the constitutional division of responsibilities between the different branches of power and the different levels of government, while in 1988, the jurisdiction of the Court was expanded through constitutional amendments to include review of the compliance of laws and regulations with the constitutional rights to equality (Article 10), non-discrimination (Article 11) and the freedom of education of linguistic communities (Article 24); the same constitutional amendments also introduced an open clause allowing the legislator to further extend the Court's jurisdiction to review legislation and regulations against additional constitutional provisions; on 9 March 2003, the legislature adopted a law that extended the competence of the Court to all constitutional rights and freedoms (see Constitutional Court of Belgium, *The History of the Constitutional Court*).

59 See e.g., *Revised Report on individual Access to Constitutional Justice*, Venice Commission, CDL-AD(2021)001-e, 22 February 2021, para. 207, where the Venice Commission recommended the introduction of a full constitutional complaint where it does not yet exist.

60 Article 68 of the *Constitution* provides that the Assembly elects Constitutional Court judges and selects, appoints and dismisses other holders of public and other office determined by the Constitution and law, but does not explicitly provide that the Assembly nominates five candidates for Constitutional Court judges. The Rules of Procedure of the Assembly also do not explicitly mandate the Assembly's Committee on Election and Appointments to nominate five candidates.

61 The requirement that three judges of the Constitutional Court be elected through this double-majority vote stems from Amendment XV of the Constitution adopted by the Assembly on 16 November 2001, following the *Orhid Framework Agreement* of 13 August 2001 which provided for broader power-sharing arrangements; see, *Framework Agreement concluded at Ohrid, Macedonia*, signed on 13 August 2001, Article 4.3.

62 *Orhid Framework Agreement* of 13 August 2001, Article 4.3.

influence the composition of the Court. This arrangement risks undermining the credibility, independence and perceived or real impartiality of the Constitutional Court and is at odds with comparative good practices in the OSCE region and international recommendations.⁶³ When the legislature elects a great majority or all of the members of the constitutional review body, it is crucial to require a qualified majority vote (e.g., two-thirds or three-fifths) to ensure that broad agreement is found in the legislature among different political forces, which tends to depoliticize the process of judges' election. By requiring the majority to seek compromise with the legislative minority, it encourages moderation in the selection process and promotes the nomination of candidates who can garner support from multiple political parties. At the same time, to avoid stalemate, it is also important that effective deadlock-breaking mechanism tailored to the country context and institutional culture be devised.⁶⁴ **Therefore, should constitutional reform be undertaken, it is recommended that the current requirement of election by absolute majority for six judges be reconsidered and replaced by a qualified majority vote in the Assembly, combined with an effective anti-deadlock mechanism.**

55. In addition, **in order to further reduce the risk that a transient legislative majority unilaterally appoints all judges of the constitutional through simultaneous election, the introduction of staggered terms of office for Constitutional Court judges could also be considered.** For example, the Constitution could provide for the periodic renewal of one-third of the Court's composition every three years. Staggered tenure may contribute to institutional continuity of the Court and reduce the likelihood of political capture of the Constitutional Court.

6. MODE OF OPERATION OF THE CONSTITUTIONAL COURT (SECTION II)

6.1. Allocation of Cases (Article 11)

56. Article 11 of the Act provides that cases are allocated among Constitutional Court judges by the Secretary-General of the Constitutional Court according to the chronological order in which initiatives for proceedings are received and the alphabetical order of the surnames of the judges.
57. This system of case distribution is commendable and consistent with international recommendations, which require that the allocation of cases should remain an internal judicial function, be carried out according to predetermined and transparent procedure, and made by random selection process, such as lot, or automated system based on objective criteria, such as alphabetical or chronological order.⁶⁵ This approach should

63 Comparative practices in the OSCE region show that the election of constitutional court judges by parliament often requires a qualified majority; see [Compilation of Venice Commission Opinions, Reports and Studies on Constitutional Justice](#), Venice Commission, CDL-PI(2022)050, Section 4.3.1. See also Venice Commission, [the Updated Rule of Law Checklist](#), CDL-AD(2025)002, December 2025, para. 140 which provides “Where judges are elected by Parliament, the requirement of a qualified majority (e.g. two-thirds or three-fifths) serves as an institutional safeguard against politicisation. An antideadlock mechanism (for example, nomination of candidates by other neutral bodies after several unsuccessful votes in Parliament) should be envisaged in order to avoid such stalemate, while not creating a disincentive to reaching agreement on the basis of a qualified majority in the first instance. There is no single model for designing an anti-deadlock mechanism.”

64 See e.g., Opinion on the Proposed Changes to the Modalities for Nominating Members of the Constitutional Court of Spain, ODIHR, 24 March 2023, paras. 54-55. See also e.g., [Compilation of Venice Commission. Opinions and Reports Related to Qualified Majorities and Anti-Deadlock Mechanisms in Relation to the Election by Parliament of Constitutional Court Judges, Prosecutors General, Members of Supreme Judicial Council and Prosecutorial Councils and the Ombudsman](#), Venice Commission, CDL-PI(2023)018.

65 See, for example, UNODC, The United Convention Against Corruption, [Implementation Guide and Evaluative Framework for Article 11](#), UNODC, 2015, para. 104 which provides that “the assignment of cases should not be influenced by the wishes of any party to a case or any person concerned with the results of the case” and that “[t]he allocation of cases may, by way of example, be made by a system of alphabetical or chronological order or other random selection process”; see also [Recommendation of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities](#), CoE Committee of Ministers, CM/Rec(2010)12, 17 November 2010, para. 24, which provides that “[t]he allocation of cases within a court should follow objective pre-established

prevent any discretion on the side of the Secretary-General of the Constitutional Court in the allocation of cases.

6.2. Self-triggering Capacity of the Constitutional Court (Articles 12 and 23 (4))

58. Article 12 of the Act provides that the Constitutional Court exercises its competence by official duty in cases provided for by the Constitution and this Act. Article 23 (4) of the Act provides that the Constitutional Court may, on its own initiative, initiate proceedings for the review of the constitutionality of laws, the compliance of regulations and other general acts with the Constitution and laws, and the constitutionality of programmes or statutes of political parties and associations. It is noted that the Constitution does not regulate standing rights before the Constitutional Court, and is silent on the self-triggering capacity to the Constitutional Court. This self-referral competence of the Constitutional Court is further extended by Article 26, which states that the Court is not bound by the claims of the initiators, and also by Article 48, which obliges the Court to continue the procedure in case the “*submitter withdraws the initiative for initiating proceedings*” if the matter is of “*broader constitutional-legal significance*”. A related, though non-adjudicative function is provided in Article 96, which authorizes Constitutional Court judges to monitor and study laws, other regulations, and general acts and propose the initiation of proceedings for the review of constitutionality of a specific law or the constitutionality and legality of a specific regulation or general act.
59. While international standards and recommendations do not require nor prohibit *ex officio* constitutional review proceedings of constitutional courts, in comparative practice, *ex officio* review powers of constitutional courts remain relatively uncommon.⁶⁶ and the prevailing comparative model remains one of reactive constitutional adjudication, whereby constitutional review is initiated upon request by authorized public institutions, or individuals through constitutional complaint mechanisms. Thus, if *ex officio* constitutional review is retained, it is recommended to define clearly and in detail, in the Constitution or in primary legislation, the grounds for its exercise and the applicable procedure.
60. In the specific contexts of democratic transitions, *ex officio* review procedures may, similarly to the broad standing rights granted under Article 23 of the Act, serve as temporary measures of transitional constitutionalism to enable newly established constitutional courts, especially in the early stages of implementation of a new constitution, to identify, review and repeal or annul unconstitutional norms inherited from a previous undemocratic, totalitarian political regime and/or enacted under an earlier constitution.
61. At the same time, the Act already establishes very broad access to constitutional review by allowing anyone to initiate such proceedings before the Constitutional Court. In this context, granting the Court authority to initiate proceedings on its own motion may expose the Court to criticism and attacks from political actors if the Court uses this power too frequently, or on a broad discretionary basis, without having clearly defined grounds,

criteria in order to safeguard the right to an independent and impartial judge. It should not be influenced by the wishes of a party to the case or anyone otherwise interested in the outcome of the case”.

66 Within the OSCE region, some form of self-triggering authority for constitutional review is found, for example, in **Austria** (see [Federal Constitutional Law BGBl](#), Article 140 (1).b), **Croatia** (see [Constitutional Act on the Constitutional Court of Croatia](#), Article 38 (2), which provides “The Constitutional Court itself may decide to institute proceedings to review the constitutionality of the law and the review of constitutionality and legality of other regulations”), **Serbia** (see [Constitution of Serbia](#), Article 168, which provides “A proceedings of assessing the constitutionality may be instituted by state bodies, bodies of territorial autonomy or local self-government, as well as at least 25 deputies. The procedure may also be instituted by the Constitutional Court.”) and **Slovenia** (see [Constitutional Court Act](#), Article 30). However, in Austria and Slovenia, the *ex officio* review power of the constitutional court is much more limited in scope since the constitutional court may review the constitutionality of a law or regulation on its own motion *only incidentally* in the context of a case already pending before it (initiated upon request submitted by an authorized applicant) in which that norm would have to be applied to resolve the case.

elaborated criteria and detailed procedure for such reviews. The use of self-referral power allows the Constitutional Court to unilaterally determine which acts should be subject to judicial review, and may thus create a perception that the Court is selecting its own cases and potentially pursuing its own priorities. In addition, if the Constitutional Court can independently select normative acts for review, its position vis-à-vis other branches of government is strengthened, as it gains power to review legislation and executive acts continuously without external trigger. This may create tensions with the principle of separation of powers and the democratic legitimacy of other branches of power.

62. In light of these considerations, **and given the already broad standing rights established under Article 23 (1) of the Act, it is recommended to assess the practical operation of the Constitutional Court's self-referral power, including its implications for the balance between State powers and the effective functioning of constitutional review, and whether on this basis, it should be retained at all or its scope and procedure be strictly defined or considerably reduced. Should there be broad consensus that such a power should be retained in light of the domestic context, it would be preferable for its scope and legal basis to be addressed within the constitutional framework rather than exclusively through the Act.**

RECOMMENDATION C.

To assess the practical operation of the Constitutional Court's self-referral authority, including its implications for the balance between State powers and the effective functioning of constitutional review, and whether on this basis, it should be retained at all or its grounds, scope and procedure be strictly defined or considerably reduced. Should there be broad consensus that such a power should be retained in light of the domestic context, it would be preferable for its scope and legal basis to be addressed within the constitutional framework rather than exclusively through the Act.

6.3. Sessions, Working Meetings, and Decision-making Procedure of the Constitutional Court (Articles 15 and 16)

63. The Act distinguishes between “sessions” and “working meetings” of the Constitutional Court (Articles 15 and 16). The Constitutional Court holds sessions when deciding on matters within its competence (Article 15 (1)), that is when exercising its judicial functions as enumerated in Article 110 of the Constitution,⁶⁷ while working meetings are held to discuss special matters concerning the Court's operation (Article 16 (1)). Any Constitutional Court judge may propose to the President of the Constitutional Court that a session be convened (Article 15 (4)). Sessions are convened and chaired by the President of the Constitutional Court (Article 15 (2)).
64. Most decisions and resolutions of the Constitutional Court are adopted by absolute majority vote of all the Constitutional Court judges (i.e., five out of nine judges) (Articles 33 and 70). Article 15 (4) of the Act requires the presence of at least five judges as a quorum for holding a session, which is in line with common good practices that the necessary attendance quorum exceeds the simple majority of judges.⁶⁸ When the agenda of the session includes matters requiring a two-thirds majority vote of the total number

⁶⁷ In particular, sessions are held when deciding on whether to initiate proceeding (following a request submitted by an authorized person, or on the Court's own motion in the case of constitutional review proceeding), deciding whether to hold a public hearing (Article 41), deliberating on a case and on draft decisions prepared by the judge-rapporteur and voting on such decisions (Articles 51 and 70); sessions are also held when electing the president of the Constitutional Court (Article 17).

⁶⁸ See e.g., [Opinion on Amendments to the Act of 25 June 2015 of the Constitutional Tribunal of Poland](#), Venice Commission, 11 March 2016, paras. 69-71; [Opinion on the Act of the Constitutional Tribunal](#), Venice Commission, 14 October 2016, para. 32.

of judges – such as the election of the president of the Constitutional Court (Article 17), and decisions on lifting the immunity, or determining permanent incapacity, of a Constitutional Court judge (Article 69) – the attendance quorum requirement increases to at least six Constitutional Court judges (Article 15 (5)). While these quorum requirements provide a degree of flexibility, as sessions do not require the participation of all judges of the Constitutional Court, the Act does not provide for smaller benches or panels of judges to adjudicate specific categories of cases. Given the broad jurisdiction of the Constitutional Court, together with the fact that anyone may file a request seeking constitutional review of laws, review of regulations, collective agreements and programmes of political parties and associations (Article 23 (1)), in addition to the direct complaint mechanism for the protection of freedoms and rights (Article 53), the Court may face a significant caseload. **Should there be a need to alleviate the Court's caseload, the establishment of smaller panel of judges (for example panels composed of three judges) with corresponding lower voting threshold (for example, a majority of judges sitting in that panel) could be considered for adjudicating specific types of cases.**⁶⁹

65. With respect to the Court's working meetings to discuss specific matters concerning the operation of the Constitutional Court, the President of the Constitutional Court convenes working meetings once a month (Article 16 (1)). In addition, the President of the Court is required to convene additional working meetings upon request of any Constitutional Court judge (Articles 16 (2), 16 (3) and 16 (4)). As Article 73 provides that the Constitutional Court adopts resolutions in cases “*where it does not rule on the substance of the matter*”, and Article 33 provides that resolutions are adopted by an absolute majority vote unless otherwise provided by the Constitution or the Act, it may be interpreted that decisions regarding the operation of the Constitutional Court made during working meetings are adopted in the form of resolutions by an absolute majority vote of all the Constitutional Court judges. **However, for legal certainty purposes, it is recommended to specify in the Act which operational matters of the Constitutional Court are discussed during working meetings, the applicable quorum, the nature of the act (resolution) and the voting threshold requirements for decisions on these operational matters.**

6.4. Election of the President of the Constitutional Court (Article 17)

66. Article 109 of the Constitution provides that the President of the Constitutional Court is elected by and from among the judges of the Constitutional Court for a non-renewable three-year term. Article 17 of the Act further elaborates the procedure for the election of the President of the Constitutional Court.⁷⁰
67. Although international standards do not prescribe a single approach to the selection of a president of a constitutional court, the election of the President by and from among the judges of the court is generally regarded as providing stronger safeguard for the independence of the constitutional court, as compared to appointment by a political

69 See, e.g., [Study on Individual Access to Constitutional Justice](#), Venice Commission, CDL-AD(2010)029rev, para. 225, which provides “*A useful method for alleviating the court's case-load can be the creation of smaller panels of judges when deciding matters initiated by one of the types of individual access, where the plenary only acts if new or important questions need to be decided. It is important that the law establishing the constitutional court provides for the possibility of a decision by the plenary if there are conflicting decisions by the chambers; otherwise, the unity of the constitutional court's jurisprudence is endangered. There needs to be clear rules to avoid any possibility of bias in the allocation of cases to the chambers or in the composition of panels*”

70 A commission composed of three Constitutional Court judges, elected by a majority of the total number of Constitutional Court judges, nominates a candidate for the election of the President of the Constitutional Court. Any Constitutional Court judge may propose a candidate for consideration by the commission. To be elected President, a candidate nominated by the commission must obtain a two-thirds majority vote of the total number of Constitutional Court judges at a session of the Constitutional Court. If the candidate does not obtain the required majority, the election procedure is repeated.

authority.⁷¹ This arrangement is used in a number of OSCE participating States, as well as in regional courts such as the ECtHR and the Court of Justice of the European Union.⁷²

68. The three-year term for the Constitutional Court President, which implies that the presidency is held by three different judges during a nine-year term, may contribute to reinforcing collegiality among judges and limiting the development of a hierarchy or overly dominant role of the President.⁷³
69. It is noted that the only mechanism provided in the event that the Constitutional Court fails to reach the required two-thirds majority to elect its president is the repetition of the election procedure. **In order to avoid prolonged deadlock and delays in the appointment of the president, the introduction of a deadlock-breaking mechanism could be considered, such as decreasing the required threshold to an absolute majority vote after a specified number of unsuccessful ballots.**
70. Article 18 (2) of the Act provides that, in case of absence or incapacity, the president is replaced by a judge according to a schedule determined by the Constitutional Court, following the alphabetical order of the surnames of the judges. While this provision is generally welcome, it does not appear to apply to situations where the Constitutional Court fails to elect a president in due time. Clear rules should be established to determine who acts as interim president in such circumstances. **In this regard, the Act could provide that the outgoing president should continue to perform functions until his or her successor is elected, provided that his or her term as a constitutional court judge has not expired. Furthermore, when no president is in office, for example following the election of an entirely new composition of the Court, the Act could provide that the interim presidency is assigned to a judge of the Constitutional Court designated on the basis of objective criteria, such as seniority or alphabetical order, until the election of a president is duly completed. Alternatively, the existing interim arrangement foreseen in Article 18 (2) of the Act could be broadened so as to apply also to both of these situations.**

7. PROCEDURE BEFORE THE CONSTITUTIONAL COURT (SECTION III)

71. Section III of the Act regulates the different stages of proceedings before the Constitutional Court. The procedure for constitutional review proceedings (Articles 23-52) is elaborated in greater detail than that applicable to the other types of proceedings, for which only specific procedural aspects are regulated. Article 70 provides that the provisions regulating constitutional review proceedings apply to other types of proceedings, unless otherwise provided by the Act.

7.1. Constitutional Review Proceedings (Articles 23 – 52)

72. Sub-section III.1 of the Act regulates the proceedings 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 Constitution*”. For the purpose of

71 See [Updated Rule of Law Checklist](#), Venice Commission, CDL-AD(2025)002, December 2025, para. 143.

72 See, e.g., [Law on the Organization and Functioning of the of the Constitutional Court of the Republic of Albania](#), Article 7.d; [Constitution of Armenia](#), Article 166.2; [Constitution of Bulgaria](#), Article 147.4; [Constitution of Croatia](#), Article 122; [Constitution of Italy](#), Article 135; [Constitution of Moldova](#), Article 136.3; [Constitution of Montenegro](#), Article 153; [Constitution of Romania](#), Article 142.4; [Constitution of Serbia](#), Article 172; [Constitution of Slovenia](#), Article 163; [Constitution of Spain](#), Article 160. For the election of the President of the ECtHR, see Rule 8² of the [Rules of the Court](#), 15 September 2025; for the election of the President of the Court of Justice of the European Union, see Article 8 of the [Consolidated version of the Rules of Procedure of the Court of Justice of 25 September 2012](#), as last amended on 2 June 2026.

73 See [Opinion on the Draft Constitutional Law of the Constitutional Court of Armenia](#), CDL-AD(2017)11, para. 52.

conciseness, these proceedings are hereinafter referred to as constitutional review proceedings.

73. On the form, the arrangement of the provisions governing the various stages of proceedings before the Constitutional Court does not always reflect the chronological sequence of the proceedings themselves.⁷⁴ This may create confusion regarding the order in which the different stages of the proceedings are to be undertaken.
74. The different stages of constitutional review proceedings can be summarized as follows. It starts with the submission by any person of an initiative (i.e., a request) for proceedings to the Constitutional Court (Article 23 (1)). The Secretary-General of the Constitutional Court examines whether the initiative contains all the elements prescribed in Article 23 (2) and 23 (3). If the initiative is incomplete, the Secretary-General notifies the submitter of the deficiencies and sets a deadline not exceeding 30 days for their rectification (Article 24 (1)). If the deficiencies have not been remedied upon within the prescribed timeline, or if the initiative have been submitted by an anonymous submitter or contains offensive allegations, the Constitutional Court determines that the initiative has not been submitted (Article 24 (2)). If the initiative complies with the formal requirements prescribed in Article 23 (2) and (3), the Secretary-General allocates the case to a Constitutional Court judge according to the chronological order in which initiatives for proceedings are received and the alphabetical order of the judges' surnames (Articles 11 and 28 (1)). The judge-rapporteur, assisted by an advisor, then conducts a preliminary proceeding (Article 28), which may be complemented by a preparatory session (Article 40), to determine whether to initiate proceedings. The Constitutional court decides whether to initiate proceedings or reject an initiative for proceedings by a resolution (Articles 36 (1), 38 and 73) adopted by an absolute majority vote of all constitutional court judges (Article 33) during a session. The Constitutional Court may also initiate a constitutional review proceeding on its own initiative (Article 23 (4) – see also Sub-Section 6.2 *supra*). Once the proceeding has been formally initiated, the judge-rapporteur and the advisor instruct the case and prepare a draft decision (Articles 28, 29 and 75 (2)). During the course of proceedings, the Constitutional Court may decide to temporarily suspend the execution of individual acts based on contested act (Article 37). The Constitutional Court can also conduct a public hearing during the course of proceedings (Article 41). Then the Constitutional Court deliberates and votes on the case at a session convened by the President of the Constitutional Court (Article 51). The final court decision is adopted by an absolute majority of all constitutional judges (Article 33). The decision is then signed by the President of the Constitutional Court and the judge-rapporteur (Article 77) and published in the Official Gazette (Articles 79 (1)).
75. Several aspects of the constitutional review proceedings could benefit from further elaboration and clarification in the Act.

7.1.1. Rejection of Initiative

76. The Constitutional Court's authority to reject initiatives following a preliminary review (Articles 24 (2), 28, 38) aims to ensure efficient functioning of the Court by enabling manifestly inadmissible initiatives to be filtered out at an early stage. Under Article 24 (2), the Constitutional Court should determine that an initiative has not been submitted when the initiative is inadmissible if it has been submitted anonymously, or contains "*offensive allegations*". Article 38 of the Act further provides that the Constitutional Court should reject an initiative when the Court is not competent to decide on the request,

74 For example, the rules governing the Court's decision on whether to accept or reject a request for constitutional review, and when accepted to formally initiate proceedings, are set out in Articles 36 and 38. However, Article 40 provides for the possibility for the Court to hold a preparatory session before initiation of proceedings.

when it has already decided on the same matter, or “when there are procedural obstacles to deciding on the initiative” (Article 38).

77. While the determination under Article 24 (2) is made without preliminary proceedings, the Act does not specify the procedural form in which it is adopted. **Since such a determination constitutes an official stand of the Constitutional Court, it is recommended that Articles 24 (2) and 73 of the Act explicitly provide that it be adopted by way of a resolution.**
78. **The reference to “offensive allegations” in Article 24 (2) is vague and subjective and should therefore be removed as a ground for rejecting an initiative. In addition, the notion of “procedural obstacles” in Article 38 is unclear. In the interests of legal certainty, it would be advisable to define clearly in the Act which situations would fall under the notion of “procedural obstacles”.** For example, it could be limited to the procedural defects explicitly identified in Article 24 (2) of the Act, that is the failure to remedy deficiencies in an incomplete initiative or the submission of an anonymous initiative, rather than being formulated as an open-ended ground for inadmissibility.
79. **The Act could also be supplemented by empowering the Constitutional Court to reject initiatives that are manifestly unfounded, that is those that obviously do not raise question of constitutionality or legality. Finally, the Act should require that resolutions rejecting an initiative be reasoned and set out the grounds on which the initiative has been found inadmissible.** Altogether, such changes would contribute to further reducing the risk of arbitrariness during preliminary proceedings and improving public understanding of the Constitutional Court’s resolution.

RECOMMENDATION D.

To remove “offensive allegations” from the grounds for rejecting an initiative for constitutional review proceeding under Article 24 (2), while defining clearly which situations fall under the ground of “procedural obstacles” under Article 38, and allowing the Constitutional Court to reject initiatives that obviously do not raise question of constitutionality or legality.

7.1.2. Public Hearing and Transparency of the Proceedings

80. Articles 7, 40 (1), 41 (1), 51 (2), 92 and 93 of the Act aim to balance the effectiveness and transparency of the Constitutional Court. Constitutional review proceedings before the Constitutional Court appears to be conducted primarily in writing (Articles 23 (1), 28 (2), 29, 30, 31 (3), 34 (1)). Given the specificities of constitutional adjudication, written proceedings allow parties to present detailed legal arguments and enable judges to carefully examine these arguments and assess the constitutionality of the contested act. Written procedures also contribute to a better allocation of judges’ time and to more timely decisions. While most of the proceedings appear to be conducted in writing, deliberation by Constitutional Court judges at a session is necessary, where judges deliberate based on the draft decision prepared by the judge rapporteur. Article 51 (2) of the Act provides that deliberation and votes by the Constitutional Court judges at a session are held without the presence of the public (i.e., in camera), which is common in comparative practice.⁷⁵
81. Article 7 of the Act establishes, as a general principle, that the work of the Constitutional Court is public. Articles 92 and 93 of the Act ensures transparency by holding sessions,

⁷⁵ *Revised Report on individual Access to Constitutional Justice*, Venice Commission, CDL-AD(2021)001-e, 22 February 2021, para. 120.

public hearings and preparatory meeting open to the public, except for cases involving “national security and defence, the protection of state, official or professional secrets, or the safeguarding of morality” (Article 93 (1)) or “in other justified cases, as decided by the Court by a majority vote of all judges” (Article 93 (2)). Articles 40 (1) and 41 (1) of the Act also promote transparency by allowing the Constitutional Court to hold public hearings during constitutional review proceedings. More precisely, during preliminary proceeding, the Constitutional Court may convene a preparatory session in order to clarify the factual and legal circumstances of the case, inviting the participants in the proceedings, as well as expert bodies and organizations, scholars and legal experts designated by the Court (Article 40 (1)). In addition, once proceeding have been initiated, the Constitutional Court may also hold a public hearing at which it can hear the opinion of the participants to the proceedings but also of organizations, scholars and legal experts invited by the Court. The possibility for the Court to hold public hearings is generally welcome, as it can contribute to enhancing the transparency of constitutional adjudication, broadens the sources of information available to the Court and enables the Court to benefit from additional legal expertise and perspectives via third parties.

82. Nevertheless, certain aspects of the public hearings would benefit from clarification. Pursuant to Article 46 (1) of the Act, the Constitutional Court may decide whether to present, during a public hearing, the evidence collected during the preliminary proceeding. This discretion raises concerns. When evidence collected during the preliminary proceeding is not presented at the public hearing, the participants to the proceeding may be deprived of an opportunity to comment on or challenge that evidence, which were collected by the Courts’ own intuitive. Moreover, if the Constitutional Court relies in its decision on evidence that has not been presented during the public hearing, this may impair the transparency of the proceedings, create some uncertainty as to the evidentiary basis of the Court’s decision, and give rise to perceptions that the proceedings did not fully respect the principle of equality of arms, and may thus affect public confidence in the impartiality of the Court. **Therefore, the legal drafters could consider amending Article 46 so as to require, as a general rule, that all evidence be presented at public hearing. The grounds for retaining the evidences from public hearing should be strictly defined and limited to the protection of privacy, interests of minors, state or commercial secrets and other cases strictly defined by the law.**
83. Article 56 of the Act, which regulates public hearings in proceedings for the protection of freedoms and rights, provides that public hearing may proceed in the absence of one or some of the parties to the proceedings, provided they have been duly invited. By contrast, no equivalent provision exists for public hearings in constitutional review proceedings. In the absence of such a rule, the Act could be interpreted as requiring the presence of all participants to the proceedings for a public hearing to take place, thereby enabling a participant to *de facto* prevent a public hearing simply by failing to appear. **It is recommended to align these two provisions and provide that a public hearing in constitutional review proceedings may proceed in the absence of participants – except the litigants - who have been duly informed.**
84. Article 50 of the Act provides that public hearings may be recorded by means of written notes, stenographic recording or audio recording. While Article 50 (4) specifies that the stenographic record forms an integral part of the minutes of the public hearing, the Act does not regulate the status of audio recordings. **It is recommended that the Act require**

that audio recording may be attached to the minutes, upon the request and with a rule on the right to access it.⁷⁶

7.1.4. Timeline

85. Regarding the timeline for constitutional review proceedings, the Act provides that the judge and advisor assigned to the case must start the preliminary proceeding no later than seven days after the case has been assigned (Article 28 (3)), that the judge-rapporteur has six-months from the date of assignment to instruct the case and prepare a draft decision (Articles 29 and 75 (2)), and that the final decision adopted by the Constitutional Court at a session must be transmitted for publication in the Official Gazette within three days of its signature by the President of the Constitutional Court and the judge-rapporteur (Article 78).
86. While these deadlines are generally welcome, the Act does not prescribe a time limit within which the Constitutional Court must decide whether to initiate proceedings or reject an initiative following preliminary proceedings, nor does it prescribe a time limit for the Constitutional Court to adopt its final decision on the case. **In order to enhance legal certainty and ensure timely administration of constitutional justice, it is recommended to introduce such time limits in the Act, while allowing for extensions in duly justified cases where the complexity of the case so requires.**

RECOMMENDATION E.

To prescribe a time limit for the Constitutional Court to adopt its final decisions in constitutional review proceedings, while allowing for extensions in duly justified cases where the complexity of the case so requires.

7.2. Constitutional Complaint (Articles 53 – 59)

87. Articles 53-59 of the Act operationalize the constitutional complaint mechanism provided in Article 110, indent 3 of the Constitution. This mechanism enables any natural or legal person who considers that an individual act or action of a public authority has violated a freedom or right protected under Article 110, indent 3, of the Constitution,⁷⁷ to request the Constitutional Court to initiate a proceeding for the protection of that right or freedom (Article 53 (1)). Such a request may be submitted by any individual or legal entity, as well as by the Ombudsperson on behalf of another person (Article 53 (2)). The constitutional complaint can be made only against an individual act or action of a public authority, and therefore does not extend to laws or regulations of general application dealing with absolute and general situations. Regarding the time limit for submission, the request must be submitted within 60 days of the exhaustion of all legal remedies against the contested individual act, or within 60 days of the date the applicant became aware of the contested action, but no later than one year from the date the contested action occurred (Article 53 (3)). Once the proceeding has been initiated and the case assigned, the judge-rapporteur has 90 days to instruct the case and prepare a report and a draft decision (Article 55). The report must include an overview of the relevant case-law of the ECtHR

⁷⁶ See, e.g., [Rules of Procedure of the Federal Constitutional Court of Germany](#), § 24(3) which provides that audio recording of the oral hearing is available only at the Court and only to the members of the Court and to the parties to the proceedings. Copying or privately transmitting audio recordings is not permissible. See also, [Rules of Procedure of the Constitutional Court of Slovenia](#), Article 28 para. 2 and 3 which provides that journalists who are covering a public hearing may, for the purposes of reporting on the work of the Constitutional Court, audio record the course of the public hearing, but they may not publicly broadcast the audio recordings and the minutes of the public hearing shall be kept and stored as an audio recording.

⁷⁷ See, [Constitution of North Macedonia](#), art. 110, indent 3 which provides that “*The Constitutional Court of the Republic of North Macedonia (...) - protects the freedoms and rights of the individual and citizen 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 55 (2)). During the proceeding, the Constitutional Court may order, as an interim measure, the suspension of the execution of the contested individual act or action pending its final decision if such execution “*could cause consequences that are difficult to eliminate*” (Article 58). The Constitutional Court decides on such proceedings based on a public hearing (Article 56 (1)). The Constitutional Court’s decision should determine whether a protected right or freedom has been violated (Article 57 (1)). When the Constitutional Court finds a violation, it should also determine the manner in which the consequences of the contested act or action are to be remedied (Article 57 (2)).

88. Notwithstanding the limited scope of the constitutional complaint mechanism (see paras. 48-50 *supra*), the procedural rules governing this type of proceedings are generally welcome. In particular, the requirement that such proceedings be decided by public hearing is commendable. From the perspective of human rights protection, public proceedings are preferable at least in cases involving individual rights.⁷⁸ The requirement that the judge-rapporteur provide an overview of relevant case-law of the ECtHR may contribute to ensuring that the Constitutional Court’s interpretation of protected rights and freedoms is informed by and consistent with the standards developed under the European Convention on Human Rights. In addition, the Constitutional Court is empowered not only to determine whether a violation has occurred, but also to limit the continuation of the alleged violation through interim suspension during the proceedings, and to provide redress by ordering corrective measures necessary to remedy the consequences of the violation. These features should contribute to the effectiveness of the constitutional complaint mechanism as a tool for the protection of fundamental rights.

7.3. Revocation of Immunity, Determination of Answerability, and Determination of the Applicability of Conditions for Cessation of the Office of the President of the Republic (Articles 60-63)

7.3.1. Revocation of the Immunity of the President of the Republic

89. Article 83 of the Constitution grants immunity to the President of the Republic and empowers the Constitutional Court to lift the President’s immunity by a two-thirds majority vote of all Constitutional Court judges.⁷⁹
90. Articles 60 and 63 of the Act regulate the procedure for deciding on the revocation of the immunity of the President of the Republic by the Constitutional Court. The Constitutional Court decides whether to revoke the immunity of the President of the Republic upon a proposal submitted by a competent authority before which a request for a detention measure has been submitted (Article 60 (1)). Upon receipt of the proposal, the President of the Constitutional Court convenes a session to establish a commission of three judges, drawn by lot, tasked with examining the proposal and the supporting evidence (Article 60 (2) and 63). The commission must submit a report to the President of the

⁷⁸ See e.g. [Study on Individual Access to Constitutional Justice](#), Venice Commission, 2010, paras. 132 and 133.

⁷⁹ It is noted that there is a discrepancy between the English version of the Constitution available on the website of the Assembly of North Macedonia and that available on the website of the Constitutional Court. The version of Article 83 of the [Constitution of North Macedonia](#) available on the website of the Assembly provides that the Constitutional Court “*decides on the lifting of the immunity of the President of the Republic*” whereas the version of the [Constitution of North Macedonia](#) available on the website of the [Constitutional Court](#) provides that the Constitutional Court decides on “*any case for withholding immunity and approving of detention for the President of the Republic*” (emphasis added). The Macedonian-language versions of the Constitution available on the websites of both the Assembly and of the Constitutional Court match with the content of the English version available on the website of the Assembly; see Constitution of North Macedonia, North Macedonian version available on the website of the [Assembly of North Macedonia](#) and of the [Constitutional Court](#), Art. 83 which provides “*Должноста претседател на Републиката е неспојлива со вршење на друга јавна функција, професија или функција во политичка партија. Претседателот на Републиката ужива имунитет. За одземање на имунитетот на претседателот на Републиката одлучува Уставниот суд на Република Македонија со двоветртинско мнозинство гласови од вкупниот број судии*” which may be translated in English as “*The office of President of the Republic is incompatible with the performance of any other public function, profession, or position in a political party. The President of the Republic enjoys immunity. The removal of the President of the Republic’s immunity is decided by the Constitutional Court of the Republic of Macedonia with a two-thirds majority of the total number of judges*”.

Constitutional Court within two days (Article 60 (3)), and the Constitutional Court must decide at a session within two days of receiving the commission's report (Article 60 (4)).

91. Although requests to lift the immunity of high-ranking public officials may arise in connection with detention or arrest under criminal (or administrative charges), depending on the scope of the said immunity, lifting immunity may also be relevant in other situations, such to initiate criminal prosecution or other forms of legal proceedings. **Accordingly, it is recommended to align Article 60(1) of the Act with the text of Article 83 of the Constitution, which provides that the Constitutional Court decides on the lifting of the president's immunity, without limiting this competence to cases involving detention. In addition, for legal certainty purposes, the Act could also reflect the constitutional requirement that a decision to lift the immunity of the President of the Republic be adopted by a two-thirds majority vote of all Constitutional Court judges.**

7.3.2. *Establishment of the answerability of the President of the Republic*

92. Article 87 of the Constitution regulates the accountability and impeachment of the President of the Republic. It provides that the President of the Republic shall be accountable for any violation of the Constitution and laws in exercising his/her rights and duties.⁸⁰ The impeachment procedure is initiated by a proposal submitted by at least 30 members of the Assembly (Article 205 of the Rules of Procedure of the Assembly).⁸¹ The proposal for impeachment must then be approved by a two-thirds majority vote of all members of the Assembly (Article 87 of the Constitution, Article 210 of the Rules of Procedure of the Assembly). Once the Assembly has adopted such a proposal, the President of the Assembly transmits it to the Constitutional Court and to the President of the Republic (Article 210 of the Rules of Procedure of the Assembly). Upon receipts of the proposal, the Constitutional Court requests the President of the Republic to respond on the allegations contained therein (Article 61 (3) of the Act), and the President is entitled to participate in the proceeding (Article 61 (4) of the Act). The Constitutional Court must decide on the proposal for impeachment of the President of the Republic within 30 days of its receipt (Article 61 (6) of the Act). Pursuant to Article 87 of the Constitution, a finding that the President has violated the Constitution or laws requires a two-thirds majority vote of all Constitutional Court judges. When the Constitutional Court establishes such a violation, the President's mandate is terminated from the date of adoption of such decision by the Constitutional Court (Article 87 of the Constitution, and Article 61 (5) of the Act). If the Constitutional Court finds the accusations to be unsubstantiated, the President of the Republic remains in office.
93. Overall, Article 61 of the Act provides clear procedural rules and timeline for this type of proceeding before the Constitutional Court. Nevertheless, **for legal certainty purposes, the Act could be supplemented by explicitly referring to the constitutional requirement that a decision to impeach the President of the Republic be adopted by a two-thirds majority vote of all Constitutional Court judges.**

7.3.3. *Cessation of office of the President of the Republic*

80 It is noted that there is a discrepancy between the English version of Article 87 of the Constitution available on the website of the [Assembly](#) of North Macedonia, which provides that the President of the Republic "shall be accountable for **any violation of the Constitution and laws** in exercising his/her rights and duties" whereas the version available on the website of the [Constitutional Court](#) provides that the President of the Republic "shall be accountable **for any violation of the Constitution** in exercising his/her rights and duties" (emphasis added). The Macedonian-language versions of the Constitution available on the websites of both the [Assembly](#) and of the [Constitutional Court](#) match with the content of the English version available on the website of the Assembly.

81 See, Assembly of North Macedonia, [Rules of Procedure of the Assembly of North Macedonia](#), art. 205.

94. Article 82 of the Constitution regulates the grounds for, and consequences of, cessation of the office of the President of the Republic. Article 62 of the Act sets out the procedure before the Constitutional Court for determining that the office of the President of the Republic has become vacant due to death, resignation, permanent incapacity, or expiry of the President's mandate. Pursuant to Article 82 of the Constitution and Article 62 (1) of the Act, The Constitutional Court makes this determination *ex officio*. When the Constitutional Court declares that the office of the President of the Republic has become vacant, it should establish the date on which the office terminated. This is important as that date determines the start of the interim period until the election and assumption of office of the next President of the Republic.

7.4. Resolving Conflicts of Competence (Article 64-68)

95. Articles 64-68 of the Act set out the procedure for resolving conflicts of competence between different branches of government or between different levels of government. Such jurisdiction is common in comparative practice. It enables the Constitutional Court to safeguard the separation of powers and the constitutional allocation of responsibilities between the different branches of government (the executive, the legislative and the judiciary) as well as between the different levels of government (the central and decentralized levels of government). In these proceedings, the Constitutional Court does not review the substance of a normative act but determines the constitutional allocation of responsibilities among public authorities.
96. Overall, Articles 64-68 of the Act establish clear procedural rules for the resolution of conflicts of competence. It is noteworthy that, unlike in the vast majority of OSCE participating States, the Act grants standing not only to public authorities involved in the dispute but also to any person whose rights are affected by such conflict of competence. Granting standing to third parties affected by a conflict of competence is uncommon in comparative practice.⁸²
97. As in constitutional review proceeding and constitutional complaint proceedings, the Constitutional Court can suspend the execution of individual acts adopted by the authorities involved in the conflict pending its final decision (Article 68 of the Act). In its final decision, the Constitutional Court determines which authority is responsible to exercise the disputed competence (Article 67).

8. LEGAL EFFECTS AND ENFORCEMENT OF THE DECISIONS OF THE CONSTITUTIONAL COURT (SECTIONS V AND VI)

98. The present Opinion should be read together with the findings and recommendations from the ODIHR *Urgent Opinion on the Legal Effect and Enforcement of Decisions of the Constitutional Court of North Macedonia* published on 29 April 2026.⁸³ For an analysis of, and recommendations with respect to, the legal effects of the decisions of the Constitutional Court (section V of the Act), refer to paras. 37 – 50 of the 2026 ODIHR Urgent Opinion. For an analysis of the enforcement of the decisions of the Constitutional Court (section VI of the Act), see paras. 61 – 71 of the 2026 ODIHR Urgent Opinion.

⁸² See, for example, [Law on the Constitutional Court of Albania](#), art. 54.3

⁸³ [Urgent Opinion on the Legal Effect and Enforcement of Decisions of the Constitutional Court of North Macedonia](#), ODIHR, 29 April 2026.

9. RIGHTS, DUTIES AND STATUS OF JUDGES OF THE CONSTITUTIONAL COURT (SECTION VIII)

9.1. Incompatibilities

99. Under Article 111 of the Constitution, Constitutional Court judges are prohibited from holding any other public office, exercising another profession, or being members of a political party. The Act does not further elaborate on incompatibilities.
100. These incompatibilities are consistent with international standards and recommendations and comparative practice.⁸⁴ Constitutional judges are usually not permitted to concurrently hold another office in the legislative, executive or judicial branches of government and are also forbidden from private occupations and business activities that might undermine their impartiality. This general rule serves to protect judges from influence potentially arising from their participation in activities in addition to those of the constitutional review body. At times, an incompatibility between the office of a constitutional judge and another activity may not be apparent, even to the judge in question. Such conflicts of interests, real or perceived, can be prevented by way of strict incompatibility provisions.⁸⁵ At the same time, incompatibility provisions should not be too strict as to jeopardize the objective of ensuring a pluralist and diverse composition of the Constitutional Court.⁸⁶
101. In principle, judges have the right to freedom of association, including membership in a political party, even though restrictions on this right may be justified to preserve their independence and impartiality and the appearance thereof, in particular when it is deemed necessary to maintain their political neutrality or where this would conflict with their public duties.⁸⁷ In that respect, judges' political involvement and membership in political parties may pose issues regarding their independence, impartiality and separation of powers.⁸⁸ While there is no consensus at the international level on whether a judge has the right to be member of a political party,⁸⁹ judges should generally exert restraint in the exercise of public political activities to preserve the separation of powers and independence of the judiciary,⁹⁰ including the appearance of independence.⁹¹ Accordingly, limitations pertaining to being a member of a political party may be justified to preserve their independence and impartiality and the appearance thereof.⁹²

84 See e.g., [Compilation of Venice Commission Opinions, Reports and Studies on Constitutional Justice](#), Venice Commission, CDL-PI(2022)050, Section 4.2.

85 See [Composition of constitutional courts – Science and technique of Democracy](#), Venice Commission, No. 20, 1997, pp 15-16.

86 See *ibid.* p. 16, which states that “one criticism of strict incompatibility was that they tend to produce a court composition of retiring members of society (...)”.

87 See e.g., [Guidelines on Political Party Regulation](#) (2nd ed., 2020), ODIHR and Venice Commission, para. 147. See also regarding public servants in general, *Ahmed and Others v. United Kingdom*, ECtHR, no. 22954/93, 2 September 1998, paras. 53 and 63. See also [Warsaw Recommendations on Judicial Independence and Accountability](#), ODIHR, 2023, para. 30. See [Joint Guidelines on Freedom of Associations](#), ODIHR and Venice Commission, 2014, para. 144, where ODIHR and the Venice Commission have specifically acknowledged the possibility of imposing restrictions on the exercise of the right to freedom of association of some public officials in cases “where forming or joining an association would conflict with the public duties and/or jeopardize the political neutrality of the public officials concerned”.

88 See [Opinion no. 3 \(2002\) on Ethics and Liability of Judges](#), CCJE, para. 30.

89 See [Report on the exercise of the rights to freedom of expression, association and peaceful assembly by judges and prosecutors](#), United National, Special Rapporteur on the independence of judges and lawyers, A/HRC/41/48, 29 April 2019, paras. 60, 64 and 109. See also [Guidelines on Political Party Regulation](#) (2nd ed., 2020), ODIHR and Venice Commission, para. 147.

90 *Ibid.* para. 110.

91 *Ibid.* paras. 66 and 111. See also [Opinion no. 3 \(2002\) on Ethics and Liability of Judges](#), CCJE, paras. 27-36.

92 See [Guidelines on Political Party Regulation](#) (2nd ed., 2020), ODIHR and Venice Commission, para. 147.

102. The extant incompatibility rules allow Constitutional Court judges to form or join associations to promote their interests and the principles of judicial independence and accountability, which is in line with international standards.⁹³

9.2. Immunity

103. Pursuant to Article 111 of the Constitution, Constitutional Court judges enjoy immunity, and the authority to decide on the lifting of such immunity is vested exclusively in the Constitutional Court itself. Section VII of the Act further elaborates the status and immunity of Constitutional Court judges. Article 94 (1) of the Act provides that Constitutional Court judges enjoy the same immunity as members of the Assembly under Article 64 of the Constitution.⁹⁴ Pursuant to Article 94 (2) of the Act, a judge of the Constitutional Court may not be detained without prior approval of the Constitutional Court, except if s/he is apprehended committing a criminal offence punishable by at least five years of imprisonment. Finally, the Constitutional Court can invoke a judge's immunity without his/her request, if necessary for the performance of his/her function (Article 94 (3)). The Constitutional Court may decide to lift the immunity of a Constitutional Court judge at a session by a two-thirds majority vote of the total number of Constitutional Court judges (Article 69 (1)).
104. The Venice Commission has previously recommended that decisions concerning the lifting of the immunity of a constitutional court judge be taken by the plenary of the constitutional court, with the judge concerned not sitting.⁹⁵ This is also the approach in relation to judges of the ECtHR.⁹⁶ While the Act provides that such decision is to be taken by the Constitutional Court at a session, it does not explicitly exclude the judge concerned from sitting. In addition, the requirement that such a decision be adopted by a two-thirds majority vote of all Constitutional Court judges (i.e., 6 out of 9 judges) appears stringent as, if the judge concerned is excluded from voting, it would effectively require a three-fourths majority of all the remaining judges entitled to vote (i.e., 6 out of 8 judges). Such a high threshold may make the lifting of immunity excessively difficult in practice. **In light of these considerations, it is recommended to clarify in the Act that the judge concerned should not be sitting when the Constitutional Court decides on whether to lift his or her immunity, and to consider lowering the two-thirds majority vote requirement, for example with an absolute majority of the total number of Constitutional Court judges.**

93 See [The Bangalore Principles of Judicial Conduct](#), United Nations, Economic and Social Council, 2002, Article 4.13. which provides that "a judge may form or join associations of judges or participate in other organizations representing the interests of judges"; [Commentary on the Bangalore Principles of Judicial Conduct](#), United Nations, Office on Drugs and Crime, 2007, para. 176, which adds "a judge may join a trade union or professional association established to advance and protect the conditions of service and salaries of judges or, together with other judges, form a trade union or association of that nature. Given the public and constitutional character of the judge's service, however, restrictions may be placed on the right to strike."; and the [Recommendations on Judicial Independence and Accountability \(Warsaw Recommendations\)](#), ODIHR, 27 October 2023, para. 30, which stipulates that judges shall have the right to form or join associations to promote their interests and the principles of judicial independence and accountability.

94 See Constitution of North Macedonia, Article 64, which provides that "Representatives enjoy immunity. A Representative cannot be held to have committed a criminal offence or be detained owing to views he/she has expressed or to the way he/she has voted in the Assembly. A Representative cannot be detained without the approval of the Assembly unless found committing a criminal offence for which a prison sentence of at least five years is prescribed. The Assembly can decide to invoke immunity for a Representative without his/her request, should it be necessary for the performance of the representative's office. Representatives may not be called up for duties in the Armed Forces during the course of their term of office. A Representative is entitled to remuneration determined by law."

95 In the [Opinion on the draft Law on the amendments to the Constitution, strengthening the independence of judges and on the changes to the Constitution proposed by the Constitutional Assembly of Ukraine](#), Venice Commission, CDL-AD(2013)014, para. 49, the Venice Commission recommended that "for judges of the Constitutional Court, immunity should be lifted by the plenary of the Court, with the exception of the judge concerned."; see also [Opinion on Two Bills of the Republic of Poland on the Constitutional Tribunal](#), ODIHR, 24 August 2024, para. 74.

96 See Article 6 of the [Fourth Protocol to the General Agreement on Privileges Immunities of the Council of Europe](#) of 1961 which provides: "Privileges and immunities are accorded to judges not for the personal benefit of the individuals themselves but in order to safeguard the independent exercise of their functions. The Court alone, sitting in plenary session, shall be competent to waive the immunity of judges [...]" (emphasis added).

105. In addition, the Act does not provide criteria for deciding whether to lift a judge's immunity. ODIHR and the Venice Commission have recommended that judges, including constitutional judges, should only have functional immunity.⁹⁷ They noted that *"there needs to be a balance between immunity as a means to protect the judge against pressures and abuses from state powers or individuals (e.g., abusive prosecution, frivolous, vexatious or manifestly ill-founded complaints) and the fact that the judges should not be above the law. In principle, a judge should only benefit from immunity in the exercise of lawful functions"*.⁹⁸ Immunity in the exercise of lawful functions means that judges have immunity from prosecution and liability for acts performed in good faith in the exercise of their functions. However, this immunity does not cover the commission of intentional crimes, even if committed in the exercise of their functions. Accordingly, if a judge commits a criminal offence outside the exercise of his/her office, for instance causing a traffic accident due to drink driving, he/she should not be immune from criminal liability. Additionally, if a judge commits a criminal offence in the exercise of his or her office (e.g., accepting bribes, corruption, traffic of influence or other similar offenses), he or she should have no immunity from criminal liability. Article 94 of the Act does not provide criteria for deciding whether to lift a judge's immunity, leaving it to the discretion of the Constitutional Court. Where there are reasonable grounds to believe a judge has committed a criminal offence, the Constitutional Tribunal should lift immunity. **In light of the foregoing, it is recommended that the Act be supplemented with a provision defining criteria for deciding whether to lift a judge's immunity to ensure that Constitutional Court judges only benefit from functional immunity in the exercise of their lawful functions.**

RECOMMENDATION F.

To define the criteria for deciding whether to lift a judge's immunity to ensure that Constitutional Court judges only benefit from functional immunity in the exercise of their lawful functions.

9.3. Disciplinary Liability

106. Importantly, the Act does not regulate the disciplinary liability of Constitutional Court judges. It simply provides that Constitutional Court judges are not liable, and may not be detained, for any opinion expressed or vote cast in the exercise of their judicial functions at the Court (Article 95 of the Act).
107. Unless provided elsewhere, the absence of provisions regulating the disciplinary liability of Constitutional Court judges constitutes a significant gap in the Act. Disciplinary liability is an important component of judicial accountability.
108. International recommendations require that the disciplinary liability of judges be limited to serious professional misconduct and that judges should not incur liability for the

⁹⁷ See *Urgent Opinion on the Draft Constitutional Law of the Republic of Kazakhstan on the Constitutional Court*, ODIHR, 30 September 2022, para. 56; *Recommendations on Judicial Independence and Accountability (Warsaw recommendations)*, ODIHR, 2023, para. 16; *Amicus Curiae Brief on the criminal liability of the Constitutional Court judges – Republic of Moldova*, Venice Commission, December 2019, paras. 25-27; *Opinion on the Draft Constitutional Law on the Constitutional Court of Armenia*, Venice Commission, 19 June 2017, paras. 36-37; *Opinion on the draft Law on the amendments to the Constitution, strengthening the independence of judges and on the changes to the Constitution proposed by the Constitutional Assembly of Ukraine*, Venice Commission, 15 June 2023, paras. 19-20. See also, *Recommendation of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities*, CoE Committee of Ministers, CM/REC(2010)12, 17 November 2010, para. 71 which provides that "When not exercising judicial functions, judges are liable under civil, criminal and administrative law in the same way as any other citizen."

⁹⁸ *Joint Opinion on the Draft Amendments to the Legal Framework on the Disciplinary Responsibility of Judges in the Kyrgyz Republic*, ODIHR and Venice Commission, 16 June 2014, paras. 37 and 41; *Urgent Opinion on the Draft Constitutional Law of the Republic of Kazakhstan on the Constitutional Court*, ODIHR, 30 September 2022, para. 56; and *Opinion on the Law on the High Judicial Council of the Republic of Uzbekistan*, ODIHR, 1 October 2018, paras. 42 and 54.

content of their judicial decisions, legal interpretation, or votes cast in the exercise of their judicial functions, except in cases involving bad faith judicial misconduct, malice, gross negligence, or criminal conduct.⁹⁹ Acts or omissions that constitute disciplinary offences should be clearly and narrowly defined by law,¹⁰⁰ and disciplinary sanctions should be proportionate to the seriousness of the respective disciplinary offence.¹⁰¹ In addition, the law should establish a clear procedure for disciplinary proceedings, to be conducted by an independent body or the Constitutional Court itself, that provide fair trial guarantees to the Constitutional Court judge concerned,¹⁰² including the right to be informed of charges, the right to be heard, equality of arms, access to evidence, legal representation, investigation as well as decision within a reasonable time and reasoned decisions.¹⁰³

109. **In light of these considerations, it is recommended to include, ideally in a law, or in the Act, provisions regulating the disciplinary liability of judges of the Constitutional Court and related procedure providing fair trial guarantees to the Constitutional Court judge concerned in line with applicable international standards.**

RECOMMENDATION G.

To introduce provisions regulating the disciplinary liability of Constitutional Court judges, clearly and narrowly defining the acts or omissions constituting disciplinary offences along with proportionate sanctions, and disciplinary procedure providing fair trial guarantees to the Constitutional Court judge concerned, in line with applicable international standards.

9.4. Termination of Office

110. The irremovability of constitutional judges constitutes an essential element of the independence of the constitutional review body. It guarantees that a judge not favourably perceived by outside forces cannot be suspended or dismissed during his/her term of office in order to effectively stop his/her work on certain cases.
111. The Constitution provides that judges of the Constitutional Court are elected for a single non-renewable term of nine years (Article 109). The Constitution and the Act do not define a mandatory retirement age, so judges of the Constitutional Court hold their office until the end of their term. Article 111 of the Constitution provides three circumstances leading to termination of a Constitutional Court judge's mandate before the end of the term of office: resignation, conviction for a criminal offence resulting in an unconditional prison sentence of at least six months, or permanent incapacity to perform judicial duties

99 See [Recommendation of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities](#), CoE Committee of Ministers, CM/REC(2010)12, 17 November 2010, para. 66; [Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia](#), ODIHR, 25 June 2010, para. 25. See also *Ovcharenko and Kolos v. Ukraine*, ECtHR, nos. 27276/15 and 33692/15, 12 April 2023, para. 104, which underlines that “the liability of a judge for the substance of judicial activity is a highly delicate question which requires that a distinction be made between a disputable interpretation or application of the law, on the one hand, and a decision or measure which reveals, for example, a serious and flagrant breach of the law, arbitrariness, a serious distortion of the facts, or an obvious lack of legal basis for a judicial measure, on the other hand.”

100 See [Opinion no.3 on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality](#), CCJE, 19 November 2002, para. 77; [Recommendations on Judicial Independence and Accountability \(Warsaw recommendations\)](#), ODIHR, 2023, para. 16; *N.F v. Italy*, ECtHR, 12 December 2001.

101 See [Opinion no. 3 on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality](#), CCJE, 19 November 2002, para. 77; [Recommendations on Judicial Independence and Accountability \(Warsaw recommendations\)](#), ODIHR, 2023, para. 16

102 See [Recommendation of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities](#), CoE Council of Ministers, CM/REC(2010)12, 17 November 2010, para. 69; [Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia](#), ODIHR, 25 June 2010, para. 26.

103 For a comparative analysis of disciplinary liability and proceedings against constitutional court judges in the OSCE, see [Comparative Note on Disciplinary Liability and Proceedings Against Judges of Constitutional Court](#), ODIHR, 15 July 2026.

as determined by the Constitutional Court (Article 111 of the Constitution). These provisions are overall commendable.

9.5. Recusal

112. Article 100 of the Act regulates the procedure for the recusal of Constitutional Court judges. A judge who becomes aware of circumstances giving rise to a conflict of interest is required to request an exemption from acting as a judge-rapporteur or from participating in the discussion and decision-making on the case. A request for recusal may also be filed by another Constitutional Court judge, by an applicant in constitutional complaint proceedings, or by the submitter in proceedings concerning conflicts of competence. The Constitutional Court decides on such requests within three days by a majority vote of all judges, with the judge whose recusal is sought not participating in the vote.
113. There is heightened sensitivity around recusals in constitutional courts due to the nature of the cases, their role as last-instance authorities, and the constitutional and political implications of their decisions.¹⁰⁴ Constitutional Court judges should not only recuse themselves when the possible conflict or lack of impartiality actually exists, but also when it could appear to a reasonable person that a conflict does exist or that a judge is unable to decide the matter impartially. Generally, three common grounds for recusal exist, namely: (1) where the judge is a party or has a particular interest in the outcome of the case; (2) where the judge is related to one of the parties to the proceedings; and (3) where the judge has previously participated in the same proceedings in another procedural capacity.¹⁰⁵ **For legal clarity purposes, Article 100 of the Act could be supplemented with a cross reference to the legislation defining conflict of interest, while further elaborating the grounds of recusal to ensure that they cover circumstances that may raise concerns regarding a Constitutional Court judge's impartiality or appearance thereof.**

10. FINANCIAL INDEPENDENCE OF THE CONSTITUTIONAL COURT (SECTION IX)

114. The budget of the Constitutional Court comes from the state budget (Article 104). Pursuant to Article 105 (1) of the Act, the Constitutional Court enjoys full autonomy in the management and allocation of the funds appropriated to it. In addition, its budget cannot be reduced, nor its execution suspended or restricted, without the Court's consent (Article 105 (2)).
115. Regarding the establishment of the yearly budget, the Constitutional Court prepares its own budget request and submits it to the Ministry of Finance, which is responsible for preparing the draft State budget. The Ministry of Finance may raise objections to the Court's draft budget request, in which case consultations are held between the Ministry and the Court. Following these consultations, the Constitutional Court determines its final budget request, which the Government is required to incorporate in the State budget proposal to be submitted to the Assembly for debate and approval (Article 108).
116. This arrangement is commendable and complies with international standards and recommendations. It ensures the Constitutional Court a meaningful role in determining its budget during the preparation of the State budget, and autonomy in the management

104 See [Comparative Note on the Applicable Standards and Regulation of Recusals and Self-recusals of Judges](#), ODIHR, 15 December 2025, Section 2.4.

105 See [Comparative Note on the Applicable Standards and Regulation of Recusals and Self-recusals of Judges](#), ODIHR, 15 December 2025, paras. 25 and 37.

of the funds allocated to it. **At the same time, although this would likely require amendments to the rules of procedure of the Assembly, and therefore goes beyond the scope of the present Opinion, consideration could be given to entitle the Constitutional Court to present and justify its budget request directly before the Assembly during the parliamentary examination of the State budget proposed by the Government.**

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

117. OSCE commitments¹⁰⁶ 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.¹⁰⁷ With respect to any reform of the Constitutional Court, it is essential that the process be 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.
118. 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.
119. 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.¹⁰⁸ 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.¹⁰⁹ To guarantee effective participation, consultation mechanisms should allow for input at an early stage, from the initial policymaking phase and throughout the process,¹¹⁰ 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

106 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).

107 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.

108 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.

109 See ODIHR Guidelines on Democratic Lawmaking for Better Laws (2024), Principle 7.

110 Ibid. Principle 7.

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.

120. Finally, it would be advisable to accompany any constitutional or 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

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