

**Jelena Ristik, PhD**

Assistant Professor

School of Law, University American College Skopje

Republic of Macedonia

[katerina.klimoska@ukim.edu.mk](mailto:katerina.klimoska@ukim.edu.mk)

**THE ROLE OF THE SUPREME COURT IN  
ENSURING UNIFORMITY OF COURT PRACTICE  
IN THE REPUBLIC OF MACEDONIA<sup>1</sup>**

Abstract

The Supreme Court of the Republic of Macedonia has a constitutional competence to ensure uniform application of laws by the courts and thus ensure the uniformity of court practice in the Republic of Macedonia. The recent Report on Macedonia: Assessment and recommendations of the Senior Experts' Group on systemic Rule of Law issues 2017, led by Reinhard Priebe and issued by the European Commission on 14 September 2017 notes the need for achieving a greater uniformity of court practice, emphasizing the role of the Supreme Court of the Republic of Macedonia in that regard. However, the national laws do not always provide for the Supreme Court to exercise its constitutional competence to ensure the uniform application of the laws by the courts and ensure the existence of a uniform court practice. This paper aims at searching a way to strengthen the role of the Supreme Court in ensuring uniform application of laws by the courts. In this regard, a thorough analysis of the relevant national legislation will be conducted.

Finally, this paper draws conclusions and recommendation as regards possible solutions to provide for better conditions for the Supreme Court to exercise its constitutional competence to ensure the uniform application of the laws by the courts and thus ensure the existence of a uniform court practice.

**Keywords:** marketing, universities, new marketing concept

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## INTRODUCTION

The responsibility for ensuring uniform application of laws by the courts and thus ensuring uniformity of court practice in the Republic of Macedonia (“RM” or “Macedonia”) is assigned to the Supreme Court of the Republic of Macedonia (“Supreme Court”), as one of its constitutional competences (Constitution of the Republic of Macedonia, Article 101). The recent Report on Macedonia: Assessment and recommendations of the Senior Experts’ Group on systemic Rule of Law issues 2017, led by Reinhard Priebe and issued by the European Commission on 14 September 2017 (“Priebe Report 2017”) indicates that there is a need for achieving greater uniformity of court practice in Macedonia, emphasizing the role of the Supreme Court in that regard. More specifically, the Priebe Report 2017 notes that “the importance of the role of the Supreme Court should be emphasised in providing appropriate safeguards for clarity and foreseeability through greater uniformity of practice”.

In addition, the need for greater uniformity of the court practice in Macedonia was also noted in latest reports of the European Union (“EU”) on the progress of Macedonia, as an EU candidate country (European Commission, 2014; European Commission 2015; European Commission 2016). The EU progress reports on Macedonia note the need for improved reasoning and transparency of court judgements as well (European Commission, 2016).

A research conducted on the status and treatment of the court practice in the legal system of RM, where the research methodology involved interviews with key representatives of the judiciary, showed that not only there are different perceptions and opinions regarding the status and treatment of the court practice, including the court practice of the Supreme Court as the highest court, but also that there is a variety of opinions regarding the effect of the principal standings and principal legal opinions of the Supreme Court, as its main tools for ensuring uniformity of court practice (Center for Legal Research and Analysis, 2015). Moreover, the procedural laws do not always provide for the Supreme Court to exercise its constitutional competence to ensure the uniform application of the laws by the courts and ensure the existence of a uniform court practice.

This paper will focus on searching a possible solution to strengthen the role of the Supreme Court in ensuring uniform application of laws by the courts and thus creating better conditions for reaching greater uniformity of court practice in Macedonia. In order to provide a starting base for reaching a possible solution to increase the level of uniformity of the court practice, through emphasizing the importance of the role of the Supreme Court in that regard, a thorough analysis of the relevant national legislation will be conducted, while the effect of the authority

given to the Supreme Court will be shown mainly through analysis of various principle standings and principle legal opinions adopted by the Supreme Court. After determining the status of court practice in Macedonia, it will be suggested that court practice, especially the decisions of the Supreme Court, together with its principal standings and principal legal opinions, should serve as an additional means of argumentation within the reasoning of court judgments, in order to increase the uniformity of court practice as well as to improve reasoning and transparency of judgments. Finally, certain improvements and changes of the national legislation will be suggested as well, in order to provide for better conditions for the Supreme Court to exercise its constitutional competence to ensure the uniform application of the laws by the courts and thus ensure the existence of a uniform court practice and legal certainty as well.

### STATUS OF COURT PRACTICE IN NATIONAL LEGISLATION

Article 98 of the Constitution of the Republic of Macedonia (“Constitution”), which is replaced by paragraph 1 of Amendment XXV, is the starting point of any discussion on the status of court practice within the Macedonian legal system. Namely, the second paragraph of Article 98 of the Constitution foresees that “courts adjudicate based on the Constitution and the laws, and the international agreements ratified in accordance with the Constitution”. The first paragraph of Article 2 of the Law on Courts almost literally reflects this constitutional provision: “the courts adjudicate and base their decisions on the Constitution, the laws and the international agreements ratified in accordance with the Constitution”.

Taking in consideration Article 98 of the Constitution and Article 2 of the Law on Courts, where the formal sources of law in RM are explicitly foreseen, it could be noted that the court practice is not a formal source of law and that the courts can not make decisions based on the court practice, i.e. based on previous court decisions. It could also be noted that the Macedonia belongs to the Continental law countries, where the doctrine of *jurisprudence constante* is dominant and previous court decisions are not binding for the judges.

However, some procedural laws contain elements of the doctrine of *stare decisis*, where previous court decisions (court precedents) are considered a source of law. Namely, such elements can be found in Article 386 of the Law on Civil Procedure, which stipulates that “the court to which the case was returned for a retrial is bound to that case by the legal understanding on which the decision of the revision court is based, by which the challenged second instance judgment was abolished, or by which the second instance and the first instance judgment were abolished “.

It could be noted that Article 386 of the Law on Civil Procedure suggests a formal bindingness of the lower court to the decisions of the higher court (the Supreme Court in this case) in a retrial, which is usually characteristic for the common law systems. It should also be noted that the term “legal understanding”, used in Article 386 of the Law on Civil Procedure, is rather wide and insufficiently precise concept that requires further interpretation and refinement.

On the other hand, the other procedural laws, such as the Law on Criminal Procedure and the Law on Administrative Disputes, do not contain similar provisions regarding a possible formal bindingness of the lower courts to the legal understanding expressed in certain decisions of the higher courts, as it is the case with the Law on Civil Procedure.

Another issue that arises from the wording of Article 98 of the Constitution is whether the court practice could serve as an additional means of argumentation within the rationale of a certain court decision, whereby the court, when interpreting the law, will use court practice as a reference, i.e. will refer to a prior court decision. Namely, the aforementioned research conducted on the status and treatment of the court practice in the legal system of RM showed that there are different perceptions and opinions regarding this issue as well (Center for Legal Research and Analysis, 2015). The ultimate purpose of using court practice as an additional means of argumentation would be reaching a greater uniformity of court practice, and thus increasing the legal certainty as well as the transparency of court proceedings and the reasoning of court judgments.

When answering this question, one should have in mind that the courts apply the formal sources of law (the Constitution, the laws and the international agreements ratified in accordance with the Constitution) through the adoption of court decisions. It should also be kept in mind that the rule of law principle is included among the basic principles of the constitutional order of RM (Constitution of the Republic of Macedonia, Article 8).

Taking in consideration that the law is applied to a particular set of facts through the court decisions, it could be claimed that using court practice as an additional means of argumentation will increase uniformity of court practice and contribute to greater respect for the principle of equality before the law, which stems from the rule of law principle. In this respect, the decisions of the Supreme Court, as the highest court in the hierarchy of the courts, are especially important. Further, given that the principle of legal certainty stems from the rule of law principle and that it generally refers to “non-retroactivity of the law, accessibility and predictability of the legal provisions and guarantee for a uniform interpretation of the laws” (Predescu & Safta, c.2009, p.4), it could also be claimed that using court practice as an additional means of argumentation and greater uniformity of court practice contribute to greater respect for the principle of legal certainty as well.

## SUPREME COURT AND UNIFORMITY OF COURT PRACTICE

The Supreme Court is the highest court in Macedonia and, *inter alia*, it is responsible for ensuring uniform application of laws by the courts (Constitution of the Republic of Macedonia, Article 101). The main instruments for implementing this competence are the principal standings and the principal legal opinions, which the Supreme Court considers and approves at a general session. Namely, it “determines principal standings and principal legal opinions on issues of importance for ensuring consistency in the application of the laws by the courts, on its own initiative or on the initiative by the meetings of judges or court departments” (Law on Courts, Article 37). It can also “consider issues related to the operation of the courts, law enforcement and court practice” (Law on Courts, Article 37).

For example, at a general session of the Supreme Court held on 9 December 2009, a principal standing was adopted as regards the concluding of a court settlement pursuant to Article 307-310 of the Law on Civil Procedure, as an issue of relevance to ensuring uniform application of laws by the courts. Also, at a general session of the Supreme Court held on 20 December 2011, a principal standing was adopted on a legal question whether the Supreme Court is a competent court to act upon appeals against the decisions of the Administrative Court, except in the cases provided for in Article 63 of the Law on Administrative Disputes.

Further, the Department of Criminal Law of the Supreme Court adopted a principle legal opinion on 21 January 2015 on the application of Article 206(2) of the Law on Criminal Procedure, which foresees an obligation for the statement of the accused for canceling some of the rights foreseen in Article 206(1) to be signed by him. This principal opinion was adopted due to an initiative filed by the Strumica Basic Court for legal opinion, in order to ensure uniform application of the laws by the courts. On 26 September 2016, the Department of Civil Law of the Supreme Court adopted a principle legal opinion on the expiration of a claim of the Pension and Disability Insurance Fund for unpaid contributions for pension and disability insurance in bankruptcy procedure, due to the fact that it found inconsistent court practice within the lower courts on this particular legal issue, when deciding upon revision submitted to the Supreme Court.

There are numerous other principle standings and principle legal opinions adopted by the Supreme Court, on its own initiative, or another person’s or court’s initiative, as regards issues of relevance to ensuring uniform application of the laws by the courts. Consequently, it could be claimed that the Supreme Court ensures uniformity in the application of laws by the basic, appellate and specialized courts (Škarić and Siljanovska-Davkova, 2007, p. 729) and that it has a key role in ensuring a uniform court practice.

The principal standings and the principal legal opinions, through which the role of the Supreme Court for ensuring the uniform application of laws by the courts on the whole territory of RM is expressed, are mandatory for all the councils of the Supreme Court (Law on Courts, Article 37). In other words, the principal standings and the principal legal opinions of the Supreme Court are binding only for its councils. Yet, in this context, one should have in mind that its responsibility to ensure the uniform application of the laws on the whole territory of RM, by using the principal standings and the principal legal opinions as main tools, must not be neglected. Moreover, one should also keep in mind that the Supreme Court, as the highest court in Macedonia, represents a final instance for supervising the judgments.

Taking in consideration the foregoing, it could be argued that the principal standings and the principal legal opinions have, at least, strong persuasive effect in the decision making process by the lower courts, despite the fact that they are not formally binding for them. Namely, they are a strong authoritative argument in the interpretation and application of law by the lower courts. In this sense, similar interpretation could be used as regards the decisions adopted by the councils of the Supreme Court. Namely, given that the Supreme Court is the highest court and the final instance for supervising the court decisions as well as responsible to ensure uniform application of the laws, it could be argued that the decisions adopted by its councils are highly authoritative means in the interpretation and application of law by the lower courts in similar cases, regardless of the fact that they are not formally binding for the lower courts and have *inter partes* effect (Fon & Parisi, 2006, p.520). This is especially important as an argument in favor of using court practice, particularly the court practice of the Supreme Court as the highest court, together with its principal standings and principal legal opinions, as an additional means of argumentation within the rationale of the court decisions, in order to increase uniformity of court practice and legal certainty.

Other tools that are at disposal of the Supreme Court in order to ensure uniformity in the application of the laws and uniform court practice are the following: preparation of a collection of court decisions with sentences and concise explanations (Court Rulebook, Article 72); the department of court practice established within the Supreme Court (Court Rulebook, Article 73), and the Information Centre of the Supreme Court that maintains database of final and non-final court decisions with integral text without anonymizing the data of the parties and other participants in the proceedings (Law on Case Flow Management in the Courts, Article 11).

A very important tool for the Supreme Court, in terms of ensuring uniformity in applying the laws and thus ensuring uniformity of court practice, is the revision by exception, foreseen in Article 372(4) of the Law on Civil Procedure. This Article

stipulated the following: “The revision by exception is permitted as well against a second instance judgment, against which a revision cannot be submitted according to paragraph (2) of this Article<sup>2</sup>, in case the second instance court allowed for that in the adopted judgment. The second instance court may allow a revision by specifying the scope of the legal issue that would be raised before the Supreme Court, in case it considers that the decision in the dispute depends on the resolution of some substantive-legal or procedural-legal issue, which is essential for ensuring uniform application of the law and unification of court practice. Within the rationale for the judgment, the second instance court is required to specify for which legal issue it allowed the revision and to cite the decisions that indicate uneven application of the law, as well as to explain the reasons why it considers that this is important for ensuring uniform application of the law and unification of court practice”.

This provision is important, in the first place, due to the fact that not all court decisions adopted by the lower courts meet the conditions in order to be submitted for review before the Supreme Court<sup>3</sup>. In such cases, it turns out that, in practice, the appellate courts are the highest courts in the hierarchy of the court system, instead of the Supreme Court. Moreover, the Supreme Court is unable to exercise its constitutional competence to ensure the uniform application of the laws by the courts and thus ensure the existence of a uniform court practice. Consequently, it could be claimed that the revision by exception, foreseen in the Law on Civil Procedure, is very important tool for the Supreme Court in ensuring uniformity of the court practice. However, provisions similar to Article 372(4) of the Law on Civil Procedure do not exist in the other procedural laws.

Namely, the Law on Criminal Procedure contains limitations as to which judgments reach the Supreme Court for review. There are two options in this regard: request for protection of legality that can be filed by the public prosecutor (Law on Criminal Procedure, Article 457) and request for extraordinary review (Law on Criminal Procedure, Article 463). Yet, although not all judgments fulfill the conditions in order to be reviewed by the Supreme Court, the Law on Criminal Procedure does not foresee means in order to provide for the Supreme Court to exercise its competence to ensure the uniform application of the laws

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<sup>2</sup> According to article 372(2), parties may file for a revision against the second instance judgment, if the value of the dispute to the challenged part of the judgment exceeds 1,000,000 denars.

<sup>3</sup> For example, parties may file for a revision against the second instance judgment, if the value of the dispute to the challenged part of the judgment exceeds 1,000,000 denars (Article 372 of the Law on Civil Procedure (consolidated text), Official Gazette of the Republic of Macedonia No.7/2011); also, the person sentenced to unconditional imprisonment or juvenile imprisonment of at least one year and his counsel may submit a request for extraordinary review of a final judgment due to violations of the law in cases stipulated in this Law (Article 463 of the Law on Criminal Procedure, Official Gazette of the Republic of Macedonia No.150/2010)

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in such cases as well. It could be noted that the appellate courts are practically the highest courts in such criminal matters, while the Supreme Court is unable to ensure the uniformity of court practice.

The Law on Administrative Disputes provides for the decisions of the administrative courts to reach the Supreme Court for review under limited conditions as well. That is through request for protection of legality that can be filed to the Supreme Court by the public prosecutor against the decision of the administrative courts upon the request for retrial (Law on Administrative Disputes, Article 49); and through special appeal that can be filed to the Supreme Court against the decision of the administrative courts upon the proposal for protection due to illegal actions by an official (Law on Administrative Disputes, Article 49). It could be noted that the Higher Administrative Court is practically the highest instance in the judicial hierarchy regarding administrative matters, while the Supreme Court is almost completely unable to exercise its role as regards ensuring the uniform application of the laws in the administrative area.

## CONCLUSIONS

The court practice in Macedonia is not a formal source of law and the courts cannot make decisions based on the court practice, i.e. based on previous court decisions. The legal system is based on the doctrine of *jurisprudence constante* where previous court decisions are not binding for the judges.

Yet, some procedural laws contain elements of the common law doctrine of *stare decisis*. Such provisions can be found in the Law on Civil Procedure. It could be concluded that inconsistencies exist between these laws, which could lead to various ambiguities and create potential for different interpretations as regards the level of obligatoriness of the decisions taken by the higher courts, in terms of decision making and application of law by the lower courts. It could even lead to a completely inappropriate conclusion that the level of obligatoriness of the decisions of the higher courts in the application of laws and the decision making by the lower courts is different for different legal areas. In any case, there is a need for harmonization of the procedural laws in this regard.

Taking in consideration that the courts apply the Constitution, the laws and the international agreements, as formal sources of law in Macedonia, through the adoption of court decisions, it could be concluded that using court practice as an additional means of argumentation when law is applied will contribute to greater uniformity of court practice and thus to greater legal certainty as well as greater transparency of court proceedings and improved reasoning of court judgments.



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Moreover, having in mind that the Supreme Court is the highest court and has a key role in ensuring uniformity of court practice, it could be argued that it is very important for its decisions, together with its principal standings and principle legal opinions, to be used as an additional means of argumentation by the lower courts, especially in terms of strengthening its role to ensure uniformity of court practice. The latter could be supported by an appropriate intervention in the Law on Courts, particularly Article 11(1), which foresees that “the judge decides impartially with application of the law on the basis of a free assessment of the evidence”, and Article 35, which determines the competences of the Supreme Court. Of course, the eventual interventions shall be in accordance with Article 98 of the Constitution, which determines the sources of law, and Article 2 of the Law on Courts, which almost literally reflects this constitutional provision:

However, the Supreme Court is sometimes unable to exercise its constitutional competence to ensure the uniform application of the laws by the courts and ensure the existence of a uniform court practice, due to the fact that certain court decisions adopted by the lower courts do not meet the conditions required in order to be submitted for review before the Supreme Court. In such cases the appellate courts are practically the highest courts in the hierarchy of the court system.

The Law on Civil Procedure is the only procedural law that foresees a means for regulating such cases. Namely, in its Article 372(4), it provides an important mechanism for such cases to reach the Supreme Court, if the dispute depends on the resolution of some legal issue, which is essential for ensuring uniform application of the law and unification of court practice. In this sense, foreseeing similar provisions in the other procedural laws as well could be another possible solution in order to strengthen the role of the Supreme Court to ensure uniformity of court practice and enable it to fully exercise its competence to ensure the uniform application of the laws.

Namely, Article 463 of the Law on Criminal Procedure, which foresees limitations about filing a request for extraordinary review of a final judgment to the Supreme Court, could be supplemented with a new paragraph 2, which will foresee an extraordinary review of a final judgment by exception, similar to Article 372(4) of the Law on Civil Procedure. A request for extraordinary review of a final judgement would be allowed to be filed before the Supreme Court regardless of the limitations foreseen in paragraph 1, if the dispute depends on the resolution of certain legal issue, which is essential for ensuring uniform application of the law and unification of court practice.

Similar provision could be also foreseen within the Law on Administrative Disputes. In this sense, a new Article 51 could be added, which foresees that a revision before the Supreme Court is allowed against the decisions of the Higher

Administrative Court, in case a dispute depends on the resolution of a legal issue, which is essential for ensuring uniform application of the law and uniform court practice. However, having in mind that even if such a provision is foreseen, it still does not significantly change the fact that the Supreme Court is unable to exercise its constitutional role as regards ensuring the uniform application of the laws in administrative matters, it is worth exploring the possibility to review the role of the Higher Administrative Court, primarily in the direction of re-examining the purpose and the need for its existence.

Of course, one should always have in mind that one of the most important conditions for any court to function properly and fulfil successfully its duties, including the Supreme Court, is to be financed in a manner that will enable it to function optimally and independently.

#### REFERENCES:

1. Alegro M G (2005) “The Sources of Law and the Value of Precedent: A Comparative and Empirical Study of a Civil Law State in a Common Law Nation”. *Louisiana Law Review*, Vol.65, No.2
2. Ambrasienė D & Cirtautienė S (2009) “The Role of Judicial Precedent in the Court Practice of Lithuania”. *Jurisprudencija*, Vol.2
3. *Amendments XX, XI, XXII, XXIII, XXIV, XXV, XXVI, XXVII, XXVIII, XXIX and XXX*. Official Gazette of the Republic of Macedonia, No.107/2005
4. Center for Legal Research and Analysis (2015) *Unifying the Court Practice in Macedonia: Possibilities vs. Challenges*. Skopje: Center for Legal Research and Analysis
5. *Constitution of the Republic of Macedonia*. Official Gazette of the Republic of Macedonia, No.52/1991
6. *Court Rulebook*. Official Gazette of the Republic of Macedonia, No.66/2013
7. European Commission (2017) *Report on Macedonia: Assessment and recommendations of the Senior Experts' Group on systemic Rule of Law issues*. Brussels: European Commission
8. European Commission (2014) *The Former Yugoslav Republic of Macedonia Progress Report 2014*. Brussels: European Commission
9. European Commission (2015) *The Former Yugoslav Republic of Macedonia Progress Report 2015*. Brussels: European Commission

10. European Commission (2016) *The Former Yugoslav Republic of Macedonia Progress Report 2016*. Brussels: European Commission
11. Fon V & Parisi F (2006) “Judicial Precedents in Civil Law Systems: A Dynamic Analysis”. *International Review of Law and Economics*, Vol.26
12. Klimovski S (2001) *Constitutional and Political System*. Skopje: Prosvetno delo AD
13. *Law on Administrative Disputes*. Official Gazette of the Republic of Macedonia, No.62/2006
14. *Law on Case Flow Management*. Official Gazette of the Republic of Macedonia, No.171/2010
15. *Law on Civil Procedure (consolidated text)*. Official Gazette of the Republic of Macedonia, No.7/2011
16. *Law on Courts*. Official Gazette of the Republic of Macedonia, No.58/2006
17. *Law on Criminal Procedure*. Official Gazette of the Republic of Macedonia, No.150/2010
18. Predescu I & Safta M (c.2009) *The Principle of Legal Certainty, Basis for the Rule of Law Landmark Case-Law*. Bucharest: Constitutional Court of Romania
19. Škarić S. & Siljanovska-Davkova G (2007) *Constitutional Law*. Skopje: Kultura