

REFORMS VERSUS RIGHTS



DETERMINING THE TERM “PUBLIC INTEREST” – ANALYSIS, OVERVIEW AND CRITICAL REVIEW OF PUBLIC INTEREST IN THE MACEDONIAN CONTEMPORARY LEGAL AND POLITICAL CONTEXT*

Legislation in the Republic of Macedonia applies unaligned approach in determining “public interest”, featuring diverse terminology and essence for this notion. The term “public interest” is insufficiently elaborated in domestic laws and regulations, which leads to erroneous and inadequate references thereof under particular legislative texts.

Therefore, when featured in legal regulations the term “public interest” should be accompanied by procedural and methodological approach to determining its essence,

which would allow this term to be put in function of attaining the basic tenet of good governance.

International experiences and practices show that national authorities are better positioned to assess existence of public interest; however, that does not imply the possibility for discretionary referral to public interest, but instead balancing public interest against other interests in the society, as advised by the European Court of Human Rights.

OVERVIEW OF DEFINITIONS AND USES OF “PUBLIC INTEREST” IN LEGISLATION OF THE REPUBLIC OF MACEDONIA

Constitution of the Republic of Macedonia explicitly refers to public interest on **two occasions**, i.e. in the context of **restrictions for the right to possession** and in the context of establishing **inquiry committees at the Parliament**.

Use of this term in the Constitution is not accompanied by elaboration of its meaning and contents. Hence, it would be inadequate if public interest is considered constitutional category, having in mind that it is literally “casually added” in the Constitution.

Law on Civil Liability for Libel and Defamation does not offer direct definition of public interest, but enlists **areas and issues of public interest**. In that, *this definition encompasses all important areas of societal life that fall within the scope of public interest; however, the weakness of the definition lies in its impreciseness.*

Law on Protection of Whistleblowers features a definition of the term “public interest”, which is focused on **enlisting areas** covered by it. *The definition does not include certain categories that should be considered as issues of public interest.*

* This text represents a summary of the key findings and recommendations of the analysis. Full version of the analysis is available [here](#)

Criminal Code does not define the term “public interest”, but establishes **persons performing activities of public interest**. *This definition is not helpful in establishing the meaning of the term “public interest”, but rather complicates matters with unnecessary introduction of the term “general interest”.*

Under the **Law on General Administrative Procedure**, the term “public interest” is considered **condition for continuation of this procedure** and **precondition for signing of administrative contracts**. *In both cases, the law does not determine what public interest is, while decisions on its existence in particular cases are left to discretionary right of the public body that takes the action in question.*

In the **Law on Protection of Privacy**, public interest is treated as **criterion for (im)punity** of certain behaviour, which otherwise represents **violation of privacy** and is regulated as criminal offence. *This law fails to define public interest and concerns are raised in regard to the fact that conditions for (non)application of punitive provisions are not fully defined.*

Law on Possession and Other Real Rights fails to define the term “public interest”, but unlike others, it requires **public interest to be established by law**, thus significantly narrowing possibilities for restriction/deprivation of the right to possession and discretionary actions on the part of relevant bodies in these procedures.

Law on Expropriation contains the most detailed provisions that regulate public interest as **public interest of significance for the Republic of Macedonia** and **public interest of significance at local level**. *Therefore, expropriation is performed for the purpose of public interest, with an ultimate goal of optimal use of certain societal goods or resources.*

Law on Free Access to Public Information links the term “public interest” to the so-called “**harm test**” as mandatory procedure implemented by information holders. *Public interest is criterion for exercise of the right to free access to information.*

Law on Donations and Sponsorships in Public Activities includes **definition** of “public interest”, where it is enlisted that public interest means supporting or promoting activities in the field of protection of human rights, promotion of culture, ethics, education, science, development of information society and transfer of electronic data, sports, environmental protection, socio-humanitarian activities, civil society development, promotion of blood donation, promotion of international cooperation and other activities established by law.

Terms similar to “public interest” and featured in the legislation of the Republic of Macedonia include: **general interest** (Constitution of the Republic of Macedonia and Law on Possession and Other Real Rights), **national interest** (Law on Culture, Law on Citizenship, Law on Organization and Operation of State Administration Bodies, Law on Protection of Cultural Heritage), **state interest** (Law on Foreign Affairs), **special interest** (Law on Public Enterprises, Law on Primary Education, Law on Secondary Education) and **interest of the Republic** (Law on Pardons).

Law on Secondary Education, **Law on the Red Cross Organization of the Republic of Macedonia** and **Law on Forests** stipulate or declare certain **activities as activities of public interest**, whereas the **Law on Associations and Foundations** establishes a **list of activities that are of public interest**.

PUBLIC INTEREST IN ADMINISTRATIVE AND COURT PRACTICES IN THE REPUBLIC OF MACEDONIA

Public interest is found in series of decisions taken by the **Constitutional Court of the Republic of Macedonia**. In many cases, the Constitutional Court deliberates whether particular legal provision that enables deprivation/restriction of the right to possession is in compliance with the Constitution, especially in terms of public interest established by law.

In certain cases, **litigation courts** have taken just decisions on establishing existence of public interest in respective matters, while decisions taken by administrative courts upon appeals contesting decisions on rejecting access to public information allow the conclusion that they pursue a superficial approach to this matter.

INTERNATIONAL STANDARDS AND EXPERIENCES RELATED TO PUBLIC INTEREST

Comparative and international law does not provide a more specific definition or methodology on determining “public interest”. Text of the European Convention and the protocols thereto explicitly refers to the term “public interest” in two places and in relation to state control over use of property/possessions. The European Court of Human Rights is flexible in establishing legitimate goals as broader public interests which provide the grounds for restricting exercise of particular right. In the case *Ivanovski v. Republic of Macedonia*, the Court acknowledged the state’s broad margin of appreciation and accepted that interference in the applicant’s right to private and family life was based on the legitimate goal defined as protection of the national security.

However, in the case *Arsovski v. Republic of Macedonia*, which concerned expropriation of land on request and for the benefit of private company, ECtHR concluded that the applicants had to carry a burden that is too high and disproportional to the goal of the public interest that should have been attained, which implied “privatization” of public interest or its links to individual interests.

THE TERM "PUBLIC INTEREST" IN THE CONSTITUTION OF THE REPUBLIC OF MACEDONIA	LAWS THAT INCLUDE DIRECT DEFINITION OF PUBLIC INTEREST	LAWS THAT DO NOT INCLUDE DIRECT DEFINITION OF PUBLIC INTEREST	LAWS THAT FEATURE TERMS SIMILAR TO PUBLIC INTEREST
<p>The term "public interest" is explicitly referred on two occasions, i.e. in the context of restrictions for the right to possession and in the context of establishing inquiry committees at the Parliament.</p> <p>Constitution of the Republic of Macedonia also includes the term "general interest".</p>	<p>Law on Protection of Whistleblowers (enlistment of areas covered by public interest)</p> <p>Law on Donations and Sponsorships in Public Activities (contains definition of the term "public interest")</p>	<p>Law on Civil Liability for Libel and Defamation (establishes areas and issues of public interest)</p> <p>Criminal Code (establishes persons performing activities of public interest)</p> <p>Law on General Administrative Procedure (the term "public interest" is considered a condition for continuation of this procedure and a precondition for signing of administrative contracts)</p> <p>Law on Protection of Privacy (criterion for punitive nature of certain behaviour)</p> <p>Law on Possession and Other Real Rights (requires public interest established by law)</p> <p>Law on Expropriation (regulates public interest as public interest of significance for the Republic of Macedonia and public interest of significance at local level)</p> <p>Law on Free Access to Public Information (the term "public interest" is linked to the so-called "harm test")</p>	<p>Law on Possession and Other Real Rights (general interest)</p> <p>Law on Culture, Law on Citizenship, Law on Organization and Operation of State Administration Bodies, Law on Protection of Cultural Heritage (national interest)</p> <p>Law on Foreign Affairs (state interest)</p> <p>Law on Public Enterprises, Law on Primary Education, Law on Secondary Education (special interest)</p> <p>Law on Pardons (interest of the Republic)</p> <p>Law on Secondary Education, Law on the Red Cross Organization of the Republic of Macedonia and Law on Forests (activities of public interest)</p> <p>Law on Associations and Foundations (list of activities that are of public interest)</p>