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THE CONSTITUTIONAL COURT IN THE REPUBLIC OF MACEDONIA: ARBITRARY INTERPRETATION OF ITS COMPETENCIES - On the Occasion of "the Case of Dissolution of the Parliament"-

Abstract

Every legal system strives to be coherent. The task of the constitutional judiciary is through control of the constitutionality and legality to ensure compliance of the entire legal system. Despite basic postulate that constitutional courts perform control of the constitutionality or legality of the general legal acts, there are differences in the scope of acts which are subject to review of constitutionality, as well as in the scope of acts which are basis for assessing compliance with them. The latest development in the Republic of Macedonia, when the Constitutional Court in the period of three months adopted two completely different decisions, raised the issue, which acts are subject to constitutional review. This paper analyses the issue of the acts, which are subject and the acts, which are basis for control of constitutionality, with special reference to the Constitutional court of the Republic of Macedonia. The constitutional frame on Constitutional court of Macedonia is not precise and detailed, but that should not give the right to the constitutional judges arbitrarily to interpret their competencies. Special attention is given to analysis of two decisions of the Constitutional court in which it arbitrary refused to decide on constitutionality of acts of the Parliament, stating that they are not general acts. One of them is Decision for Dissolution of the Parliament with postponed effect, adopted in 2016. This case is peculiar even more, because the majority in the Constitutional court changed their minds and adopted completely opposite decisions within a period of three months. The paper also analyses the arbitrary interpretations of the Republic of Macedonia on the content of the review of constitutionality.

Key words: Constitutional Court, Parliament, Macedonia, Constitutionality, Legality.

I. Introduction

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Every legal system strives to be coherent. The task of the constitutional judiciary is through control of the constitutionality and legality to ensure compliance of the entire legal system. Despite basic postulate that constitutional courts perform control of the constitutionality or legality of the general legal acts, there are differences in the scope of acts which are subject to review of constitutionality, as well as in the scope of acts which are basis for assessing compliance with them.

The latest development in the Republic of Macedonia, when the Constitutional Court in the period of three months adopted two completely different decisions, raised the issue, which acts are subject to constitutional review. The constitutional frame on Constitutional court of Macedonia is not precise and detailed, but that should not give the right to the constitutional judges arbitrarily to interpret their competencies. And that happened on 18 February 2016, when Constitutional Court refused to decide on the constitutionality of the Decision for Dissolution of the Parliament. Three months after that, on 18 May 2016, the Constitutional Court decided that it is competent to review that Decision and opened a procedure for constitutional review.

II. Acts that are basis for constitutional review

Traditionally, the primary basis for assessment of the constitutionality of legal acts is the constitution, which is on the top of the legal hierarchy. The Constitution is the basic and highest legal act and all internal acts must be in compliance with it. Written constitutions regulate the mutual relations of the legal acts and provide for themselves highest legal power and primacy in relation to other acts in the legal system. Of course, when EU countries are in question, their legal systems are based on the principle of supremacy of EU law.

The second on the legal hierarchy are statutes. In that sense, all by-laws must be in accordance with the laws and the constitutional courts are authorized to assess the compliance of lower legal acts (by-laws, collective agreements, acts of the local government units, etc.) with the statutes. In the federal countries, the constitutional courts assess the compliance of state with federal laws.

But the law can be a basis only for control of the legality of lower legal acts, and not for acts of the same legal force. This means that the constitutional courts do not decide on the mutual compliance of two acts with same legal force. That was also stated by the Constitutional Court of the Republic of Macedonia, who does not decide on the "for mutual compliance of the laws, i.e. mutual compliance of the other acts of the same rank in the hierarchy of legal acts".[1]

With the increasing of the importance of the international community and international law, the ratified international agreements receive their places in the legal hierarchy in the modern countries. In some countries, the constitutions proclaim that international treaties are part of the internal law, but do not specifically recognize supremacy of the international instruments.

In other countries international agreements shall become part of the internal (domestic) legal system, and are higher in relation to the statutes. Such hierarchical setup

[1] Resolution of the Constitutional Court of the Republic of Macedonia, U. No.189/1999.

is favorable for checking the compliance of laws and other acts with international agreements. But, there are differences whether the Constitutional Court examines the compliance of laws and other acts with all ratified international agreements, or only with those ratified international agreements, which are in force. Thus, for example, in Slovenia the Constitution stipulates that the Constitutional Court decides on the conformity of laws and other acts with the international agreements ratified by the National Assembly, which are in force "(Art. 153). The Constitution, in another article devoted to the approval of the legal acts only speaks for "ratified international agreements" (Art. 160). The difference is that not all ratified treaties must bind the country, or be in force. For some multilateral treaty to become in force it is necessary to be adhered by certain number of countries. So one country can adhere and ratify that treaty, but it will not come in force until enough countries do the same.

The Constitution of the Republic of Macedonia contains only a competence of the Constitutional Court to decide on conformity of the general legal rules with the Constitution and statutes. So, there is no explicit competence for the Constitutional Court to decide on the conformity of the general legal rules with the ratified international agreements, although they are part of the internal legal order and they cannot be changed by statute (Art. 118). But, this problem could be solved through deriving this competence of the Constitutional Court from the provision that establishes primacy of the international agreements over statutes. So, any statute that changes ratified international agreement is in conflict with the Article 118 of the Constitution.

On the other side, no explicit constitutional base could be found for evaluation of the conformity of the general legal rules in Macedonia with the general principles of international law.

Comparatively, different solutions can be found in relation to the status of the general principles of the international law in the legal system of certain countries. There are constitutions that fail to even mention general principles on international law. Others specifically mention these general principles of international law, but their status in the legal system of the country is not determined. Third constitutions recognize general principles of international law as part of the internal law and give them equal status as national law. Fourth constitutions give higher status of the principles of the international law than that of the domestic law. In such a hierarchical setup, for example the Constitution of Slovenia stipulates jurisdiction of the Constitutional Court to evaluate the compliance of the laws and other acts with the general principles of the international law.

III. Acts which are subject of constitutional review

The theory and practice raised the question whether Constitution can only basis or can also be the subject of control, or whether it is possible to examine the "constitutionality" of the Constitution. There are three different possible answers:

- Constitution is just the basis, but not subject for the control of constitutionality, because it is the highest legal act;
- Constitutional norms can be subject of control in terms of some basic constitutional principles;

- Constitutions contain some norms, which have a higher legal force, and tie can be the basis for control of the other constitutional norms. [2]

Those authors who support the idea of the Constitution as subject to control emphasize the importance of the "natural heritage", natural law and need of harmonization of constitutional norms with them. The constitutional courts of Germany, Portugal and Turkey accept this stance.

As a result of the fascist past, when many laws were formally constitutional, but in the essence they were in conflict with democratic and general principles of international law, the opinion that certain principles of the natural law must not be violated even by the Constitution appeared in Germany. That opinion gave the Constitutional Court wide opportunity to interpret the Constitution and natural law. At the same time it is complicated and delicate task for the Constitutional Court.

Differently from this opinion is that all constitutional norms are equal by their hierarchy and value.

Compromising is the opinion that "in principle all constitutional norms have the same value, but some of them contain in themselves quality of the higher norms". [3] Such the quality of higher norms is given to the provisions on human rights.

The issue of the hierarchy of norms also applies to constitutional amendments and constitutional statutes that are changing or supplementing the constitutional provisions. But there are certain specifics in relation to these two types of acts. Namely, the theory almost generally accepts the position that if the constitution specifically contains the prohibition of certain changes to the constitutional norm, in that case it is possible to evaluate the constitutionality of amendments or constitutional statute, which change that norm. For example, the Constitution of Italy contains constitutional provision that the Republican form of governance must not be amended.

Certain authors think that it is allowed to assess only formal constitutionality of the constitutional amendments, or of the constitutional statute, which means only whether they are adopted in the procedure, as it is determined in the constitution, and not their material constitutionality.

In comparative law there are constitutions that contain explicit provisions determining that international agreements can be subject of control of the constitutionality. Such are for example constitutions of Austria, France, Slovenia and others. In other countries the possibility international agreements to be subject to the constitutional review is derived from the interpretation of the constitutional norms regulating the relationship between domestic and international law and those regulating the control of constitutionality of statutes. In Italy the Constitutional Court in its decisions invokes the Articles 10 and 11 of the Constitution which regulate the relationship between domestic and international law and thus established jurisdiction for control of the constitutionality of the international agreements that are part of the domestic legal system.

The control of constitutionality of international agreements usually is preventive, as in Slovenia, France, Spain etc. According to the Art. 160, para.2 of the Constitution of Slovenia, in process of the ratification of international agreements; at the instigation of

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[2] Љ. Славнић, *Од државе која одумира ка правној дражави*, Београд, 1994, p. 39.

[3] E. Cansel, *General report, VIII Conference of European Constitutional Courts*, *7-10 May 1990*, Ankara, p. 76.

the President of the Republic, of Government or of no less than one third of the Representatives of the National Assembly, the Constitutional Court shall provide opinion on their conformity with the Constitution. The National Assembly is bound by any such opinion. Similar is in Spain and in France, where if Constitutional Court i.e. Constitutional Council determine that the international agreement is not in compliance with the Constitution, that agreement cannot be ratified till the revision of the constitution is done.

In the countries in which the constitutional review of international agreements is not preventive, as it is in Austria, if unconstitutionality is determined, the international agreement is not nullified or abolished, but the competent bodies do not implement it.

In the Macedonia, in Article 110 of the Constitution, there is not explicit competence for the Constitutional Court to decide on constitutionality of ratified international agreements. There were several cases in front of the Constitutional Court to decide on constitutionality of international agreements. In 1996, the Constitutional Court of the Republic of Macedonia [4] stated that the evaluation of the compliance of the international agreement with the Constitution is performed by the Parliament in the procedure for ratification of the international agreement.

In 2000 Constitutional court was asked to decide on constitutionality of the *Law for ratification* of the Agreement between the states-parties in North-Atlantic Agreement and other state parties in the Partnership for peace. [5] The Constitutional Court of the Republic of Macedonia rejected this initiative because its content was evaluation of the "content of international agreement". The Court ruled that it did not have such competence.

In 2002 the Constitutional court in same composition decided that the Constitution gives it the opportunity to decide on formal and material aspects of the Law for ratification of some bilateral agreement because international agreements, with an act of ratification become part of the legal system of the Republic of Macedonia and they should be in conformity with the Constitution. [6]

But in 2005 the Constitutional Court passes a decision in which it returned to its primary stands and decided that it is not competent to evaluate the constitutionality of content of the international agreements and rejected the initiative for the assessment of certain articles of the Agreement between the Government of the Republic of Macedonia and the Government of the Republic of Albania on cooperation in the field of education and science and certain articles of the Agreement between the Government of the Republic of Macedonia and the Government of the Republic of Bulgaria on mutual recognition the documents on education and scientific degrees. [7] The Constitutional Court explained that assessment of the compliance of international agreements with the Constitution is exercised by the Parliament of the Republic of Macedonia in the procedure for ratification of the international agreement, which after its ratification becomes part of the domestic legal system, and thus directly implemented.

The least controversial is the control of constitutionality of statutes. That control can be obligatory or facultative. In most of the countries it is facultative, while in France there are two forms of control of the constitutionality of the laws. The organic laws in France are subject to obligatory preventive control of their constitutionality. According to

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[4] Decision of the Constitutional Court of the Republic of Macedonia, No. 230/1996.
[5] Resolution of the Constitutional Court of the Republic of Macedonia, No. 178/2000.
[6] Decision of the Constitutional Court of the Republic of Macedonia, U. No.140/2001.
[7] Resolution of the Constitutional Court of the Republic of Macedonia, U. No. 150/05.

Art. 61 of the Constitution of France the basic (organic) laws, before their proclamation, must be submitted to the Constitutional Council to plead for their compliance with the Constitution.

There are interpretations that the Constitutional Council during the review of the constitutionality of the organic laws does not carry and control of their compliance, but "controls compatibility, and looks for the existence of contradiction in both texts."[8] During the control of the organic laws the Constitutional Council possesses certain discretion, because the organic law cannot be just a mere reproduction of the constitutional provisions, but this is supposed to develop and implement the principles contained in the Constitution.

The Constitutional courts do not control the compliance of one law to another, neither the mutual consent of the provisions in one law, i.e. internal compliance of legal norms. Before the Constitutional Court of the Republic of Macedonia many initiatives requesting examination of mutual compliance of certain statutory provisions were raised. Such initiatives were refused by the Constitutional Court as something outside of its jurisdiction.[9]

The authentic interpretation of the statute is also subject of control of constitutionality. Adoption of such interpretations is in the competence of the parliaments, by which they determine the meaning of the law and the intentions for the adoption of that law. In legal theory authentic interpretation of the laws is considered a general legal act with same legal force as the laws. According to some authors authentic interpretation is an integral part of the law, which is not adopted in the same time with the law, and it is not an independent act, but an act tied with the law.[10] Other authors believe that the authentic interpretation of the law is a general act with special nature, general *sui generis* act by force of the law.[11]

Because of the legal character of the authentic interpretation, which is same with the one of the statute, there is a consensus in the legal theory that it can be subject of substantial and formal control of constitutionality. The authentic interpretations are subject of control of constitutionality in Macedonia.

Beside these acts, subject to the control of the constitutionality can be other acts of the Parliament, which are not laws, by-laws issued by the executive authority, acts of organs of local self-government and collective agreements.

According to the Article 110 of the Constitution of the Republic of Macedonia the Constitutional Court decides on the conformity of the laws with the Constitution and the conformity of collective agreements and other regulations with the Constitution and the laws.

As it could be seen, instead of enumeration of the acts which are subject of the judicial review, the Constitution of the Republic of Macedonia uses the term other regulations which is very broad and entails: by-laws (decrees, decisions of the Government, directions, rules and other acts of the administrative bodies) enacted by the executive power; local-government acts (municipality statute, decisions and conclusions of the municipal council etc.); the acts of the institutions and organizations with public powers; the statutes and rules of the educational, health and other institutions and

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[8] O. Nikolić, 'Ustavni savet Francuske republike', *Strani pravni život*, Beograd No.1-2/1993, p. 24.
[9] For example U.No. 167/96; 129/96; 22/96; 165/96; 82/97.
[10] R. Lukić i Košutić B., *Uvod u pravo*, Beograd, 1991, p. 326.
[11] П. Николић, 'Прилог питању карактера аутентичног тумачења закона', *Pravni život*, 11/82, Beograd, p. 1110.

organizations; the regulations of the Assembly of the Republic of Macedonia which do not have status of law (decisions, conclusions, declarations, resolutions and recommendations) etc. These acts are subject to the judicial review if they are general acts i.e. if they are valid for an uncertain number of entities in Macedonia. But the evaluation whether some act is general or not is in power of the Constitutional Court. The Constitutional Court misused this power to declare itself incompetent for deciding in constitutionality of some acts, which were considered as acts, which are not general, by the members of the Constitutional Court.

IV. Two Examples of Arbitrary Interpretation of its Competencies by the Constitutional Court of the Republic of Macedonia

Beside the inconsistency of attitude whether international agreements are subject of control of constitutionality, the Constitutional court of the Republic of Macedonia in several occasions used "strange" criteria in determination whether certain act should be under control of constitutionality or not.

One very obvious example was the decision of the Constitutional Court adopted in 1996 that it is not competent to decide on the constitutionality of the Conclusion of the Assembly that there is no constitutional base for Parliament to issue a notice for referendum for pre-term elections.

According to the Constitution of MR. the Assembly decides on issuing notice of referendum concerning specific matters within its sphere of competence. The Assembly is obliged to issue notice of referendum if one is proposed by at least 150 000 voters. In 1996, 150 000 voters demanded by the Assembly to issue a notice of referendum on the question: "Are you for pre-term elections for representatives in the Assembly of Republic of Macedonia, which would be held at the end of 1996?" The Assembly did not accept this initiative with the explanation that it can issue a notice of referendum concerning specific matters within its sphere of competence, and not for pre-term elections. There was initiative sent to the Constitutional Courts for deciding on constitutionality of this Conclusion of the Assembly. The Constitutional Court decided that it was not competent to decide on the constitutionality of the Conclusion of the Assembly with explanation that it (Conclusion) did not regulate relations, which make this act general, but it was an act of the work of the Assembly with which it decided concrete question[12](?!). This is very problematic explanation, because it raises many questions, as are the question of the definition of general acts; if the general acts are acts which *erga omnes tanguit*, whether this Conclusion of the Assembly does not produces consequences *erga omnes* etc.

In determination of the nature of some act, i.e. whether it is general act or not, the Constitutional court should consider the relations regulated with the act and the effects produced with that act. The name of the act should not be primary concern, especially when other bodies could misuse their competence and try to avoid review of constitutionality by giving "wrong titles" of the acts.

This decision showed that the Constitutional Court was not prepared at that time to be check on the ruling power and guardian of the Constitution; as well as that shaping of the competencies of the Constitutional Court with such general expressions in the

[12] Resolution of the Constitutional Court of the Republic of Macedonia, No. 150/1996-1-0, Official Gazette of the Republic of Macedonia, No. 70/96.

Constitution can leave space for different interpretations and for maneuver for the Constitutional Court itself.

Twenty years after this decision that raised public debate, another decision adopted in 2016 showed politicization of the Constitutional Court, who acted as a body executor of the will of the Government. In 2016, within a period of three months the Constitutional court adopted two contrary decisions on its competence to decide on the constitutionality of the act for dissolution of the Parliament.

On 18 January 2016 the Parliament of the Republic of Macedonia adopted a Decision for its dissolution, which should have entered into force on 24 February 2016. This Decision was challenged before the Constitutional court because of its postponed effect. The Constitutional Court on 18 February 2016 refused the initiative for review of constitutionality of the Decision stating that it is concrete act and does not contain general norms for behavior, i.e. does not at all regulate relations in general manner. The Decision is act with "individual character" which decides "on individual legal situations in which the application of some general regulation is exhausted once." To this strange explanation, the Court adds that "the challenged decision does not regulate legal relations in general manner and its function is exhausted only in one concrete case of dissolution of the Parliament".[13] The majority of the Constitutional Court issued very dangerous from constitutional point of view, decision. It is not understandable to state that the Decision for dissolution of the Parliament (with postpone effect) is individual act and to leave the Parliament the possibility for arbitrariness.

Three judges of the Constitutional court wrote two Dissenting Opinions. They point that the "challenged Decision has universal effect (characteristic) because it affects all citizens of the Republic of Macedonia who on general and direct elections vote for Members of the Parliament." The Decisions which refer and involve voters, "in its essence are not referring to the Parliament itself and to its internal operation, but initiate whole serial of legal activities and implications, which refer to their parliamentarian mandate and legitimacy, as well as of the power (Government) and with that universally to all citizens. With contrary interpretation, there will be no systematic possibility for control of the Parliament, whether it performs its function according to the Constitution, which will mean that there is serious legal void in functioning of control mechanisms between three branches of state power, and which will generate arbitrariness."[14]

The Decision for dissolution of the Parliament was amended on 23 February 2016, and the date for entering into force was changed. With the changes, the dissolution of the Parliament should become effective on 7 April 2016, instead of 24 February 2016. The Parliament dissolved on 7 April 2016 and the elections were called. The country has been in political crisis and the conditions for free and fair elections have not existed. The State Electoral Commission announced that only one political party - ruling one would run on elections, which supposed to be held on 5 June 2016. In such situation, demands for postponing elections and reconvening the Parliament were posed. The "salvation" came from the Constitutional court. On 18 May 2016, the Constitutional court unanimously decided that it is competent to decide on the Decision on Dissolution of the Parliament because "it has a character of regulation, because the decisions of this type has universal effect and indirectly refer to all citizens who on direct elections vote for

[13] Resolution of the Constitutional Court of the Republic of Macedonia, U. No. 9/2016.

[14] Dissenting Opinion on Resolution of the Constitutional Court of the Republic of Macedonia, U. No. 9/2016.

certain Member of the Parliament, i.e. transfer them the mandate, but also they transfer the sovereignty to the Parliament to be able to decide in their name."[15]

There is no doubt that these two completely different decisions adopted within a period of three months, testify for the politicization and political influence over the majority in the Constitutional court, who vote according to the will and needs of the ruling majority. But, the dilemma is, which of these two completely opposite attitudes is really held by the "changing mind" majority in the Court! Especially when the President of the Constitutional Court, while deciding the second time, on 18 May 2016, stated that she would make a precedent and accept the initiative because of the political crisis in the country. That implies that she, as one representing the "changing mind majority" in the Court did not think that she made mistake during deciding first time.

But the arbitrariness of the Constitutional court of the Republic of Macedonia in the interpretation of its competence, does not ends in the determination which acts can be subject of control, but it affects also the question of the aspects which could be controlled, i.e. the content of the control of constitutionality and legality.

V. The content of the control of constitutionality and legality – control of substantial and formal constitutionality

For a long time in the legal theory there was a dilemma whether control of constitutionality and legality should include only the substantial or also the formal evaluation. Substantial constitutionality and legality means compliance of the content of legal acts with the Constitution or statute. That means for examining the substantial constitutionality, constitutional courts should take in account whether the content of a certain legal act is in conformity with the Constitution or not.

Formal constitutionality and legality points whether the act, which is the subject of assessment, is adopted in a prescribed form and procedure and whether it is passed by competent authority. The need for a formal examination of the constitutionality of the laws, in the past was denied, and this position was elaborated with the existence of the act of promulgation of the laws. Laband, Jelinek and other authors held the attitude that the issue of the formal constitutionality of laws is solved with the act of promulgation. Today this attitude is overcome and dominant understandings is that constitutional courts should evaluate the formal constitutionality.

But this is followed by some open questions and dilemma. The procedure for passing laws in a small part is regulated in the Constitution, and the larger part is regulated in the Rules of Procedure of the Parliaments. So there is a question whether the constitutional courts should evaluate if the law is adopted in a procedure prescribed in the Rules of Procedure of the Parliament or they should evaluate just the consistency with the part that is regulated by constitutional provisions. In theory, "the prevailing is the opinion that the law should be considered for formally unconstitutional in the case of violation of the constitutional provisions on the competence and the manner of its adoption, as well as in the case of violation of the provisions of the law and Rules of procedure that refer to the legislative procedure. The principle of constitutionality and legality implies that state

[15] Resolution of the Constitutional Court of the Republic of Macedonia, U. No. 104/2016

authorities, including the Parliament, should be bound also with their own acts, until they modify or abolish them in a prescribed procedure."[16]

In the Constitution of the Republic of Macedonia, the Constitutional Court is defined as a body which I protects constitutionality and legality (Article 108), but Article 110 enumerates its jurisdiction. Thus in relation to the laws, the Constitutional Court decides on their conformity with the Constitution. Article 110 does not specifically states that the Constitutional Court is competent to assess whether a certain law is passed in a procedure that is prescribed in the Rules of Procedure of the Parliament of the Republic of Macedonia.

But the competence of the Constitutional Court of the Republic of Macedonia to assess the formal consent of the laws with the constitutional provisions should be undisputed. The Constitution of the Republic of Macedonia regulates certain issues pertaining to the procedure for adoption of the laws. The Constitution regulates important issues pertaining to the formal conditions for the adoption of the laws, as are question of competent authority for enactment of laws, the authorized proponents of the law, the required majority for the adoption of the law, proclamation of the laws, the right to veto the laws, the rejection to the veto of the President, the obligation and the deadline for the publication of law and deadlines for the entry into force of the law. Other issues are regulated in the Rules of Procedure. The Constitution in Article 61 regulates that the organization and functioning of the Parliament are regulated by the Constitution and the Rules of Procedure. The obligation of the Parliament to function according to the Rules of Procedure has constitutional basis. This constitutional obligation can be used for deriving the competence of the Constitutional court to review as part of constitutionality, whether the law is adopted according to the procedure prescribed in the Rules of Procedure. But the Constitutional court does not understand its competencies in that manner.

The issue of compliance of a procedure for adoption of the law with the procedure prescribed in the Rules of Procedure was raised before the Constitutional court. On 29.01.2014, the Constitutional court refused the initiative to decide on constitutionality of the Law on Budget of Republic of Macedonia for 2013, stating that it is not competent to decide whether the Law was adopted in a procedure contrary to the Rules of Procedure of the Parliament of the Republic of Macedonia.[17] As far as the procedure for adoption of the Law is concerned, for the Court, it is important whether competent body adopts the law, as it is determined by the Constitution.

Such attitude opens the door for Parliament to violate its own Rules of Procedure in the procedure of adoption of laws, and nobody to be competent to control legislative body if it follows its own rules. This is dangerous attitude, which puts the Parliament in a position to act without any limitation and control.

In order to avoid such situations, the best solution is to regulate explicitly that the Constitutional court is competent body for such cases, as it is done in Poland. In the Law on Constitutional Court adopted in Poland is determined that the assessment of the legal acts is based on three criteria: 1) compliance of their content with the Constitution (international agreements or laws); 2) the respect of the procedure prescribed for the adoption of a legal act, and 3) the competence to adopt the legal act.

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[16] G. Mijanović, *Kontrola ustavnosti zakona*, doktorska disertacija, Sarajevo, 1965, p. 216.

[17] Resolution of the Constitutional Court of the Republic of Macedonia, U. No. 20/2013-0-0.

VI. Conclusion

The Constitutional Court "failed the test of impartiality and independence" in several "highly politicized cases" in which refused to decide on the constitutionality of certain acts with explanation that it is not competent to decide on such acts. With avoiding to decide on certain acts and with avoiding to review certain formal aspects of constitutionality, the Constitutional Court opened space for abuse of powers by the ruling majority in the Parliament and left that abuse without control and sanction.

Such political decisions affected authority of the Constitutional Court, whose decisions usually are not elaborated and suggestive and cannot contribute to better understanding of the constitutional principles. The majority of the judges in the Constitutional Court of the Republic of Macedonia have not learn the lesson that: for the Constitutional Court to be honored in their function to protect human rights by their normative violations they should try to represent the "idealism" of the constitutional regulations, in contrast to the "pragmatism" of the other state bodies. Unfortunately, our Constitutional Court acted pragmatic "defending" the positions of the ruling majority, instead of standing for "idealism" of the constitutional values.

The majority of the constitutional judges have not shown awareness about theoretical and comparative constitutional concepts and developments in the constitutional law and readiness to protect constitutional values from breaches. Actually majority of them have not shown readiness to resist the political pressures and to stand behind the Constitution. Even more, they (mis)used modesty of the constitutional provisions on the Constitutional Court, to avoid their basic function – protection of the Constitution.

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