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Control of the Constitutionality of Acts via the Decisions of the Constitutional Court of the Republic of Macedonia

Introduction

The control of the constitutionality of the legal acts of the Republic of Macedonia is the main competence of the Constitutional Court of the Republic of Macedonia. This function, which historically has been the reason for the creation of the constitutional courts in Europe, is provided for in Article 110, indents 1, 2 and 7 of the Constitution of the Republic of Macedonia. The control of the constitutionality of the acts is concentrated as a jurisdiction of the Constitutional Court which performs it, on the territory of the entire country. Therefore, we would not make a mistake if we refer to *Victor Comella* who stated that "when it comes to the control of the constitutionality, the constitutional courts have a "monopoly" in its conducting and they are the only bodies that can "nullify" the unconstitutional legal acts"[1]. Finally, the procedure through which this competence of the Constitutional Court is being conducted is regulated in the Rules of Procedure of the Constitutional Court of the Republic of Macedonia in the III part named "Procedure for Assessment of the Laws and the Constitutionality and Legality of the Regulations and Other General Acts". The abovementioned is important, especially because the Rules of Procedure of the Constitutional Court of the Republic of Macedonia is the only act which regulates the issues related to the elements of the procedure, the course of the procedure, the Court decisions and their effect. Compared to the competencies of the constitutional courts in the countries implementing the model of constitutional and judicial control of the constitutionality, the constitutional resolutions referring to the Constitutional Court of the Republic of Macedonia are modest and leave an impression that the idea of "the founding fathers" was the main

[1]*The Spanish Constitutional Court: Time for Reforms*. Ferreres Comella Victor. Journal of Comparative Law Vol.3 issue 2 www.astrid-online.it/Giustizia-1/Studi--ric/JCL3-**2**-final_.pdf*p.25*

task and the work of the Constitutional Court of the Republic of Macedonia should be focused on the normative control – control of the constitutionality of the legal acts.

Acts – Subject to Control of the Constitutionality

Every legal system tends to be monolithic. The legal order must not allow internal contradictions and discrepancies. They enable the implementing and conducting of the law, thus the functioning of the system as whole as well. One way to achieve the harmony and compliance of the legal acts is by using the assessment of their compliance with the constitution. The control of the constitutionality of the legal acts conducted by the constitutional courts has the sole objective to provide the coherence of the legal system and the unique interpretation of the constitutional norms. This ensures not only protection of the constitution, but respect of the principle of the constitutionality and legality as well, thus finally the principle of legal security.

I The issue of the subject to control of constitutionality for the constitutional and court literature is actually an **issue of *the types of acts subject to control of the constitutionality*.** In this manner, in Article 110 the Constitution of the Republic of Macedonia provides for that *the acts, other regulations and collective agreements, programmes and statutes of the political parties and statutes of the citizens' associations* are subject to the control of the constitutionality.

From the constitutional provisions it can be concluded that the control of the constitutionality of the legal acts is conducted at two levels: *control of the constitutionality of the acts and control of the constitutionality of other regulations and collective agreements*. This leads to the conclusion that the control of the constitutionality covers all general regulations and legal acts.

In the context of the above-mentioned, it must be pointed out that the Macedonian constitution maker did not specify the acts subject to the control of the constitutionality, nor left a possibility for this issue to be subject to detailed regulation by the Act on Constitutional Court. Instead, "the founding fathers" used the term *"other*

regulations" which is very general and imprecise and leaves space for discretion in the acting of the Court, when deciding whether one act may be subject to control of constitutionality. Namely, the imprecise constitutional provisions leave space before the Court itself to determine which acts are classified in the category of general legal acts.

The provision, in a manner provided for in the Constitution, leaves a possibility for all the general legal acts, i.e. acts having erga omnes action to be subject to control of the constitutionality. This includes all acts, authentic interpretation of acts, acts of the Assembly that do not have a status of a law, but have an effect on indefinite number of people, bylaws adopted by the executive authorities, acts of local self-government units, acts of educational, health and other institutions with erga omnes action, acts of organisations and institutions with public authorisations etc.

However, although the constitutional solution leaves space for all the legal acts referring to imprecise number of persons to be subject to control of the constitutionality, the practice of the Macedonian Constitutional Court develops the caravaggism, and its decisions represent a reflection of continuous shadow play. The above mentioned can be presented most appropriately through the decisions No. U. No. 150/96 from 11 December 1996, U. No. 259/2008 from 27 January 2010, U. No. 28/2006 from 12 July 2006 and U. No. 82/2012 from 27 June 2012.

The manoeuvring space provided to the Constitutional Court of the Republic of Macedonia by the constitutional formulation *"other regulations"* enables it different interpretation of the constitutional norm and possibility for it to independently determine whether one legal act has an effect on imprecise number of persons and whether it can be subject to control of constitutionality.

1) In this manner, in one of its Resolution (U. No. 150 /1996-1-0), the Constitutional Court declares the lack of jurisdiction to evaluate the constitutionality of the *Conclusion of the Assembly of the Republic of Macedonia* from June 1996 which refuses the proposal for scheduling referendum on early elections for Members of Parliament of the Republic of Macedonia. In the explanation of this Resolution, the Constitutional Court found that “the conclusions whose nature was concisely determined belongs

to the nomenclature of the acts adopted by the Assembly, performing tasks of its competence". Referring to the provisions of the Rules of Procedure, the Court established that "the conclusions are treated as acts of the work of the Assembly, not as regulations or general acts which normatively regulate relations". Thus, the Court established that the disputed conclusion does not regulate relations in terms of scheduling referendum and that the disputed act does not regulate relations which would refer to imprecise number of subjects, but it is used for settling concrete request by individually determined applicants. Finally, the Court concluded that *"the disputed conclusion does not regulate relations so that it has a feature of a general act, but it is an act of the work of the Assembly which decides on concrete issue, it does not represent a regulation for conducting a law and expresses contents based on the political will at the time of its adoption, and it does not have the general characteristics of a regulation due to which it does not represent an act for which the Constitutional Court is competent to decide on its constitutionality and legality"*[2]. In the context of the above-mentioned decision *Treneska-Deskoska* states that "the decision shows that the Constitutional Court was not ready to be a limiter of the authorities and a guardian of the Constitution[3].

2) Contrary to the previous cases in 2006 and 2010, the Court has expressed determination in the performance of the function "guardian of the Constitution" via two of its decisions: U. No. 28/2006 with which the Court established unconstitutionality of Article 231 paragraph 2 of the Rules of Procedure of the Assembly of the Republic of Macedonia and the Decision U. No. 259/2008 with which the Court established unconstitutionality of Article 127 of the Rules of Procedure of the Assembly of the Republic of Macedonia. In the Decision from 2006, the Court established unconstitutionality of the procedural resolution according to which the public is excluded from the work of the Assembly by majority votes of the MPs and revokes the part "by majority votes of the total number of MPs" from Article 231, paragraph 2 of

[2]http://www.ustavensud.mk/domino/WEBSUD.nsf/ffc0feee91d7bd9ac1256d280038c474/09110777894a411cc125716b0047c340?OpenDocument

[3]*Конституционализмот и човековите права.* Тренеска-Дескоска Рената. Скопје. 2006. p. 267

the procedural provision. In the explanation of the Decision U. No. 259/2008 the Constitutional Court stated that "when the Rules of Procedure established that a discussion is opened at a session of the Assembly, every MP must have a right to participate in the discussion, whereupon the MP who is not a member of an MP group cannot be deprived from this right. Considering the above-mentioned and accepting the concept of the Rules of Procedures for introduction of MP groups and determining their position, the Court considers that the MP elected through direct elections and to whom the citizens had transferred the sovereignty cannot be deprived of the possibility for him/her to express his/her opinion in terms of the law for which general discussion had not been held, just because he/she is not a member of an MP group"[4].

The above-mentioned decisions point out that the Constitutional Court did not have a dilemma whether the Rules of Procedure, as an act of the work of the Assembly of the Republic of Macedonia, represent general legal act. In both cases, the Court has positioned itself as the most adequate constitutional actor who, placed in the centre of the constitutionalism, protects the constitution and ensures that all branches, and in the above-mentioned two cases the legislative authorities, are within the frames of the established constitutional limits.

3) All of the above-mentioned represents the Court in a new light up to the adoption of the Decision U. No. 82/2012. The above-mentioned decision confirms the fact that the imprecise constitutional provision leaves maneuvering space to the Constitutional Court in the determination of the acts which can be subject to the control of the constitutionality. Namely, in the above-mentioned Resolution, the Court declared lack of jurisdiction and dismissed the initiative for assessment of the constitutionality of the Rulebook Amending the Rulebook on Internal Relations and Operations of the Faculty of Dentistry at the "Ss. Cyril and Methodius" University in Skopje. On the one hand, the Resolution intends to determine the actual situation and see

[4]http://www.ustavensud.mk/domino/WEBSUD.nsf/ffc0feee91d7bd9ac1256d280038c474/fbfd035e3e6d0f5bc12576be0048c27b?OpenDocument

whether there is unconstitutionality of the disputed act with the Law on Higher Education, which is evident from the parts in which the Court established that the law provides for "only the employed teachers should participate in the work and decision making process of the faculty, but not the teachers who are not employed at the faculty", as well as the fact that the Rulebook established that "the Teaching-Scientific Council of the faculty is composed of the full-time, associate and assistant professors of the faculty". On the other hand, in the explanation of the Resolution, the Court emphasized that "the Rulebook is an act regulating the mutual relation of the employees of the Faculty of Dentistry". Therefore, it can be concluded that "*it represents concrete and internal act which has legal action only for the entities of the Faculty of dentistry, but not for indefinite number of entities and as such it is not a subject to constitutional and judicial assessment"*[5].

Finally, the Court established that "having in mind the contents and the character of the disputed provision, as component of the subject rulebook, and having in mind the above-mentioned provision from the Constitution according to which the Constitutional Court does not have a jurisdiction to evaluate the legality of the internal acts without erga omnes character, the procedural presumptions for rejection of the initiative have been accepted".

All of these cases, pointing to a different practice presented by the Court through its decisions, cannot be classified under any category of judicial pragmatism, judicial minimalism or any modern constitutional theories for "living constitution" or "constitution in exile". They only represent a product of imprecise constitutional provision which needs to be regulated in a different manner.

The acts and acts of authentic interpretation, i.e. the so called interpretive acts (laws) are covered in the category of acts subject to control of constitutionality. Two decisions through which the Constitutional Court of the Republic of Macedonia presents so-called mood swings, can testify how much the Court has positioned itself in the

[5]http://www.ustavensud.mk/domino/WEBSUD.nsf/ffc0feee91d7bd9ac1256d280038c474/d23207fae75d2773c1257a3d002b7d54?OpenDocument

system as real guardian of the established order including: U. No. 158 /2011 from October 2012 for the Act on Amnesty and U. No. 52/2011 from February 2012 for the Act Amending the Act on Additional Requirement for Performing Public Function and previously adopted U. No. 42/2008 and 47/2008 from March 2010 for the Act on Additional Requirement for Performing Public Function.

4) In the Decision from October 2012, U. No. 158/2011, the Constitutional Court dismissed the initiative for assessment of the constitutionality of Article 1 of the Act on Amnesty and Authentic Interpretation of the Act on Amnesty. The basic thesis on which the submitted initiative is based is a violation of the fundamental value of the constitutional order of the Republic of Macedonia from Article 8, paragraph 1, item 11 of the Constitution of the Republic of Macedonia – respecting the generally accepted norms of the international law. In the initiative it is emphasized that the international law knows no amnesty for war crimes against civilians. In the statements it is emphasized that the disputed Act is contrary to Article 9 of the Constitution since it covers only the perpetrators of serious criminal acts against civilians but not the convicted persons who serve a prison sentence for committing simple criminal acts, as well as contrary to Article 20, paragraphs 3 and 4 of the Constitution of the Republic of Macedonia which prohibits military and semi-military associations not belonging to the armed forces of the Republic of Macedonia. The Resolution of the Constitutional Court is interesting from the aspect that on the one hand it rejects the initiative for initiating a procedure on the basis of the fact that the Court has previously expressed its opinion on the same issue through the decisions U. No. 169/2002 from February 2003 and U. No. 155/2007 from December 2007, and on the other hand, in order to support again its already expressed view, it enters into determination of the actual situation of how to decide meritoriously on the subject through extremely long explanation The latter is important in particular because the Court stated that there are no listings of acts for which the amnesty has been provided in the disputed Article 1, but they are established in the provisions of Articles 2 and 3 of the Act. The two diametrically opposite views of the Court in terms of whether the disputed provision violates the principle of the

rule of law causes an additional confusion in the Resolution. On the one hand the judges emphasized that there is a violation of this principle because the Act does not provide for a number of elements determining the circle of persons covered by the amnesty (type of criminal act, time of committing it, type and severeness of punishment). On the other hand, completely contrary conclusion was made that although these elements are provided for, they do not violate the principle of rule of the law since the "disputed act does not violate the right to life, physical and moral integrity of the person and there is no constitutional prohibition for an amnesty to be given to the perpetrators of the most severe criminal acts by the Assembly of the Republic of Macedonia". The Court even goes so far that it enters into the analysis of the provisions of the Statute of the Hague Tribunal to finally conclude that *it rejects the initiative* for assessment of the constitutionality.

With the same Resolution, the Court rejects the initiative for assessment of the constitutionality of the Act on Authentic Interpretation of the Act on Amnesty with the explanation that the disputed article of the authentic interpretation is not significantly different from the original Article 1 of the Act on Amnesty and therefore "it is not suitable for judicial assessment"[6]. The above-mentioned Resolution presents application of self-restraining techniques in the decision making process and raises the question how much the Court is guardian of the Constitution in the true sense of the word. The Resolution is:

- extremely long if we take into consideration the fact the Court did not decided meritoriously in the case;

[6] U. No. 158/2011
http://www.ustavensud.mk/domino/WEBSUD.nsf/ffc0feee91d7bd9ac1256d280038c474/ae2d2113039a8887c1257ab60045863b?OpenDocument
In another Resolution, the Constitutional Court also rejected the initiative for assessment of the constitutionality of the Law on Authentic Interpretation of the Law on Primary Education. However, the Court established that there is constitutional basis for the adoption of the Law on Authentic Interpretation, estimating that "it cannot be reasonably accepted that concrete authentic interpretation violated the constitutionally established guarantee that any workplace is available to anyone, under equal conditions, and that retroactive application of the law was enabled which is less favourable for the citizens, thus violating the principle of rule of the law as founding value of the constitutional order of the Republic of Macedonia, due to which the Court did not raised the issue of the compliance of the disputed authentic interpretation with the Article 8, paragraph 1, indent 3, Article 32, paragraph 2 and Article 52, paragraph 4 of the Constitution. See U. No 221/2010 from February 2011.

- confusing because it expresses different views which result in rejecting the initiative for initiating a procedure, and as a technique correspond to the in meritum decision making;
- the expression "not suitable for assessment of the constitutionality" were used which indicates to the discretion of the Court to independently decide which acts are suitable and which are not for the assessment of the constitutionality, and finally
- When deciding, the Court does not begin from the claims in the initiative and does not answer them which can be interpreted as ultra petitum acting. On the other hand, the normative framework does not oblige the Court, without any provision, in the process of proceeding and deciding such as the experience from the comparative analysis of the systems for control of the constitutionality.

Therefore, the Court must start from the premise that the battle for the rule of the law and the defence of the Constitution is a privilege as well as an obligation of the Constitutional Court and every dissociation affects the trust in this institution and the legitimacy which it should have[7].

5) On the other hand, the decisions U. No 42/2008 and 47/2008 from March 2010 and U. No. 52/2011 from February 2012 refer to the decision making by the Constitutional Court which shows completely different picture about it. In these decisions the Constitutional Court established the unconstitutionality of the disputed articles from the Act on Additional Requirement for Performing Public Function and revoked them due to the violation of the principle of the rule of the law, violation of the provisions for protection of the physical and moral integrity from Article 11 and the guarantee for protecting and respecting the privacy, personal and family life and dignity and reputation from Article 25. In the

[7]On the other hand, the decisions of the Constitutional Court revoking the provisions of the Law on Additional Requirement for Performing Public Function, Law Amending the Law on Additional Requirement for Performing Public Function, Law on Religious Education, and the Law on the Legal Status of Churches, Religious Communities and Religious Groups show that "the least dangerous branch of authority" has a capacity to represent an "iron glove" which can perform control of the constitutionality and protection of the established order, not in the name of the majority, but against it even under the pressure of "political mobbing".

decision U. No 52/2011 from March 2012 the Constitutional Court confirmed its views on the time period of the lustration, revealing the names of the persons about whom the Commission for Verification of Facts had established that they cannot be holders of the function in the Official Gazette, i.e. at the official web-page of the Commission and annuls the provisions indicating to the expanding of the list of persons who will be covered by the Law. The above-mentioned decisions are indicators that 1) the Court can show persistence, perseverance and tenacity in respecting the established practice and 2) It can finally realise its role and function for which it was established.

II In terms of the constitutional and judicial literacy the view that the **constitutional laws** and the **constitutional amendments** may be subject to the assessment of the constitutionality is very interesting. The answer of this question is directly conditioned by the setup of these acts in the legal system. Thus, one theoretical view defends the thesis that although the constitutional laws and amendments regulate materia constitutionis and according to this they have the same legal power as the constitution, they cannot be subject to assessment of the constitutionality. The above-mentioned theoretical view rigidly keeps to the Kelsen's Doctrine of Degrees in Law and provides for the possibility of assessment of the constitutionality of the legal norms from the lower degrees with the ones from the higher degrees. The above-mentioned is a theoretical basis for the traditional conducting of the constitutional and judicial control of the constitutionality of the legal acts. On the other hand, a wider theoretical view represents the thesis that in order to realise a protection of the established order in the true sense of the word, the constitutional court can evaluate the constitutionality of both the constitutional laws and constitutional amendments. The doctrinal concept of *unconstitutionality of the constitutional provisions* is based on the view that all legal norms can be subject to control of the constitutionality solely in order to protect the values and the principles which the constitution appreciates as fundamental. The concept of "fundamental constitutionality" in modern conditions is also marked as "absolute entrenching" whose task is to provide protection of the "spirit of the

constitution" [8]. The view of Kelsen according to which the constitution can prohibit for the laws to have certain contents, therefore the legislator cannot adopt not a single law, even a constitutional law which would have such contents, is the theoretical basis for the above-mentioned modern doctrine in the constitutional and judicial literature. Thus, the prohibition on change of the form of ruling or the prohibition on change of the democratic order with constitutional provisions directly binds the legislator and does not leave a space for manoeuvring and eventual adoption of constitutional laws or amendments which would be contrary to the above-mentioned prohibitions. The above-mentioned "eternity clauses" or "eternity guarantee" can be interpreted as a presumption for conducting the assessment of the material constitutionality of the legal acts, i.e. presumption for so-called unconstitutionality of the constitutional norms. Thus, the constitutional law or the constitutional amendment which would regulate the issues considered as definitely regulated by the constitution will be subject to the constitutionality. In this context, we can mention the practice of the Constitutional Court of Austria which approached to formal assessment of the constitutionality of the constitutional laws and the Constitutional Court of Italy for which an assessment of the material constitutionality of the constitutional laws which would refer to the republican form of governing is possible.

However, the doctrine of unconstitutionality of constitutional norms is primarily related to the assessment of the material constitutionality, not the formal one. Although the above-mentioned doctrinal concept (*verfassungswidrigen Verfassungsrechts*) has its origins in the Constitution of Norway from 1814, it is also established and maintained as a practice of the Federal Constitutional Court in Germany. Nor the Basic Law nor the Federal Law on Constitutional Court does not contain provisions which expressis verbis provide authorisation of the Federal Constitutional Court to perform control of the constitutionality of the constitutional norms. The Federal Constitutional Court of Germany believes that the constitutional norms are subject to control of the constitutionality solely because no constitutional norm should be out of the context and interpreted independently. Namely, in the explanation of the first decision from 1951

[8]Kontrola ustavnosti ustavnih normi (ustavnih amandmana I ustavnih zakona). Omejec Jasna. UDK>340.131.5. studen. 2010.

(*Südweststaat-Streit*), the Federal Court of Germany laid the foundations of the *doctrine of unconstitutionality of the constitutional norms* and emphasized that the individual constitutional provision cannot be isolated and interpreted individually because the constitution has internal unity and the importance of the single part is related to the importance of all other parts and the unity as general. *There are constitutional principles which are basic and which are reflection of the law in such amount that they have an advantage over the constitution and also oblige the constitutor.* Two years later, the doctrine was amended by the view that when one of the norms of the basic law will exceed the limits of the principle of fairness and over the positive law, the Federal Constitutional Court will be obliged to abolish this constitutional norm[9].

The doctrine of unconstitutionality of the constitutional norms was also established by the Constitutional Court of the Czech Republic through its practice, although the Constitution does not explicitly provide for such power. The Constitutional Court put the category constitutional laws under the category laws and estimated that they are also subject to control of constitutionality. Namely, in 2009, the Court believed that the exclusion of the assessment of the constitutionality of the constitutional laws from the competence of the Constitutional Court would completely eliminate its role as guardian of the constitutionality[10].

According to the above-mentioned, the question is raised what is the position of the Macedonian Constitutional Court in terms of the issue of control of the constitutionality of the constitutional norms and whether the doctrine of unconstitutionality of the constitutional norms is inspiring enough for it. Unfortunately, no. In this context, the Constitutional Court of the Republic of Macedonia rejected the initiative for initiating procedure for assessment of the constitutionality of the Draft

[9]BVerfGE 3, 225,234

[10]Decision Pl.US 19/93 through which the Constitutional Court of the Czech Republic estimated that the Constitutional Law No. 195/2009 on Shortening the Fifth Term of Office of the Chamber of Deputies is unconstitutional using the explanation that the democratic constitution, which is a social agreement in its most general form, provides the framework of human freedoms, constitutional values and structure of the main institutions of the government. Referring to Alexandar Hamilton and Federalist papares No. 78, the Court emphasized that the courts have been created to mediate between the people and the legislative body in order to keep the legislative body within the frames of its competence. For more details see Kontrola ustavnosti ustavnih normi (ustavnih amandmana I ustavnih zakona). Omejec Jasna. UDK>340.131.5. studen. 2010. p. 14

Amendments to the Constitution of the Republic of Macedonia in the Resolution U. No. 188/2001 with the explanation "*the Constitutional Court does not have the jurisdiction and cannot consider the Constitution as expression of the political will of the entities in the country. Namely, for the Constitutional Court the Constitution is an act in terms of which the Court considers the constitutionality of all other lower acts. Therefore, the assessment of the constitutionality of the text of the Draft Amendments to the Constitution is not within the competence of the Constitutional Court"* [11].

The above-mentioned decision is an indicator that the Constitutional Court of the Republic of Macedonia strictly keeps to the traditional theoretic view and the established practice to solely assess compliance of the lower legal norms with the ones from the Constitution[12]. However, it must be concluded that the implementation of this modern doctrinal concept represents powerful tool in the possession of the constitutional courts and for the use of which a capacity and so-called passive virtue are needed. The introduction of such practice hides the danger of transforming the constitutional courts into hidden constitutors and the possibility to practice enhanced judicial activism under the veil of the terms such as "symbolic constitution", "living constitution" or "backdoor constitution".

Conclusion

The Macedonian ,,founding fathers" did not specify the acts subject to the control of the constitutionality, nor left a possibility for this issue to be subject to detailed regulation. Instead, "the founding fathers" used the term *"other regulations"* which is very general and imprecise and leaves space for discretion in the acting of the Court

[11] U. No. 188/2001
http://www.ustavensud.mk/domino/WEBSUD.nsf/ffc0feee91d7bd9ac1256d280038c474/c04486ea01c96b83c125716b00480ddd?OpenDocument

[1212] It is very interesting that on the one hand the Constitutional Court strictly keeps to the traditional doctrinal concept to assess the compliance of the lower legal norms with the higher ones in the hierarchy of legal norms, i.e. the compliance of the norms having higher legal power as in the case of U. No. 188/2001 and leaving the above-mentioned doctrinal concept as in the case of U. No. 55/2012-0-1 from April 2013 when the Court access to assessing the compliance of one law with another and revokes provisions which "create legal insecurity" explaining that "the Constitution and the laws in the Republic of Macedonia should represent consistent legal system which will provide conducting of the rule of the law".

when deciding whether one act may be subject to control of constitutionality. Namely, the imprecise constitutional provisions leave space for the Court itself to determine which acts are being classified under the category general legal acts, thus to determine in discretion which acts can be subject to control of the constitutionality. The issue of acts subject to control of the constitutionality is a constitutional matter which should be precisely regulated by an Act on Constitutional Court.

The provisions referring to the Constitutional Court of the Republic of Macedonia allow for this authority to transform into the most powerful institution in the system. However, this cannot be stated for the Constitutional Court of the Republic of Macedonia. From the practice developed by this authority, it seems that the self-restraining doctrine and the Bickel's passive virtue carried out in its extreme are used more, than the decisions which will leave an impression that the Court creates „*constitution behind the constitution"*. This practice requires well explained and elaborated decisions from which the determination of the Court to guard the "spirit of the constitution", as well as the capacity, expertise and following of the modern doctrinal concepts and practices of the comparative systems of constitutional judicial control of the constitutionality will be evident.

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