

Procedure for Protection of Human Rights by Constitutional Courts – Constitutional Complaint

I Introduction

Judicial control of the constitutionality of legal acts, by constitutional courts, is performed on two levels:

1. Control of the constitutionality of general legal acts (through a combination of models of abstract and concrete control of the constitutionality on one side, and preventive and repressive control of the constitutionality on the other side), and;
2. Control of the constitutionality and legality of individual acts, which violate constitutional rights and freedoms, guaranteed by a constitutional complaint, constitutional appeal, or *recurso de amparo constitutional* etc².

The second aspect is important, not only because such instruments are a powerful mechanism for the protection of human rights, but because these instruments can also be used as a trigger to initiate (ex officio) a procedure for the control of the constitutionality of the general legal act, which was the basis for the adoption of the act, by which the violation is committed.

Rudiger Zuck, points out some basic elements of the definition of a constitutional complaint. These are:

- 1) The constitutional complaint is a specific remedy – it is not a fundamental right per se;
- 2) The constitutional complaint is a legal instrument for the protection of human rights;
- 3) It is a legal instrument aimed at public authorities (acts of the legislative, executive and judiciary);
- 4) Can be used as a means to protect their own, and not someone else's rights;
- 5) The statement of the applicant of the constitutional complaint that his/her right has been violated is sufficient to use this instrument³.

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² Common terms used to denote this instrument are: Verfassungsbeschwerde (Germany), Beschwerden (Austria), Recurso de amparo constitucional (Spain), Constitutional complaint, уставна тужба (Croatia), уставна жалба (Serbia) ect.

³ More about the definition read: *Конституционализмот и човековите права*. Тренеска-Дескоска Рената. Скопје. 2006.p. 270

II Comparative analysis – the European context

The constitutional complaint – Federal Republic of Germany

The constitutional basis for the protection of fundamental rights through constitutional complaint is found within the provisions of Art. 93. Provisions 4a and 4b of the Basic Law, and Articles 91-95 of the Federal Constitutional Court Act.

- *Scope of the rights that will be subject of protection under this instrument-* Pursuant to the provisions of Art. 93 – 4a of the Basic Law, any person may file a constitutional complaint if it has violated his / her fundamental rights, or the right of resistance of paragraph 4 of Art. 20 of the Constitution (every citizen has the right to give resistance to anyone who wants to disturb/violate the established constitutional order, if no other means are applicable), or Article 33 (principle of equality), art.38 (right to vote), art.103 (right to a fair trial), and art.104 (right to liberty). The Constitution provides that, not all rights, but just those mentioned, can be further protected using the constitutional complaint before the Constitutional Court.
- *Entities that shall have the right to initiate proceedings* – Anyone can file a constitutional complaint in order to protect their constitutionally guaranteed rights. All individuals with legal capacity and legal entities have the right to submit a constitutional complaint. The general rule is that only legal entities registered in Germany have the right to submit a constitutional complaint as a remedy to protect their constitutionally guaranteed rights, even though the second Senate of the Constitutional Court has taken the view that legal entities that are not registered in Germany have the right to submit a constitutional complaint if they call on a violation of the right to a fair trial. A constitutional complaint may be submitted by the municipalities or associations of municipalities against the act that violates Art.28 of the Basic Law (provisions for the autonomy of municipalities and the right to local self-government introduced by the constitutional amendments since 1969).
- *Acts against which this special remedy may be filed* – A constitutional complaint may be filed to protect the rights violated by acts, decisions, actions or legal acts of the organs of public authorities. These include decisions, laws and other legal acts of state bodies and the autonomous communities and all other bodies and organizations which exercise public authority. Challenging the constitutionality of the law, a constitutional complaint is possible if the appellant argues that his rights, or some interests, are affected by

the adoption of the act (not a specific – individual act adopted under the law).

- *Conditions for admission* – The Federal law on the Constitutional Court provides that the conditions for admissibility of constitutional complaints are a direct violation of the rights induced by the very publication of the law (the act does not have to be executed), and subsidiarity. The first condition refers to when the violation of rights is done directly with the publication of the act that causes the violation to the rights or interests of an individual, or a violation of civil rights by acts of public authorities (administrative regulations, court decisions and other regulations). Subsidiarity as a condition requires the violation of rights to be caused by an act of the executive authorities, administrative authorities or courts of the judicial system, but most importantly all legal remedies have to be exhausted previously. In this case, the constitutional complaint appears as an additional instrument for protection of the human rights. It can be submitted to the Constitutional Court only if all mechanisms for protection of rights before the regular courts are previously exhausted. However, the constitutional complaint may be subject to review by the Federal Constitutional Court, without effecting the previous protection of rights before other authorities (judicial protection): 1) if it is necessary to avoid the occurrence of severe consequences and irreparable damage and 2) if acting upon the constitutional complaint is of public importance.
- *Provisions of the Federal Constitutional Court Act* – Any person who claims that the rights set out in Articles 20 , 33 , 38 , 101 , 103 , and 104 of the Basic Law have been violated by an act of bodies exercising public authority may file a constitutional complaint before the Federal Constitutional Court. The submission of the constitutional complaint is possible only if all legal instruments are exhausted, unless the court decides that the proceeding is necessary to avoid the occurrence of severe consequences and irreparable damage and if acting upon the constitutional complaint is of public importance. Municipalities and associations of municipalities have the right to file a complaint for the violation of the right of local self-government established according to Article 28 of the Basic Law. The proposal for the protection of rights must contain the right that is violated, and the act or action of the authority that made the violation of the right (art.92). The Constitutional complaint will be accepted:

1) If there is a constitutional importance and significance of acting upon the constitutional

complaint;

2) If it is necessary for the implementation of the rights of Art.90 of the Basic Law;

3) The constitutional complaint will be accepted even if the Federal Constitutional Court has previously decided on the same or similar constitutional complaint, but deciding on this is obviously justified and required.

- Regarding the already filed constitutional complaint, the Federal Constitutional Court will allow the authorities called on in the complaint a specified period of time to answer the allegations stated in the complaint (art.94). If the Federal Constitutional Court accept the constitutional complaint, his decision clearly states the provision of the Basic Law which is violated by the act or action of the authority carrying out public mandates. If the constitutional complaint is submitted for the violation of rights made by act of the parliament, the enacted law (act) is nullified (art. 95.-3).

The Constitutional Complaint – Spain

The protection of fundamental rights through a constitutional complaint (*recurso de amparo constitucional*) has its basis in the Constitution's Art. 53, the Organic Law on the Constitutional Court of 1979, and the amendments which followed in 1984 and 1988.

- *Scope of the rights that will be subject of protection under this instrument-* Not all rights, but only those provided in Articles 14-30 of the Constitution, and the constitutional principle of equality, can be protected using a constitutional complaint (*recurso de amparo constitucional*) before the Constitutional Court. The constitutional provision of Art. 53 provides that the before-mentioned rights can be protected by the courts of the judicial system, but the procedure is based on the principle of urgency. However, it must be emphasized that the procedure for the protection of rights by the Constitutional Court must always be initiated after the initiation of proceedings before the courts of the judicial system. It is a special procedure that cannot be replaced with the procedure for protection of guaranteed rights by the courts of the judicial system.
- *Entities that shall have the right to initiate proceedings-* All individuals with legal capacity and legal persons have the right to submit constitutional complaint. The Ombudsman and the Public Prosecutor have the right to submit a constitutional complaint. The constitutional provision of Article 162-2 determines that individuals and legal persons must have a legitimate interest in

initiating proceedings before the Constitutional Court, which refers to the inability to use this instrument (*amparo*) for future violation of rights. This provision is contrary to the initial provision of the Organic law on the Constitutional Court that the right to legal capacity is bound with the citizenship. However, critical thinking by the scientific community for restrictive constitutional interpretation of this constitutional provision, ultimately resulted in changing the law and the possibility all individuals (not only citizens but also foreigners) to achieve protection of violated rights through this instrument.

- *Acts against which this special remedy may be filed* – A constitutional complaint may be submitted for the protection of rights which are violated by the decisions, actions or legal acts of the organs and institutions of public authority. This instrument can be submitted if the violation of the guaranteed rights is made by actions, decisions or other legal acts of state authorities and the autonomous communities and all other organs, institutions, state bodies who exercise their public authorizations. These are: 1) the decisions and acts of the Spanish Parliament, decisions and acts of the legislative authorities of the autonomous communities that do not have the status of law (*erga omnes* effect); 2) legal acts and actions of the executive organs of the state and the executive body of the autonomous communities; 3) acts of the judiciary.

The possibility of filing the Amparo against a general act of Parliament is not allowed. The conditions for admissibility require an individual act that violates the guaranteed right, enacted on the basis of the act of the parliament with *erga omnes* effect.

- *Conditions for admission* – The Organic law on a Constitutional court stipulates that the conditions for the admissibility of *recurso de amparo* are a direct violation of the guaranteed rights and subsidiarity. The first condition applies when the violation of rights has been committed by some action or act which is enacted by the legislative body. Subsidiarity as a condition requires the violation of the rights to be committed by an act of the bodies and institutions of executive authorities, administrative authorities or courts of the judicial system. In this case *recurso de amparo* appears as an additional mechanism for protection of the rights of the citizens and that it may be committed before the Constitutional Court only if previously all mechanisms for protection of the rights before the courts of the judicial system are exhausted. In this way, *recourse de amparo* is additional instrument for protection of the human rights and freedoms of citizens.

- *Provisions of the Organic Law on the Constitutional Court* – Articles of the Organic Law on the Constitutional Court determined that the request for protection of rights must contain the correct facts that violated the right, specific constitutional provisions which are violated by the enacted individual act and obstacles that limit the constitutional right for which protection is provided by *recurso de amparo constitutional* (art.49). The procedure is conducted before one of the two chambers of the Constitutional Court. The issue of the protection of the rights will be reviewed and the procedure will be implemented before the Constitutional Court in the plenum in this conditions: a) if the President of the Court or 3 Judges ask the protection of the right to be reviewed before the Court in plenum, b) if the chamber of the Court will not apply the established principles of operation of the Constitutional Court.

Constitutional Court will dismiss the complaint if:

- 1) The Constitutional Court does not have the jurisdiction to decide upon the particular case;
- 2) If none of the guaranteed rights have been violated (the protection of the rights is not covered by the instrument *recurso de amparo*)
- 3) In the case of *res judicata*;
- 4) If the petition does not meet the requirements of the provisions of the Organic Law 41-46 for the Constitutional Court.

The instrument *recurso de amparo* does not have a suspensive effect. However if this instrument is submitted as a prior issue in particular litigation, or if the enforcement of the individual act that violates the guaranteed rights causes irreparable legal consequences, the Constitutional Court may decide to postpone the execution of the individual act that violates the guaranteed right (art.56).

- *Legal effect of decisions of the Constitutional Court in proceedings for the protection of rights* – Art.53 of The Organic law on the Constitutional Court regarding the decisions of the Constitutional Court, adopted in a procedure for protection of the rights, stipulates that the Court may accept or reject *amparo de constitutional*. In case it accepts a complaint, the authority that made the violation of the right must revoke its the decision or the legal act in full size or order reinstatement condition of the situation before the violation of rights.
- Finally, the proceedings initiated by *recusro de amparo constitutional* are regulated in the part III of the Organic law on the Constitutional Court. However it is established that the proceedings initiated by *recurso de amparo constitutional* might trigger and initiate a

proceeding for control of the constitutionality. This can occur if there is an initiative by the chamber of the Court that conducted the prior procedure for protection of the violated right. The Constitutional court further plenary decides whether to initiate proceedings for control of the constitutionality of the act which was the basis for the enactment of the individual legal act. Statistics show that most of the cases of the Constitutional Court are cases for protection of the guaranteed right initiated by the instrument *recurso de amparo constitucional*. In the context of the above, we highlight the established practice of the Constitutional Court with the Decision No 155/2009. The practice of the Constitutional Court indicates that the Court will accept to decide on constitutional appeal only if: a) any other authority does not have jurisdiction to decide on the specific subject matter; b) if it is necessary to modify established practice in the courts of judicial system; c) if it is necessary to correct the interpretation of the present Act by the judicial system; d) if it decides that the violation is caused directly by law or other acts with erga omnes effect; e) when the subject is relevant and has social, political or economic significance. In all other cases, the Constitutional Court may leave the final decision on the protection of rights to be taken by the courts in the judicial system. Pablo Santolaya argues that as a result of this reform the number of amparo lawsuits decreased by 22 % between 2006 and 2010⁴.

The Constitutional Complaint – the Republic of Slovenia

The protection of fundamental rights through constitutional appeal has its basis in the Constitution Art. 160 and The Constitutional Court Act of 1994, Art .50-61.

- *Scope of the rights that will be subject of protection under this instrument* – Article 160 of the Constitution of the Republic of Slovenia, Article 50 of the Constitutional Court Act constitute grounds for filing a constitutional complaint in terms of violation of human rights and fundamental freedoms. That means there is no limit to the rights and freedoms that may be subject to constitutional complaint, or that the subject of protection may be not only the rights and freedoms provided by the Constitution, but also the rights provided in the ratified and published international agreements.

⁴ *The Role of Constitutional Court in Stenghtening Constitutional Values: The Spanish Experience*. Pablo Snatolaya. European Commision of Democracy through Law. Strasbourg.2011.p.2

- *Entities that shall have the right to initiate proceedings* – entities that may file a constitutional complaint before the Constitutional Court are all natural and legal persons and the Ombudsman. If the submitter of the constitutional complaint procedure is represented by an authorized agent, it should submit to the Court with special authorization. Legal acts that regulate this issue declare that all individuals and legal persons must have a legitimate interest in bringing proceedings before the Constitutional Court. This refers to the inability to attack any future violation of rights.
- *Acts against which this special remedy may be filed* – a constitutional appeal may be filed to protect the rights that are violated by individual acts of state authorities, local governments or entities exercising public powers.
- *Conditions for admission* – a constitutional appeal may be filed only if all legal remedies to protect the violated rights are previously exhausted. The law provides that the Constitutional Court will on exception decide on a constitutional complaint lodged, only if the violation of rights is „manifestly obvious" and if the enforcement of the individual act that violates the guaranteed rights, causes irreparable legal consequences. A constitutional appeal may be filed within 60 days of submission of the act, only after all legal remedies to protect the rights are taken.
- *Provisions of Constitutional Court Act* – the Constitutional Court Act stipulates that the request for protection of rights must specify:
 - a) individual act that violates the rights and the institution that enacted this Act, the number and date of enactment
 - b) (publishing); rights and freedoms that have been violated by the act;
 - c) reasons why a particular act violates their rights;
 - d) If an individual files the constitutional complainant, the request for protection of rights must specify name, data and the address of permanent or temporary residence, or if the applicant is a legal person data name, headquarters and data for its representative (art.53/1).

The constitutional complaint is submitted in writing. The constitutional appeal is reviewed by a Council of the Constitutional Court composed of three judges, in a session closed to the public. The law provides that the council of the Court decides whether to initiate proceedings on the constitutional complaint before the Constitutional Court on the basis of the submitted documents. If accepted, in accordance with legal provisions, the Court may schedule a public hearing. In this case the Council, who considered the filed constitutional complaint, may prohibit

the execution of an individual legal act which is a violation to the final decision of the Constitutional Court .

III The need for the Constitutional Complaint in the Republic of Macedonia

The Constitution provides for limited jurisdiction of the Constitutional Court to decide on the protection of only a certain number of rights including: rights and freedoms of man and citizen relating to the freedom of conviction, conscience, thought and public expression of thought, political association and activity and the prohibition of discrimination on the basis of sex, race, religious, national, social or political affiliation⁵. From the stated solution we get the impression that the basic intention of the „founding fathers” of the Macedonian Constitution, was to focus the Constitutional Court on a control of the constitutionality and legality of general legal acts. Through such regulation, write of the constitution has left citizens without a possibility for protection of their rights and freedoms (except for the abovementioned) by the Constitutional Court, in circumstances where they are affected by individual legal acts, and therefore took away the possibility of additional mechanisms for detection of unconstitutional legal acts in the system.

The Rules of Procedure of the Constitutional Court of the Republic of Macedonia in part IV under the title “Procedure for protecting the rights and freedoms of Article 110 paragraph 3 of the Constitution of the Republic of Macedonia”,⁶ or precisely through 7 Articles, determines the jurisdiction of the Constitutional Court concerning the protection certain rights and freedoms. The solutions of the Rules of Procedure provide that “every citizen who deems that an individual act or action violated a right or freedom set out in Article 110 paragraph 3 of the Constitution, may require protection by the Constitutional Court within 2 months from the date of delivery of the final or effective individual legal act, or from the day of learning of the taken action which made a breach, but not later than 5 years from the date of its taking ”⁶ . The said provision is important to be analyzed from two aspects : 1) The Constitutional Court manifested an extremely restrictive approach to the protection of the already limited number of rights and freedoms, which is evident since the Rules of Procedure are limited to the term citizen , and not “human” as the Constitution provides, and 2) probably fearing the increased workload, the Court provides an additional instrument which proportionally increases the possibility of not to act upon such cases – a subjective and objective deadline.

⁵ The Constitution of Republic of Macedonia art.110-3

⁶ The Rules of Procedure of The Constitutional Court art.51

Further, the Rules of Procedure provide that the application must encompass the reasons for which protection is being sought, acts or activities by which the rights and freedoms have been violated, the facts and evidence on which the application is founded, and other information necessary for the decision of the Constitutional Court. The application shall be delivered for response to the authority that passed the individual act or the authority that took the action by which the rights and freedoms are violated, within 3 days of submission. The deadline for response is 15 days⁷. The Constitutional Court decides upon the protection of human rights after a public hearing. The parties to the proceedings, the Ombudsman and if necessary other persons, bodies or organizations are summoned at the public hearing. A public hearing may be held even if one of the participants in the procedure or the Ombudsman is not present, but if properly summoned⁸. Through the decision for protection of the freedoms and rights the Court shall determine whether there is a violation, and based on that decision the Court will overturn the act, prohibit the action that caused the violation or reject the application⁹. All of the above is also a reply as to how far the Constitution and the Rules of Procedure have gone in terms of the usual definition of a constitutional complaint.

The experience of implementation of constitutional review in other countries that have accepted the above legal remedy determines that the biggest workload of constitutional courts and the largest percentage of decisions made by the courts concern the procedures upon the instrument of constitutional complaint. That is not the case with the Republic of Macedonia. The Constitutional Court of the Republic of Macedonia receives relatively few applications for the protection of freedoms and rights, and statistics indicate that the Court mostly issues a decision for dismissal upon different grounds such as: lack of jurisdiction to decide on protecting the rights of that are not provided with the Constitution (Decision U.br. 29/97), decides only when it comes to protecting one's own and not someone else's rights (same Decision U.br.29/97), lack of jurisdiction to decide upon violation by an act that is not final or effective (eg. Criminal indictment as in Decision U.br.168/97), lack of jurisdiction to decide upon the rights and interests of the party in a particular case (Decision U.br. 23/2012, Decision U.br. 89/2012). For a small number of applications the Constitutional Court has decided in merito (eg. Decision U.br.84/2009 and Decision U.br155/2011).

Finally, the question arises which elements have to be taken into consideration in case of extension of the jurisdiction of

⁷ The Rules of Procedure of The Constitutional Court art.53

⁸ The Rules of Procedure of The Constitutional Court art.55

⁹ The Rules of Procedure of The Constitutional Court art.56

the Constitutional Court, through the introduction of the instrument constitutional appeal. In this context, the following issues should be considered:

- *Scope of the rights that will be subject of protection under this instrument*- Constitutional literature analyzes different solutions regarding the scope of the rights protected with the constitutional complaint.
 - 1) The experience of Germany and normative solutions of *recurso de amparo constitutional* in Spain indicate that this instrument is modeled initially to ensure the protection of fundamental human rights and freedoms. Yet, in the constitutional provisions and in the provisions of Federal law on the Constitutional Court of Germany, it is pointed that the scope of the rights is wider and covers basic human freedoms and rights, and the principle of equality, the right to liberty, the right to vote, the right to a fair trial, and right to resist to anyone who wants to harm or disturb the established order, if no other means is permissible. In Spain the normative framework regulates the scope of protection by adding to the basic freedoms and rights *expressis verbis* the principle of equality.
 - 2) The Slovenian model on the other side does not provide a limitation of the rights that may be protected by the instrument of constitutional appeal. Therefore the subject of protection may not only be the rights and freedoms provided with the Constitution, but also the rights provided in the ratified and published international documents. The specified solution certainly provides a wider range of rights that are protected, but on the other side two moments must be emphasized: a) the constitutional complaint is not an instrument that is in symbiosis with the so-called *actio popularis* and b) this solution (especially the combination of constitutional appeal and *actio popularis* for initiating action for assessing the constitutionality of legal acts) leads to a significant increase in the workload of the Constitutional Court. That in itself is contrary to the idea to separate this institution from the system of regular courts. Finally, the system of control of constitutionality of acts of Republic of Macedonia will have to choose between these two alternatives. Of course, the solution will depend on the manner of arranging the issue of the entities authorized to initiate proceedings for constitutional control.
- *Entities that shall have the right to initiate proceedings* – In Slovenia the entities that may file a constitutional complaint at the Constitutional Court are all natural and legal persons and the Ombudsman. In Spain *recurso de amparo constitutional* may be submitted by all natural

and legal persons as well, the Ombudsman and the Prosecutor General. It covers not only the citizens, but also the foreigners. In Germany the right to initiate proceedings covers all individuals with capacity to act and legal persons (even those legal persons that are not registered in the country). Regarding the subjects who have the right to initiate proceedings in Macedonia, it must be emphasized the provision of the Rules of procedure – article 51 which points to the solution every “citizen” and not “everyone”, which significantly limits the possibility for protection before the Constitutional Court of the rights provided in the Constitution. The experience of the Spanish Constitutional Court in terms of this solution and practice should be avoided. On the other hand, it should take into account the experiences of the countries that practice this instrument, and the right to constitutional complaint is tied to the legal entities and not just individuals. Finally it should be considered the Ombudsman to appear as an authorized entity who has the right to initiate proceedings.

- *Acts against which this special remedy may be filed* – The systems of control of the constitutionality and legality of legal acts classifies two basic methods in which this matter is regulated. One model predicts that the constitutional complaint may be filed to protect the rights violated by law, decisions, actions or legal acts of the organs of public authorities. These include decisions, laws and other legal acts of state bodies and the autonomous communities and all other Bodies and organizations which exercise public authority. The challenging of the constitutionality of the law by constitutional complaint is possible if the appellant argues that his rights or interest thereof are affected by the adoption of the law (German model). The second model provides that this instrument may be filed for protection of rights that are violated by the decisions, actions or legal acts of the bodies of public authorities. These include the decisions, other legal acts and actions by state bodies and the autonomous communities and all other bodies and organizations which exercise public authority.

The possibility of submitting a constitutional complaint against a law is not permitted, and requires specific act (enacted on the basis of the law), which is a violation of the rights, in order to initiate proceedings before the Constitutional Court (Spanish model). The normative solutions concerning the protection of freedoms and rights by the Constitutional Court in Republic of Macedonia should precisely regulate this issue. It should be noted whether the protection applies only to acts by which the rights are violated and are adopted by the state authorities, or to apply the Slovenian experience in

which case it refers to rights that are violated by individual acts of state authorities, local self-government units or entities exercising public authorities. On the other hand, it should be considered between the alternative whether the said instrument could be submitted if the violation of rights is done by a law (and which additional conditions and restrictions would apply in this case) or the law as a general legal act will be excluded and the constitutional complaint would be restricted only to individual legal acts.

- *Conditions for admission* – The instrument of constitutional complaint represents a final, extraordinary and supplementary instrument of protecting the rights and freedoms of citizens. The German model of constitutional control provides that the conditions for admissibility of the constitutional complaint are a direct violation of the protected rights by the very publication of the law (its enforcement is not required) and subsidiarity. The first condition refers to when the violation of rights is done directly with the publication of the law that causes violation of the rights or interests of an individual or a violation of the rights of the citizen by acts of public authorities (administrative acts, court decisions and other regulations). Subsidiarity as a condition is required when the violation of rights is caused by an act of the executive authorities, administrative authorities or courts of the judicial system. In this case, the constitutional complaint appears as an additional mechanism to protect the rights of citizens since it can be submitted to the Constitutional Court only if all other mechanisms of protection of rights have been previously exhausted at the regular courts. However, as an exception, the constitutional complaint may be subject of review by the Federal Constitutional Court, without effecting the previous protection of rights before other authorities (judicial protection), if it is necessary to avoid the occurrence of severe consequences and irreparable damage and when the acting upon the constitutional complaint is of public importance and interest. Almost identical solution is provided by the Organic law on the Constitutional Court of Spain.

The Slovenian normative framework provides that the constitutional complaint may be filed only if all legal remedies to protect the violated rights have been previously exhausted. The law provides that the Constitutional Court will only upon exception decide on filed constitutional complaint, if the violation of rights is “manifestly obvious” and if by the application of the act which caused the violation serious and irreparable consequences for the person that submits it may occur. An additional requirement for the application of the

constitutional complaint is the possibility to submit it within 60 days from the date of service of the act, only after all legal remedies for protection are exhausted. The solution provided in Article 51 of the Rules of Procedure in Republic of Macedonia regulate the conditions for the issue of admissibility of the application for the protection of the rights and freedoms of Article 110 paragraph 3 of the Constitution. Thus, the constitutional judges found that every citizen will be required to request protection of the rights determined in the Constitution within 2 months from the date of service of the final or effective individual act, or the day of finding out about the taking of the action which performed the violation, but not later than 5 years from the date of its taking¹⁰. The constitutional judges indicate that it is necessary to be extremely careful with the manner of how to determine the conditions necessary to realize the proceedings at the Constitutional court for protection of the rights. In this context the experience and statistical data should be mentioned in accordance to which of the total number of cases of constitutional courts over 80 % (Croatia), 90 % (Spain) and to over 95 % (Germany) are cases upon constitutional complaints. It may finally result in defocusing the constitutional courts from their principal competence for which they have been founded. Prior to starting the change of the normative framework one should pay attention the effect of the implemented solutions not to lead to a subsequent request for a so-called “the important constitutional relevance” as in Spain, a request for “fundamental constitutional importance” in Germany, search for “reasonable chance of success” as in Austria or finally as the experience with the application of *writ of certiorari* by the U.S. Supreme Court¹¹.

Finally, from all of the above stated it may be concluded that the need for an additional instrument for the protection of rights and freedoms is never excluded, and that if the powers of the Constitutional Court of the Republic of Macedonia are expanded there should be consideration for the implementation of the constitutional complaint. This should be done with extreme care and only upon previous analysis of the normative solutions, and experiences from countries that practice this instrument.

IV Conclusion

The constitutional complaint is specific legal instruments for the protection of human rights. The constitutional complaint

¹⁰ The Rules of Procedure of the Constitutional Court art.51

¹¹ *Уставната жалба во Република Македонија*. Спировски Игор. Стручно списание Правник. Бр.251.март.2013. р. 28

can be used only if all other remedies for the protection of rights are previously exhausted.

The right to file a constitutional complaint must be clearly and accurately foreseen in the national legal system. That means that all issues like: the Scope of the rights that will be subject of protection, entities that shall have the right to initiate proceedings, acts against which this special remedy may be filed, conditions for admission, procedure and the legal effect of the constitutional court decisions, must be precise and accurately determined.

The Constitution of the Republic of Macedonia provides for limited jurisdiction of the Constitutional Court to decide on the protection of only a certain number of rights including: rights and freedoms of human and citizen relating to the freedom of conviction, conscience, thought and public expression of thought, political association and activity and the prohibition of discrimination on the basis of sex, race, religious, national, social or political affiliation. Thus, we are left with an impression that basic competence of the Constitutional Court of the Republic of Macedonia is control of the constitutionality of laws. In this way, the impression remains that citizens are deprived of one very important instrument for the protection of rights. Hence, there is a need to examine the possibility of expanding the scope of rights that would receive protection through constitutional complaint. In addition, the rules and norms of the Rules of procedure of the Constitutional Court regarding the request for protection of rights, must precisely regulate all other issues like entities that shall have the right to initiate proceedings, acts against which this special remedy may be submitted, conditions for admission, procedure and the legal effect of the constitutional court decisions.

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