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CONSTITUTIONAL JUSTICE IN THE REPUBLIC OF MACEDONIA MACEDONIAN CONSTITUTIONAL COURT - LEGAL SYMPHONY OR LEGAL CACOPHONY?

Abstract

The constitutional justice is an exceptionally important category in every democratic legal system. Through the capacity and the quality of protection of the constitutional justice, the state is valued, among the other things, to which extend it respects the rule of the law, and how committed it is to the realization of the European standards in the legal system. The supremacy of the constitution, as well as the respect for the hierarchy of the legal acts, both domestic and international, is a key precondition for the existence of the constitutional justice in the state. And not by chance, the constitutional justice is one of the main ingredients in the rule of the law. By limiting the legislative and the executive government, as **Mauro Cappelletti** would say, the constitutional judiciary "puts the crown on the rule of law".[1]

We should note that in most of the post-socialist countries, the activism of the constitutional courts in different periods has had a strong role in preventing tyranny from the majority political power. They significantly contributed in explaining the relations between the democracy, on one side, and the judiciary on the other, as well as between the division of power and the constitutional protection of the citizens' rights and freedoms. The constitutional and legal development of Macedonia and the gradual stabilisation of the state institutions in the period form the adoption of the Constitution in 1991 until the present date is seen specifically through the theory, but also through the practice of the Macedonian judicial judiciary.

The development of the constitutional judiciary in Macedonia could be compared with the development of the constitutional judiciary in the other so-called new democracies. It is typical for all new democracies that the constitutional courts are striving to enhance their reputation, position and activism within the governing system. However, each of these institutions after 1989 has been building its activism in its own way. Some constitutional courts deserved the epithet of activist courts from the very beginnings (the Polish, Hungarian, Czech, Slovak courts). Others developed their activism in accordance with the difficult conditions to establish the proclaimed democratic principles and institutions. The Constitutional Court of the Republic of Macedonia falls in this second group. The Court, having in mind the socialist tradition of having this institution within the system, theoretically had a chance to show from the very beginning that it is not in an obedient position vis-à-vis the legislative and the executive government.

Still, the Constitutional Court of Macedonia showed no interest with regard to its activism. The "activist" position in the performing of the most important authorisations (guardian of the Constitution and the laws, "watchdog" for the legislative and the executive government,

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[1] See: Mauro Cappelletti, Repudiating Montesquieu? The Expansion and Legitimacy of 'Constitutional Justice', Catholic University Law Review, sv.35, no.1, 1983-1986, p. 26.

protector of the human rights and freedoms) remains without a concrete effect even today. This paper will explain all the anomalies in the work of the Constitutional Court and the missed opportunity for the Court to become leader in the systematic reforms in the judiciary, which are still desperately needed in the judicial system in Macedonia in context of developing a new legal culture in the country.

Key words: *constitutional justice, Constitutional Court, judicial activism, human rights, constitutionality, legislation*

I. PROTECTION OF THE CONSTITUTIONAL JUSTICE – INTRODUCTORY REMARKS

There are different institutional forms through which protection of the constitutional justice is achieved in the world. While in most of the country that takes place through the competence of the constitutional courts as separate state bodies that protect the Constitution (such as Germany, Austria, Croatia, Macedonia, Serbia, Spain, Russia, Slovenia, Italy, Bulgaria etc.), there are also countries in which separate state (constitutional) councils exist (France), or special court bodies that perform constitutional control of the legal and other acts in the country (the US, Norway, Greece, Finland, Denmark etc.)

Comparative analysis of the constitutional systems shows that in general there are two common types of organisation of the constitutional judiciary:

1. The **American model** foresees the existence of the so-called diffuse control of the constitutionality which is not given exclusively to one authority, and

2. A **European model** that implies the existence of a centralized system in which a key position has a separate state body authorized to protect the Constitution of the state. It is a model in which abstract and concrete, but also preventive and repressive control of the constitutionality and legality is carried out.

Regardless of the chosen model for the protection of constitutionality and legality in the states, one thing is important - the key goal of protection, i.e. respecting the supremacy of the Constitution over the laws and other legal acts within the legal order is done to protect the constitutional justice in the country.

Hence, the question follows: **can a general European model be considered, or a European standard in the protection of the constitutional justice?**

Taking into account the experiences in the European countries, it can be said that there is a **certain European standard for the protection of the constitutionality and legality, since in most of the states it is left to a separate state body – a Constitutional Court**, which according to its main characteristics constitutes a common denominator for the protection of the constitutional justice in Europe.

A general characteristic of the European constitutional justice is in the strengthening of the competences of the constitutional courts, which also includes finding solutions for the constitutional disputes which are not always related with the protection of the constitutional justice, like, for example, disputes concerning elections, determining responsibility for senior

state officials, reviewing the possibilities for putting a ban on the work of political parties or civil organizations if their programs, statutes or activities are contrary with the constitution[2], etc.

More specifically, the constitutional justice means concrete protection of any application of the constitution in practice. This constitutional protection is important when there is a conflict in the system, when there is an evident, concrete collision of competences among state bodies, or when specific constitution provisions are violated, especially in the part of the human rights and freedoms by a state or other body or a physical person.

In this sense, particularly important is the following statement made by **Stone Sweet**, "regular judges remain bounded by the supremacy of law within the legal order, while the responsibility of constitutional judges is to ensure supremacy of the constitution".[3]

One of the main tasks of any Constitutional court is to provide normative control over the laws, to protect the human rights and freedoms and to protect the principle of supremacy of the Constitution and the principle of division of power.

In most of the states which have constitutional courts, the constitutional justice means **having an active constitutional court with a role to protect the holders of legislative, executive and judicial government, an active constitutional court that should remove the threats to the Constitution by a different normative acts**, collective agreements and other bylaws that have been assessed as unconstitutional.

Therefore, it is often said that the European constitutional courts, starting from their independent position, often find themselves "on the intersection of law and politics" (Leibholz, G.).[4] On the other hand, the activism of the European constitutional courts in the part of securing protection for the constitutional justice by securing protection for the individual human rights, results in increased commitment by the constitutional courts aimed to secure their specific power with the constitutional control as a fourth branch within the state government.

The constitutional courts perform number of functions aimed to protect the constitutionality and legality within the legal system. The competences of the constitutional courts can be treated as narrow, limited, but also as very broad, which depends on the position and the role of the court in the country. Regardless the scope of their competences, the goal of all constitutional courts, with no exception, is to secure protection for the highest legal act in the country, and to secure rightful application of the principle of the rule of the law.

If we analyse the main functions of most of the constitutional courts in Europe today, we will spot several different groups.

The function of protection of the human rights and freedoms and the decision-making of the courts on the constitutional appeals/lawsuits by concerned individuals is considered their primary duty. In this case, the activity of the constitutional courts is *in totum*, i.e. fully oriented towards protection of the human rights and freedoms. In this context, one of the key differences between the work of the regular courts and the constitutional courts in the part of protection of the human rights and freedoms is in the fact that the constitutional courts protect these rights through direct application of the constitutional norms or through the norms coming

[2] The function of democratic protection of order is realized through constitutional court's competence of examining the constitutionality of activities of political parties and prohibiting those which act in a counter-constitutional way.

[3] See: Stone Sweet, A. (2002), Constitutional Courts and Parliamentary Democracy, West European Politics, Vol. 25, No. 1, p. 80.

[4] See: Vučić, O. (2012), "Izbor i sastav ustavnih sudova-mukotrpan put dostizanja evropskih standarda", p.132.

from the separate constitutional law that protect the human rights, while the protection of the human rights by the regular courts is done through direct application of the laws.[5]

The next important function of the constitutional courts is the protection of the division of power in the state and the assessment of the constitutionality of certain functions performed by legislative, executive and judicial bodies. Generally speaking, this function is known as **protection of the rule of the law in the country**. It is commonly achieved though normative control of the acts passed by the bodies of the state and the local government, through protection of the democratic order form any form of misuse by the holders of power, up to the function of the constitutional court to operate with a role of special criminal court when that is necessary.

Although this function is rarely performed by the constitutional courts in the European countries, perhaps we should think about its broader application, especially in conditions of increased political extremism in Europe.

II. THE CONSTITUTIONAL COURT OF MACEDONIA – SEVERAL ORGANISATIONAL ASPECTS

The Constitutional Court is a separate state body that serves as a watchdog of the Constitution, and as a protector of the principle of constitutionality[6], legality[7], and the citizens' freedoms and rights within the national legal system.

The 1991 Macedonian Constitution accepts the European (continental) model of protection of constitutionality and legality through a specialized body[8], the Constitutional Court of the

[5] This function is not specified in all constitutional courts. Some courts exercise it through normative review of law, like, for example, Italian Constitutional Court. On the other side, in Austrian Constitutional Court it is possible to lodge a state legal appeal only against sovereign acts of administration, and not against judicial decisions, when the basic law is directly and de facto violated by a general norm.

[6] The provision of constitutionality in the constitutional order of the Republic of Macedonia is seen through the realization of the following principles: supremacy of the Constitution, guaranteed constitutionality, formal constitutionality, firm constitutionality, constitutional protection of the human rights and freedoms and the division of power.

[7] The provision of legality, on the other hand, is realized in Macedonian constitutional order through the following principles: prohibition for retroactive application of the laws, obligation for publishing of the laws in the "Official Gazette", legal definition for the sanctionable deeds and for the sanctions, obligation for the legal grounds of the bylaws, measures and activities, resolving of the disputes in a procedure defined with the law (due process of law), right to complaint, judicial control over the legality of the acts of the state bodies and institutions. Until 2006, besides the Constitutional Court, the Supreme Court was also responsible regarding the legality of the acts, activities and measures, and for more than a decade this responsibility also falls on the Administrative Court and the Higher Administrative Court of Macedonia.

8 This model is based on the 1920 Kelzen theory. According to this theory, there is a mutual dependence between the principle of supremacy of the Constitution from one, and the principle of supremacy of the Parliament from the other side. The constitutional issues, according to this model, are reviewed and resolved by a separate, specialized body called Constitutional Court, whose composition includes judges who are qualified to decide on constitutional matters. In Europe, the following countries have accepted this model of organization of constitutional courts: Andorra, Albania, Bosnia and Herzegovina, Belarus, Croatia, The Czech Republic, The Republic of Macedonia, Germany (with 12 regional constitutional courts in BadenWurtemberger, Bavaria, Brandenburg, Bremen, Hamburg, Hessen, Niedersaschen, Nordhain-Vestfallen, Rainland-Falz, Saarlend, Saschen and Sachen-Anhalt), Hungary, Italy, Lithuania, Latvia, Luxemburg, Malta, Poland, Russia, Slovenia, Slovakia and others.

With regard to the qualifications of the judges, it is interesting to mention that most of the constitutional judges in Europe come from the line of university professors in constitutional law. For example, in Spain the constitutional

Republic of Macedonia as a state body which, according to its status, does not fall under the constitutionally protected system of division of power.

The Constitutional Court of the Republic of Macedonia is not an organizational, nor a hierarchically dependent on any other state body, nor is a subject under any body according to its position, according to its status or according to its constitutionally determined competences. Its position, status and competences are directly regulated, i.e. generate from the Constitution of the Republic of Macedonia and they represent a counter balance in case of misuse of the arbitrary will or the other holders of public functions.

The Macedonian Constitutional Court, both according to its function and its organization does not derive from the Assembly of the Republic of Macedonia, nor, according to the Constitution, it answers for its work in front of the Assembly.

Although, according to the Constitution, the Assembly elects all nine judges with the majority of votes from the total number of MPs, where for three of these judges there must be majority of votes from the MPs coming from the minority communities in Macedonia[9], **the constitutional judges are still not held accountable for their work before the Assembly.** The submission of the annual report for the work of the Constitutional Court to the Assembly cannot initiate any individual or collective responsibility for the constitutional judges from a constitutional-legal point of view, or of the Court in general, which is a concrete problem, having in mind that the responsibility of the state bodies is a crucial necessity when it comes to the proper functioning of the legal and of the political system.

Having in mind the fact that in Macedonia there is no body that can initiate accountability for the constitutional judges and the Constitutional Court, the state is practically left without any constitutional and legal mechanisms to deal with the imprudent constitutional judges or with the dysfunctional Constitutional Court.

The Macedonian Constitutional Court does not fall under any law, because it is the Constitutional Court that assesses the coordination of the laws with the bylaws of the Constitution and if there is a disharmony, the Court can decide to terminate or to annul the unconstitutional legal provisions, or the whole law.

In this sense, the Constitutional Court is directly dependent on the Constitution. It is the Constitution that determines the Constitutional Court as a separate body in the Republic which is the only holder of the institute of normative control of the positive domestic law.

It is interesting to note that the Constitutional Court does not have the competence to give authentic reading of the Constitution (this right falls directly on the Macedonian Assembly).

The 1991 Constitution defines the position of the Constitutional Court, its composition, competences, functions and immunity of the judges, as well as the legal effect of its decisions. According to Article 113 of the Constitution, the manner of work and the procedure in front of the Constitutional Court is determined with the act of the Court.

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judges are elected from the line of university professors in law, lawyers, public prosecutors, state officials that have professional experience of at least 15 years in the field of the law.
In Spain, the constitutional judges appointed form the line of university professors are usually constitutional law professors who published their opinions about the most problematic areas of the Spanish constitutional model, starting from the basic and personal freedoms and rights, all the way to the territorial division of power.

[9] Although the election of the constitutional judges is centralized in the Parliament, the proposals of some of the constitutional judges can reach the President of the Republic (two candidates, according to the amendment 29, paragraph 1, item 7), and the Commission for election and appointment in the Parliament (it proposes five candidates in accordance with Article 68, item 14,)

The mandate of the constitutional judges is nine years without a possibility for re-election. The Constitution explicitly prohibits re-election of a judge for another mandate after the completion of the nine year term. With regard to the conditions that a constitutional judge needs to meet, the Constitution foresees one, and that is that "the judges are elected from the rank of distinguished lawyers". **It is interesting to note that no one has still not defined and explained the formulation "distinguished lawyer", what it specifically means and who can be treated as distinguished to become a candidate for a constitutional judge in Macedonia**.

The constitutional judges elect the President of the Court from within their own ranks. The mandate of the President of the Constitutional Court is three years without the right to re-election.

According to article 7 of the Court's Rulebook, the president is elected at a court session from the rank of the judges with two-third majority of total number of votes, in secret voting procedure. Any judge has the right to nominate a candidate for president of the constitutional court (article 7, paragraph 2). The president of the Constitutional Court represents the court, signs its decisions and other acts which are under the competence of the Court and takes care of the application of the Rulebook (Article 8).

The Constitution also determines that the function of a constitutional judge is incompatible with any other public function or profession, as well as with the membership in a political party (article 111 of the Constitution).

The constitutional judges have a material and procedural immunity which is identical to the one of the members of the Parliament (Assembly). The content of the immunity of the constitutional judges is regulated in more details in the Rulebook of the Constitutional Court, which stipulates that a constitutional judge cannot be held criminally responsible or be detained for his/her opinion or manner of voting in the court (article 10, paragraph 2), and that a judge cannot be detained without an approval from the Court, unless he/she is caught while performing a criminal act for which the law foresees imprisonment of at least five years (article 10, paragraph 3).

The Constitution foresees two ways for termination of the function of the constitutional judge: regular one, based on expiration of his/her nine-year term, and early termination of mandate, when the judge submitted an irrevocable and personal resignation (discretionary right of the judge), as well as his dismissal.

A dismissal takes place in the following cases: when the judge is unconditionally sentenced to a prison of at least six months, or when he/she permanently loses the ability to perform his/her function. The Rulebook of the Constitutional Court also foresees special procedure for determining the facts and for meeting the conditions for dismissing a constitutional judge. It is interesting to note that in the Macedonian legislation there is no age limit for performing the function of a constitutional judge which means that the judge can perform the function even after he/she meets the criteria for retirement.

The fact that there is practically no country in the world that has a Constitutional Court in its system that is not regulated with a law, or a constitutional law, above all, the statutory matters related with the constitutional court, opens the issue whether there is a need from this kind of a law in the Republic of Macedonia.

This need is obvious. The experience of other countries shows that regulating of the status, organization and the competences of the Constitutional Court must be organized with a separate law or by a separate constitutional law, due to the meaning and the character of these matters in the constitutional and legal system of the country. The law on the Constitutional Court of the

Republic of Macedonia will help in increasing the quality of defining the matters concerning the court which are currently regulated with an act (Rules of procedure) of the Court.

Having in mind the comparative findings of the several systems of nomination and appointment of constitutional judges we could conclude that provided balance in order to guarantee independence from any political influence as well as independence of the judges, to guarantee high level of expertise and qualifications of the judges elected for this duty, to provide broad spectrum of knowledge, experience and culture in the court, and political sensibility which should in any case undermine the independence and impartiality of the judge, is a question of highly importance.

The need of greater inclusion of experienced judges in the Constitutional Court or recognized and distinguished retired judges from the Supreme court, or from the appellate courts who have broad experience in executing their judicial functions represents a good model for reforming the composition of the Macedonian Constitutional Court.

Also, the need of inclusion of distinguished university professors in law in the composition of the Constitutional Court will enhance the role of this very important body. The need of demanding greater professional qualifications in the process of election of constitutional judges as well as the long-year experience in the field of the law also represents a very important criterion for election of constitutional judge.

Comparative analysis of the election of the constitutional judges reveals that there are two main systems of appointment of constitutional judges, plus an additional, combined model, which represents a combination of the previous two.

The first system is the system of direct appointment, whereat no election procedure is involved (for example, the system applied in Canada, Finland, France, Ireland, Lithuania, Norway, Sweden, Turkey and other countries). This system can be divided on two subgroups. In the first subgroup, the power of appointment is a discretionary right of a given institution (France, Lithuania, Turkey).

In France, the appointment of constitutional judges is equally divided among three judges appointed by the President of the State, the Senate and the National Assembly.

In Lithuania, the President of the country, the Parliament and the Supreme Court appoints per three judges each.

For the second subgroup, the power of nomination of candidates for constitutional judges is related with previously submitted proposals coming from other bodies (the prime ministers of Sweden, Finland, Sweden, and Ireland). For example, the Republic of Ireland has a special advisory board for judicial appointments whose recommendations must be taken into consideration when constitutional judges are appointed.

In Finland, the Constitutional Court itself proposes candidates for future judges, and the president of the state appoints the new judges based on prior consultations with the minister of justice and the Council of Ministers.

The second system is the electoral system, which is considered as more democratic than the previous one. The election of constitutional judges is most often executed by the parliament (the case of Hungary, Latvia, Portugal, Slovenia, Germany and others).

In the case of Germany, the Bundestag elects only one-half of the constitutional judges in an indirect manner, i.e. through the Committee for judicial appointments, which is proportionally composed of members of the Bundestag.

In Portugal, ten of the permanent 13 judges are elected by the Parliament. The difference in the electoral systems that exist in different countries is in which institution nominates the

constitutional judges. The proposals can come from the president of the country (Slovenia, Azerbaijan), the upper house of the parliament (Croatia), combined proposal from the parliament, the executive government and the supreme court authority (Latvia), or the judicial council (like in the case of the Republic of Macedonia), or the proposals can come from the parliamentary political parties (Lichtenstein10.)

The third system is the so-called hybrid system, which represents a combination of the previous two. This system is most common and has developed several alternative types. In some countries, the electoral element can have equal weight as the element of appointment (the case of Austria), but most often the electoral component is more important than the appointment (the case of Albania, Armenia, Romania, Spain and other countries). With the hybrid system, the authorities that nominate constitutional judges, such as the judicial bodies or the judicial councils, can also directly appoint judges (the case of Bosnia and Herzegovina, Bulgaria, Italy and other countries).

It is believed that the system in which the election of the constitutional judges does not depend only on one segment of the state authority, i.e. the system where all segments of the state authority (legislative, executive and judicial) are involved in the election of constitutional judges is the most democratic system which has the highest level of legitimacy.

The second system includes those countries in which the Parliament is the only body that elects constitutional judges, and the decision for their appointment is adopted by qualified majority of members of parliament, i.e. with the same majority needed for amending the Constitution.

In this respect, there are three main models in the election of constitutional judges: monocratic, majority and supermajority model. Therefore, according to the majority of theoreticians, the best manner for election of constitutional judges is when all three segments of the government (legislative, executive and judicial) are equally involved in the process of election of the constitutional judges.

Also, the duration of their mandate is very important segment for the election of the judges. The constitutional judges usually have much longer mandate, without the right to be re-elected. Mandate of nine years is most common, as well as the provision for one-third of the judges to be replaced on every third year. The main principle on which the constitutional democracy is based upon is the **principle of responsibility** for all segments of the government, and especially for the judicial government.

There is a stance in the constitutional theory that the Constitutional Court has important functions in the consolidation and harmonization of the democratic government in a country. The Constitutional Court plays an important role in the "reviving" of the highest legal act in the country as an act that shapes and directs the political government.

However, it is a fact that not all constitutional courts can achieve this goal.

Some of them become powerless structures when facing the power of the executive and the legislative government (as it is the case with Macedonian Constitutional Court), some fail to win the respect of the public because they are becoming "dictators" of what the executive and legislative government ought to do, thus becoming "hidden politicians" who deny the will of the citizens.

The Constitutional Court of the Republic of Macedonia has a need of essential reforms, both in regard to the manner of nomination, as well as in regard to the manner of appointment of the constitutional judges, as well as legal regulation of the statutory matters of the Constitutional Court.

III. Several functional aspects of the Constitutional Court of the Republic of Macedonia

The protection of constitutionality and legality itself is not kind of a state power, but an autonomous and independent function. The realization of the competences of the Constitutional Court of the Republic of Macedonia stands beyond the relations between the holders of the legislative and the executive branches of the government.

Hence, the Constitutional Court is one of the key factors for the implementation of the Constitution. It is this Court that solves the problems of competencies conflicts between the legislative, executive, and judicial bodies, as well as between the central and the local bodies in the system, as defined in the Constitution.

The position of the Constitutional Court guarantees that the conditions for fulfillment of the constitutional-judicial function are already protected from any influence from the holders of the political power.

But, from the other side, the constitutional status of the Court enables it to distance itself from the political authorities while performing its constitutional-judicial function, because the Court has a continuous and stable position when presenting its own independent position in time of change of the holders of the government.

Regarding the competences of the Constitutional Court, they could be analyzed in five separate groups:

1. Normative control of the acts;
2. Protection of the human rights and freedoms;
3. Resolving of conflict of competence by holders of the legislative, executive and judicial government, as well as among the central and local bodies of government;
4. Deciding on the responsibility of the President of the Republic, and
5. Deciding on the constitutionality of the programs and activities, as well as on the statutes of the political parties and civil associations.

a. Normative control of the constitutionality of the adopted legal acts – basic authority of the Constitutional Court

In accordance with Article 108 of the Constitution, the only authorised state body in charge of control of the constitutionality of the laws and the constitutionality and legality of the bylaws and the other regulations is the Constitutional Court of the Republic of Macedonia.

The constitutional formulation "other regulations" is pretty vague and broad and in our legal system it refers to a number of acts adopted by the bodies of the executive government, acts of the local self-government, acts adopted by institutions, by the Assembly of the Republic of Macedonia which do not have the status of a law, etc.

It is because of this broad formulation that we often witness how the Constitutional Court manipulates in its assessment on whether a specific regulation is under its competence or not. The Court is practically left on its own to assess whether it is competent to assess the constitutionality of a certain regulation, which led to double standards in its practice in the past, i.e. on some regulations the Court made its own assessment, and on others it decided that it is not competent to decide.

The free will of the Constitutional Court can sometimes distort its original and constitutionally defined competence to act, which opens room for legal insecurity in the system. This uncertainty on whether the court will get involved in assessing the constitutionality or the legality of "another procedure" harms the principle of the rule of the law and the legal security of the citizens[10]

This practically means that only the Constitutional Court has the right to perform normative control over the acts in the legal system. Hence, the normative control of the constitutionality of the acts is done in two ways: 1. By an abstract control of the constitutionality and assessment of the laws on whether they are in accordance with the constitution; and 2. Through an abstract control of the coordination of the bylaws with the constitution and the laws in the country.

According to Article 11 of the Rulebook, the procedure for assessing the constitutionality of a given law and the constitutionality and legality of a procedure or another general act is done based on a decision of the Constitutional Court based on a filed initiative. Anyone can file an initiative for assessment of the constitutionality of a given law and constitutionality and legality of a procedure or another general act.

The submitter of the initiative and the submitter of the disputed act are participants in the procedure before the Constitutional Court. The Constitutional Court can also initiate a procedure by itself in order to assess the constitutionality of a given law, i.e. the constitutionality of a regulation or another general act.

While assessing the constitutionality of a law or a regulation or another general act, the Constitutional Court can assess the constitutionality and the legality of the provisions of that law or another general act which are not disputed with the initiative. Initiatives before the Constitutional Court are submitted in written in two samples.

An initiative for launching a procedure for assessing the constitutionality of a law or constitutionality of a regulation or another general act contains the following: marking of the law, regulation or the general act or its certain provisions that are being disputed, reasons for their disputing, provisions of the Constitution or the a that are violated with that act as well as its title, i.e. the title of and the address of the submitter of the initiative.

The decision for launching a procedure is submitted to the body that adopted the disputed regulation or a general act and he is given timeframe for a response which cannot exceed 30 days. If the submitter of the disputed regulation or another general act does not submit a response

[10] The practice knows two such cases. In the first case, the Court has exempted itself, while in the second case it said the case was under its competence. In the first case, the Court initiated a procedure for assessing the constitutionality and legality for a conclusion made by the Assembly of the Republic of Macedonia in 1996, a conclusion adopted based on a filed civil initiative for scheduling a referendum for early parliamentary elections. Here, the Constitutional Court said that "the conclusions are not considered general legal acts, but acts that regulate specific matters, and that the conclusion does not have characteristics of a general legal procedure." In the second case, subject was a Decision for changes and amendments to the curriculum in the education sector for the nine-grade elementary education adopted by the Ministry for Education and Science in 2009, on which the Constitutional Court directly assessed the constitutionality and legality of the act without to previously initiate a procedure and to answer whether this decision can be qualified as a legal act under its competence. The Court never answered this very important question, i.e. it never give an explanation why the specific act adopted by the Minister is considered a procedure according to Article 110, line 2 of the Constitution. In this context, we must mention the Decision for dissolution of the Assembly of the Republic of Macedonia adopted in February 2016 where first the court refused the initiative to access the Decision stressing that this is a concrete act with "individual character" which is used to decide on the specific legal matter, and shortly afterwards, due to the direct political pressure from the political parties in the country to change its position and to assess, i.e. to annul the previous decision.

within the foreseen timeline, the Constitutional Court will determine the future procedure. After the completion of the early procedure and latest in three months from the day when the case was put in process, a file for a session is submitted or the Court is informed about the progress in the procedure.

At its main session, the Constitutional Court launches a debate on the disputed legal and factual issues and makes a decision. The decisions are adopted with majority of votes from the total judges in the Constitutional Court, unless the Constitution, i.e. the Rulebook foresees otherwise.

A Constitutional Court judge who is unable to attend the session can submit a written opinion on the case. A judge who voted against the decision or who believes that decision should be founded on other legal grounds can give a separate opinion and explain that opinion in written. This separate opinion is published in the Court's bulletin and in the Official Gazette in which the decision of the Court is published.

Having in mind the normative control of the acts, the Macedonian Constitutional Court has **only a repressive, and not a preventive control over the constitutionality of the laws and over the constitutionality of the bylaws**.[11]

The Constitutional Court also provides abstract, but not a concrete control over the constitutionality of the laws and the bylaws.

The constitutionality assessment is carried out in a special procedure before the Constitutional Court which is known as a constitutional dispute. Subject of the assessment cannot be laws that have not yet been voted in the Assembly, i.e. which are still in a draft form, or laws that are not published in the "Official Gazette of the Republic of Macedonia".

This abstract control by the Constitutional Court is not only carried out on the laws passed by the Parliament of the Republic of Macedonia, but also on the laws that would eventually be adopted in a referendum, as well as on the acts with the legal power adopted by the Government during a military or state of emergency.

This control of the constitutionality and legality by the Constitutional Court also refers to the bylaws and other general acts, where the term bylaws refers to the provisions and regulations adopted by the Government, as well as the instructions, manuals and rulebooks of the state administration bodies. The term **"general acts" refers to the following: municipal statutes, decisions and conclusions adopted by the municipal councils, acts of the institutions and organisations that hold public authority, statutes and rulebooks of the public and stockholding companies, as well as the collective agreements.**

When it comes to this constitutional competence of the Constitutional Court, we should stress that the Court does not have the right to assess the Constitution or to determine the true meaning of the constitutional norms.

The Constitutional Court is not a positive legislator, i.e. during the control of the constitutionality of the laws it is not authorised to make changes or amendments to the existing legislation that it assessed as non-constitutional.

[11] The following are considered bylaws: regulations and decisions of the Government of the Republic of Macedonia, instructions and rulebooks of the state administration bodies; much more numerous are the general acts, which cover the following: statutes of the self-government units, decisions and conclusions of the municipal council, acts of the institutions and organisations with public authorities as well as of the public companies, stockholder companies, and the collective employment agreements.

The Constitutional Court does not have the authority to assess the activities that the authorised bodies need to undertake in order to implement the laws. The Constitutional Court is not authorised to assess the individual acts adopted by the Assembly, although it is an open question whether a decision for election of an Assembly president or a decision for election of a government can be considered an individual act, when that decision has an *erga omnes* capacity.

It is my position that a decision for election of an Assembly president cannot be considered as an individual act, nor can the decision on the election of the Government, because neither the first, nor the second decision refers only to the rights and obligations of the individual holders of public authorisations, but the effect of that election is on all citizens of the Republic of Macedonia.

The President of the Assembly is president of all citizens represented through their MPs in the Assembly, and the Government is a government of the whole country, which means their election cannot be considered an individual act.

The Constitutional Court cannot assess the mutual compliance of different laws, nor does it have the competence to assess the compliance between two or more collective agreements.

The Court will not get involved in normative control of the constitutionality of a specific law or another general act if it already made a decision on that dispute (*ne bis in idem*). The Court cannot be a party in its own procedure in which it would review act that was adopted by this Court (*nema iudex in sua causa*), and the Court is also competent to assess the constitutionality of the disputed act, and not the opinion of the submitter of the initiative (*quod non est in actis).*

It is interesting to note that according to the Constitution, the Constitutional Court of Macedonia can decide on other issues related with the Constitution. This constitutional freedom practically enables to the Constitutional Court to decide on issues of different nature, if the Constitution calls for that. Macedonian Constitutional Court has no competence, although other constitutional courts in Europe have numerous competences in certain fields.

In its work, the Constitutional Court of Macedonia adopts several types of legal acts, i.e. decisions,[12] solutions, and conclusions.

The decisions of the Court can have the effect of annulment (ex tunc) and effect of cancellation (ex nunc). The court's decisions are always with the effect for all (erga omnes), and not only to the parties before the court. This is the criterion that makes the decisions of the Constitutional Court different than the decisions of the regular courts who act only with regard to the parties (inter pares).

According to its Rulebook, the Constitutional Court adopts a decision when it decides on the essence of the matter, in the following cases: for termination or cancellation of a law or other act, programme and statute of a political party or another act; for protection of the rights and freedoms listed in Article 110, line 3 of the Constitution; for resolving of a conflict of competence; for revoking of immunity, accountability and for determining of the conditions for termination of the function of the President of the Republic of Macedonia; on the immunity and conditions for dismissal from the duty of a Constitutional Court judge; for determining non-constitutionality of a given law, regulation or another general act at the time when it was valid, which became invalid during the procedure, if conditions for their annulment were met.

On the other hand, Article 71 of the Rulebook foresees when the Constitutional Court is passing a decision. Based on decision, the Court initiates a procedure for assessment of the

[12] The Constitutional Court adopts three types of decisions: decision to conclude, decision to cancel and decision to revoke the unconstitutional legal and other provisions.

constitutionality of a given law, i.e. constitutionality and legality of a regulation or another general act. It stops the initiated procedure with a decision, it rejects the submitted initiatives, proposals and demands, it stops the execution of the individual acts or activities based on that law, regulation or another general act whose constitutionality and legality it assesses, as well as in other cases when it does not decide on the essence of the matter.

The Constitutional Court passes decisions on the activities that are initiated during the procedure.

While deciding on whether the law, regulation or the general act will be annulled or terminated, the Court will take into consideration all the circumstances that are relevant for the protection of the constitutionality and the legality.

The Constitutional Court decisions (cancelling or annulling) must respond to the question: whether the law or the general legal act is in accordance with the Constitution or not. In this context, it needs to be stressed that the decisions of the Court are final and executive form the moment when they are published in the Official Gazette of the Republic of Macedonia. They are final because no appeal can be filed against them, which is why the decisions of the Court are considered invulnerable in the judicial system. The decisions of the Court are executed by the body that passed the law or the general legal act. The Court has the right to monitor the execution of its decisions and if the body responsible for the execution of the decision does not comply with the court's decision, then the execution is done by the government.[13]

b. Human Rights and Freedoms Protection

In Article 51 of the Constitutional Court's Rulebook it says that any citizen who believes that an individual act or activity violates his right or freedom as determined in Article 110 line 3 of the Constitution of the Republic of Macedonia can seek protection from the Constitutional Court in period of two months form the day of submission of a final or executive individual act, i.e. from the day of learning about the activity which led to committing the violation, but not later than five years form the day when it took place.

The request needs to specify the reasons why protection is sought, acts or activities that are harming the citizens' freedoms and rights, facts and evidences on which the request is founded, as well as other data needed for the decision process of the Constitutional Court.

Article 53 of the Rulebook says that the request for protection of the freedoms and rights is submitted as a response to the submitter of the individual act, i.e. the organ that undertook activities that violate these rights and freedoms, in a period of three days after the submission. The deadline for response is 15 days. Latest in period of 30 days form the day when the file was

[13] In 2001, the Constitutional Court passed a decision for cancellation of Articles 37 and 38 of the Law on the Government of the Republic of Macedonia, because it found them unconstitutional based on a conclusion that the Government has no right to interfere in the work of the Constitutional Court and has no right to determine the manner of securing the decisions made by the Court. The government cannot, based on its conclusion, to delegate to itself the right to determine the manner of execution of the court's decisions, because that would violate the final and executive character of the court's decisions as defined in the Constitution of the Republic of Macedonia. The non-execution of the Court's decision by a state body is a punishable act according to the Criminal Code, article 377 paragraph 3, and the foreseen sentence is one to five years imprisonment. If the non-execution of the decision caused serious violation of the human rights, if it caused significant property damage, then the perpetrator can be sentenced to prison sentence from one to ten years.

put in process, a file for a session is submitted, or the Court is informed about the progress in the procedure. The Constitutional Court decides on the freedoms and rights based on a public debate.

At this public debate, the Court invites the parties in the procedure and the public ombudsman, and, if needed, other parties, organisations or bodies. The public debate can take place even if one of the parties in the process or the public ombudsman are absent in case they were regularly invited. With its decision for the protection of the rights and freedoms, the Constitutional Court shall determine whether they have been violated and on those grounds the Court will annul the individual act, it will stop the activity that caused the violation or it will reject the case. Also, during the procedure, the Constitutional Court can pass a decision to stop the execution of the individual act or activity until its final decision (temporary measure).

In Article 110, paragraph 1, line 3, the Constitution says that the Constitutional Court protects the rights and freedoms of the citizens that refer to the freedom of belief, conscience, thought and public expression of thought, political affiliation and activity and prohibition of discrimination against the citizens on the grounds of gender, race, religious, national, social and political orientation.

Neither the Constitution, nor the rulebook of the Court foresees the right of the citizens to file a lawsuit/complaint as a procedural mechanism for protection of the constitutionally guaranteed rights. The Macedonian citizens have a limited right to protection of only three rights and freedoms that are defined in the Constitution before the Constitutional Court, based on a previously submitted initiative by a citizen which cannot be considered a constitutional complaint of a European type, but a special kind of submission.[14]

The Constitutional Court of the Republic of Macedonia has a need of introduction of a new processing instrument for protection of the rights and freedoms of the citizens of the Republic of Macedonia. The past practice of the Constitutional Court indicates that the Court had a very low activity compared to the other courts in the region or in Europe, when it comes to the protection of the civil rights and freedoms.

For example, according to the data contained in **the Report for the Work of the Constitutional Court in 2009, the Court had only 15 cases, i.e. only 15 applications for protection** of civil rights and freedoms based on Article 110, line 3 of the Constitution. In nine cases the submitters called for protection from discrimination, in three cases they demanded protection of the right to belief, in one case the submitter demanded protection of the freedom to public expression and one case was about protection of the right to fair trial.

In 14 of these cases the Court decided to reject the case mainly because the submitters demanded from the Constitutional Court to act as an institutional court vis-à-vis the regular judiciary, i.e. to re-assess the verdicts passed by the regular courts, something which is not under the authority of the Constitutional Court. In one case, the Court rejected the application because it was not within the scope of rights protected by the Constitutional Court according to Article 110, line 3 of the Constitution.[15]

During 2010, the Court acted on nine cases, i.e. requests for protection of the rights and freedoms, where we should note that the Court made its first decision which found violation of the rights and freedoms. This is the decision in the case **U. No**. 84/2009, of 10 February 2010, where the Court found that the right to political affiliation of the person Xhavid Rushani from the

[14] The constitutional lawsuit/complaint exists today in most of the European countries, as well as in a number of African countries that were under the influence of the European legal practice.

[15] For more details, see: Review of the work of the Constitutional Court of the Republic of Macedonia from January 1 2009 to December 31 2009, Skopje, February 2010 (p 39) http://www.ustavensud.mk.

village of Zajas was violated with the non-acceptance of his nomination for mayor of Zajas municipality at the local elections held in March of 2009. The Court annulled the final Decision No. 01-31/2 from 6 February 2008 adopted by the Municipal Election Commission in Zajas.

In the other five cases, the Court decided to reject the cases based on a decision, in two cases due to non-competence, in one case due to non-existence of procedural preconditions for a decision, and in two cases due to lack of timeliness.[16]

In 2011, the number of filed cases for protection of the civil rights and freedoms increased, compared to the previous two years. The Court had a total of 27 cases, 23 of which filed during 2011, which is the largest number of cases in the previous five years.

In 2011, the Court closed 23 cases for protection of the freedoms and rights; in three cases the Court rejected the applications because it did not find violation. Also, with the Decision on the case U.no..107/2010, the Court rejected the case of the citizen Levko Tanevski, lawyer from Skopje, for protection of the freedom of public expression of thought, violated with the verdict K.no.80/2010, adopted by the Appellate Court in Stip, and the verdict KZ.no.94/2010 adopted by the same court.

With the Decision U.no.146/2010, the Court rejected the request of the citizen Jani Makraduli from Skopje for protection of his freedom of belief, conscience, thought and public expression of thought. With the Decision U.no.147/2011, the Court rejected the request of the citizen Ljubomir Frckovski for protection of the freedom of thought and public expression of thought, guaranteed with the Article 16 of the Constitution, for which the submitter of the case believed to have been harmed with the verdict KZ.no.991/09, adopted by the Trial Court Skopje 1, Skopje, and the verdict KZ.no.332/11 of the Appellate Court in Skopje. In the other 20 cases, the Court decided to reject the cases from the citizens, from which 11 due to non-competence, two because of absence of procedural preconditions for decision-making, and in one due to administrative reasons.[17]

During 2012, the Court had a total of 25 requests for protection of the citizen's freedoms and rights, which is considered the largest number in the previous five years. In this year, the Court closed 27 cases, which is also the highest number in the previous five years. From the total number of solved cases in 2012, most of them – 15 requests, referred to protection from discrimination, 11 requests concerned protection of the freedom of belief, conscience, thought and public expression of thought, and one case referred to protection of the freedom of political association. In six cases, the Court decided to reject the requests for protection of the freedoms and rights by not finding committed violation of a specific right whose protection was sought (in four cases this was protection of the freedom of thought and public expression of thought, in one case it was a case of discrimination on the grounds of social status, and in one case discrimination on the grounds of religious orientation.) In the remaining 21 cases, the Court decided to reject the requests, where at in 11 cases due to non-competence, in eight due to absence of procedural preconditions and in two due to non-timeliness.[18]

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[16] See: review of the work of the Constitutional Court of Macedonia from 1 January 2010 to 31 December 2010, Skopje, February 2011 (p.47) http://www.ustavensud.mk.

[17] See for more details: Review of the work of the Constitutional Court of Macedonia form 1 January 2011 to 31 December 2011, Skopje, February 2012 (p 32-34) http://www.ustavensud.mk.

[18] See for more details, Review of the Work of the Constitutional Court of Macedonia for 2012, Skopje, February 2013 (p.32-35), http://www.ustavensud.mk.

In 2013, the Court decided on 23 requests for protection of the citizens' rights and freedoms.[19]

In 2014 were filed 13 requests for protection of human rights and freedoms according to Article 110, paragraph 3 of the Constitution what is seen as decreased number comparing to the last three years. **In 2014 the Court have solved 16 files of which 7 were for protection against discrimination,** 2 files were for protection of freedom of conscience, thought and public expression of thought.[20]

In 2015 were filed 13 requests for human rights protection. Sixth of them were for protection against discrimination, three of them were for protection for freedom of thought, and public expression of thought, two cases were for protection of freedom of expression, and one subject was for protection of right of property.[21]

It is evident that in comparison with the constitutional courts of the other European countries, the Macedonian Constitutional Court has an exceptionally low activity in the part of protection of the human rights. This situation can partly be due to the non-existence of a constitutional complaint in our legal system however this handicap can also be attributed to the inactive position of the Court vis-à-vis the protection of the human rights.

Despite the fact that the Constitutional Court has the possibility to assume the role of an instance court with the authority to decide in final instance on possible violations of the rights and freedoms of the submitter of the constitutional appeal, as well as to decide on the verdicts passed by the regular courts, it seems that the Macedonian Constitutional Court does not understand, or does not want to understand its exceptionally important position in the system.

Although the Macedonian legal system foresees both competences and procedures before the Constitutional Court which it can use to control and influence the work of the regular courts in context of protection of the constitutionality and the constitutional rights and freedoms, still, the specific control and initiative the Constitutional Court can input for protection of certain human rights is completely lost and is totally inefficient in the legal space in Macedonia.

For example, **since 1991 until the present date, the Macedonian Constitutional Court has not received one initiative with a preliminary question regarding the constitutionality** of a legal act filed by a regular court, and in context of a proceeding led by that court. On the other hand, in its past practice, the Constitutional Court has found violation of a constitutionally guaranteed rights or freedoms by passing a decision in only one case.[22]

Even though Article 18 of the existing Law on Courts offers this possibility, it seems that the judges are not prepared or do not want to use this possibility, and the Constitutional Court does not take any steps to initiate this procedure.

The reasons for this situation can mainly be put in three groups.

The first group covers the so called procedural reasons connected with the procedure that would be initiated before the Constitutional Court and which can be very slow and long, which will certainly have negative impact on the length of the court procedure before the regular court. The sluggishness of the procedure before the Constitutional Court is not in accordance

[19] See for more details: Review of the work of the Constitutional Court of Macedonia for 2013, Skopje February 2014 (p.8) http://www.ustavensud.mk.

[20] See for more details: Review of the work of the Constitutional Court of Macedonia for 2014, Skopje February 2015 (p.15) http://www.ustavensud.mk.

[21] See for more details: Review of the work of the Constitutional Court of Macedonia for 2015, Skopje February 2016 (p.25) http://www.ustavensud.mk.

[22] The decision in the case no. 84/2009 from 10.02.2010.

with the provision for a trial in a reasonable time which is binding for the regular courts, and which can cause points the regular court judges during their assessment by the Judicial Council.

The relevant judiciary laws do not foresee this situation when it comes to the assessment, which means that many judges can be negatively assessed if they submit the case to the Constitutional Court and if, by doing that, they are unable to finish the case in a reasonable time.

The second group of reasons includes those that have a legal character. Namely, besides the previously mentioned Article 18 of the Law on Courts, there is no other legal norm that regulates the procedure regarding the initiating of the specific control of the constitutionality by the regular courts. The rulebook of the Constitutional Court does not foresee this kind of possibility, which leads to conclusion that if there is such a request or initiative by the regular courts, it would be processed as any other initiative for abstract control of the constitutionality, which means without any urgency or priority.

The third group would involve the reasons of subjective character, and particularly the absence of authority or reputation of the Constitutional Court in the eyes of the regular judges, as well as the public, which is the reason why they do not think they should address the Constitutional Court.[23]

Certainly, this depends a lot on who is elected for constitutional judge, having in mind that there are no precise and objective criteria for election of constitutional judges. The only criterion for that election is regulated in Article 109, paragraph 4, which says that "the judges of the Constitutional Court are elected form the line of distinguished lawyers."

It is not clear what the word "distinguished" means in this context, which means that the election of the constitutional judges pretty much becomes "political bargain" among the ruling parties. A distinguished lawyer is someone who is seen by the public as distinguished partisan lawyer, obedient to the government who elects him and nominates him.

This leads to the logical conclusion that the candidates who run for this position must first be lawyers, with a university diploma in law, who are well familiar with the law (although there is no such instance in the system that will verify the candidates' familiarity with the law), and to probably enjoy respect from the public, although this is not explicitly mentioned as a criterion. So, basically the formulation "distinguished lawyer" defines the candidate to be a lawyer and nothing more than that. The reputation of a certain candidate is not measured by objective or precisely defined parameters, but according to the subjective assessment of the MPs who elect the constitutional judges.

Therefore, authority and reputation of the constitutional judges is very often under the minimum demanded level needed for this important function. This is probably the main reason why the Macedonian Constitutional Court has this devastating court practice when it comes to the protection of the civic rights and freedoms.

Of course, besides the above mentioned, one of the main reasons for the present condition is the restrictive nature of the institute for protection of the rights and freedoms by the Constitutional Court, which are very narrowly defined in the Constitution without any rational explanation for this selectivity.

Here we should also mention the self-restrictions applied by the Constitutional Court itself through the traditional rigid textualism when reading the legal norms, which even further narrows the scope of work of the Court, thus leaving an impression that the Court is not interested in playing the role of protector of the constitutional rights and freedoms.

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[23] See publication of Denis Preshova Ph.D., the Constitutional Court lost in judicial reforms, Conrad Adenauer foundation and Institute for Democracy Societas Civilis – Skopje, 2018, (p 13-14) http://www.kas.de/mazedonien.

Not only there is a tendency for self-restriction by the Constitutional Court when it acts in defence of the human rights, but there is even a more dangerous tendency visible in the verdicts of the ECHR, which stress that the Macedonian Constitutional Court has violated the rights and freedoms of the Macedonian citizens with its decisions.[24]

Basically, this paradox can be an indicator, and it can also reflect the overall work of the Macedonian Constitutional Court. "Although it was designed to be the protector of the constitutionality and legality, the Constitutional Court is in a pretty marginalised position", number of Macedonian professors would say.[25]

IV. FINAL VIEWS

The constitutional judiciary, the development of the constitutionality, legality and democracy *per se*, and particularly of the rule of the law, require existence of a complete and efficient protection mechanism. The rule of the law must be treated as a second name of the power (and government) limited by the constitutional and the law. The state, with the help of the legal norms, must limit its bodies, i.e. must limit the legislative and the executive government, and put a rule of the law over the holders of office.

The rule of the law means (and assumes) application and protection of the rights and freedoms of the citizen, his legal security and full realisation of his equality. The rule of the law as a "strategic" benchmark for the Constitutional Court, must be present at all levels in the system, starting from the obligation for respecting the constitutional boundaries for the work of the state institutions and bodies, through the manner of determining the obligatory written rules and ban on the endangering of the constitutionality and legality doctrine, up to the demanding for adequate and available mechanisms for human rights protection.

The Constitutional Court has a task and obligation to play the role of protector, guardian of all elements of the rule of the law. Whether and how successful the Macedonian Constitutional Court is in its role of guardian of the Constitution is not a question only for the subjective assessment of the author of this paper, but a question for an overall objective analysis for what the Constitutional Court has done thus far. And it is from its work that we can draw a conclusion that the Macedonian Constitutional Court is not at the height of its task which comes from its defined authorities. This body did not justify its mission to protect the Macedonian Constitution when its application was violated, or when it was not applied.

In Macedonia, particularly in 2017, many unconstitutional political activities took place, on which the Constitutional Court decided to remain mute. It did not find necessity to decide on any of the unconstitutional decisions adopted by the Parliament.

On 27 April 2017, an unconstitutional election of Parliament president took place with a procedure entirely contrary to the parliament's rulebook, without the necessary quorum of MPs, without any minutes, contrary both to the Rulebook, and to the Constitution of the Republic of Macedonia. This election was never disputed by the Constitutional Court.

The Constitutional Court also never acted on the initiative submitted by a group of citizens for assessment of the constitutionality and legality of the assembly president's election,

[24] The case of Selmani and others v. The former Yugoslav Republic of Macedonia, Application no. 67259/14, 9 септември 2015, http://www.pravda.gov.mk/documents/Selmani%20&%20Others%20-%20judgment%20%20mak-final.pdf.

[25] Prof. Gordana Siljanovska-Davkova, "The Constitutional Court of RM from my angle", Skopje, 2010, p.14

calling upon the past practice of the Court that these decisions had a character of individual legal acts(!?) and that the Court had no authority to decide on such acts.

The Court acted in an identical way when the illegal and illegitimate President of the Parliament scheduled the session for election of the Government. The Constitutional Court, quietly and informally said it was out of its authority to decide, because the Court considers this decision to be an individual legal act!

And then there is the popularly known Law on the Special Public Prosecution on which, despite the initiatives filed by a great number of citizens, the Court decided not to act. These initiatives remain in the drawers in the Court. And the Court, even though it is obliged to act upon these, it decides not to do so, despite the evident non-constutionality of the existing law.

When it comes to the protection of the human rights and freedoms, the Macedonian Constitutional Court is practically invisible.

Its more than modest court practice in this field gives us the right to conclude that the Court does not act as true protector of the human rights, but as a body that works ad-hoc, by undertaking activities that are not completely clear.

On one hand, the inefficiency of the Macedonian Constitutional Court in the part of protection of the human rights can be linked with the very restrictive character of the constitutional norms that foresee protection of only three rights and freedoms defined in the Constitution. However, on the other hand, the reason for this inefficiency can be sought in the matrix of the Court's work, because it is evident that all decisions it has made so far are based on identical explanations and facts.

Even though the Court could have come out as a strong and institutional factor that protects the Constitution, it failed to do that in any of the cases it worked on. Not once in its past work the Court managed to act as a primary factor when it comes to the reading of the Constitution. This task was passed to the Parliament, as a constitutional authority.

The Macedonian Constitutional Court, contrary to the European practice for constitutional justice, also failed to answer the key question; what is considered Constitution in Macedonia and how the Court should act in cases that are not strictly regulated with the Constitution. In Macedonia we do not have a Law on the Constitutional Court and all organisational and material aspects except the Constitution are regulated with an act of the Court (a rulebook), which is an exemption from the European legal practice. Court's rulebook falls in the group of bylaws, i.e. in the group of third instance legal acts. The non-existence of legal solutions on key aspects from the work of the Constitutional Court often creates unconstitutional situations in the practice. For example, in the Macedonian Parliament, its President is the first instance that is authorised to verify the constitutional validity of all laws and civil initiatives, which is ridiculous for a country that has a functional constitutional court. This a-priori procedure applied by the Parliament President is also unconstitutional by itself.

The decision on the organisation of the judicial authority and the position of the Constitutional Court in this hierarchy is also unconstitutional, having in mind the fact that this hierarchy is very similar to a subsidiary submission.

The Constitutional Court is practically prevented from deciding on violations of certain rights and freedoms guaranteed with the Constitution if a first instance court does not react first on that violation, i.e. if a judge from a regular court does not stop the procedure in order to ask for an opinion from the Constitutional Court on the constitutionality of certain acts or activities. In many cases, depending on the will of the judge, and not on the obligation of the Constitutional

Court, depends the very observing of the Constitution, which is a disgrace for the Court itself regarding its position in the system.

The non-existence of the instrument of constitutional appeal/complaint in the Macedonian legal system additionally worsens the protection of the human rights and freedoms of the Macedonian citizens.

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