

General Reviews of the Independent Work of the Constitutional Courts

Safet Emruli

Faculty of Law, State University of Tetovo of Republic of Macedonia, rr.Ilinden pn, 1200 Tetovë, Macedonia

Abstract

The issue of the independence of the constitutional judiciary within the legal literature and the written acts, whether national or international, is treated much less than the independence of the ordinary judiciary.¹

Nowadays, in order to guarantee the independence of the courts, there is a large number of acts both in internal and international scope. Within the European law, the right to court independence is first and foremost guaranteed by the Convention for the Protection of Human Rights.² In addition to the Convention, the other important European document about the independence of the judiciary is the Recommendation (94) 12 of the Committee of Ministers on the independence, efficiency and the role of judges.³ Another important document about the independence of the judiciary is the European Charter on the Status of Courts, adopted by the Council of Europe in 1998.⁴

It is also worth mentioning the opinion no.1 of the Consultative Council of European Judges (CCJE), as important document regarding the independence of the judiciary about the standards related to the independence of the judiciary and the non-revocation of judges.⁵ Also important are other opinions of the CCJE concerning the fair and reasonable ruling⁶, so the role of the judicial council can be in the service of the society,⁷ and towards qualitative court decisions.⁸

Unlike of the guarantees for independent judiciary, which are considerably significant, guarantees for the independence of the constitutional judiciary in European jurisdictions are taken only by the Venice Commission.⁹

In the structuring of the guarantees for the independence of the constitutional judiciary, the case law of the European Court of Human Rights contributes greatly, but it is obvious that because of its nature there is lack of systematic approach on this issue. The working practice of ECHR shows that the guarantees for independent judiciary, given in the article 6, line 1 of the ECHR, will also apply in the proceedings before the Constitutional Courts of the Contracting States. The Constitutional Courts of the member states of the Council of Europe in this context are in a specific position, because in those States, the constitutional courts will also apply the guarantees of the Convention about the independence of their functioning.

Regardless of the small number of acts that regulate the constitutional judiciary, it is perfectly understandable that due to its nature, role and function the judiciary independence guarantees can not be fully applied on the constitutional judiciary.¹⁰

When we talk about guarantees for the independence of the constitutional court, we should take into account that the notion “constitutional judiciary” is understood in its broad sense.¹¹

The principle of the independence of the Constitutional Court originates in the first place from the position

¹ With the notion “ordinary courts” we understand the regular local district courts (*ordinary courts; regular courts; courts of law*), including the judges of that courts.

² Republic of Macedonia has ratified the European Convention for Human Rights in 1997, published in the Official Gazette of RM, no. 11/97.

³ *Recommendation (94)12 of the Committee of Ministers on the Independence, Efficiency and Role of Judges* (adopted by the Committee of Ministers on 13 October 1994 at 516 the meeting of the Ministers’ Deputies).

⁴ *European Charter on the Statute of Judges*, DAJ/DOC (98)23, Strasbourg, 8-10 July 1998.

⁵ *Opinion No. 1 (2001) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers on standards concerning the independence of the judiciary and the irrevocability of judges*, CCJE (2001)OP NA 1, Strasbourg, 23 November 2001.

⁶ *Opinion No. 6 (2004) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers on fair trial within a reasonable time and judge’s role in trials taking into account alternative means of dispute settlement* (adopted by the CCJE at 5th meeting, Strasbourg, 22-24 November 2004), CCJE (2004) OP No.6, Strasbourg, 24 November 2004.

⁷ *Opinion No. 10 (2007) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of Council of Europe on the Council for the Judiciary at the service of society* (adopted by the CCJE at 8th meeting, Strasbourg, 21-23 November 2007), CCJE (2004) OP No.10, Strasbourg, 23 November 2007.

⁸ *Opinion No. 11 (2008) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of Council of Europe on the Council for the Judiciary on the quality of judicial decisions* (adopted by the CCJE at 11th meeting, Strasbourg, 12-14 November 2008), CCJE (2008) OP No.11, Strasbourg, 14 November 2008.

⁹ *Venice Commission Vademecum on Constitutional justice*, CDL-JU (2007)012, 11 May 2007, *The Composition of Constitutional Courts, Science and technique of democracy* No.20, European commission for Democracy through Law (Venice Commission), CDL-STD (1997)020, Council of Europe Publishing, December 1997.

¹⁰ Commission for Democracy Through Law (Venice Commission), *Draft report on the Independence of the Judicial System: part I: the Independence of Judges* (revised) on the basis of comments by Guido Neppi Modona, Angelika Nussberger, Hjortur Torfason, Valery Zorkin, Study No.494/2008, CDL (2010)006, Strasbourg, 5 March 2010, Point 11, 4.

¹¹ For instance in the so-called mixed systems for controlling the constitutionality, even though the constitutional court or the supreme court (i.e. any specialized unit of that court) has powers for controlling the constitutionality, all regular courts have the power not to enforce the law if they think that it is in violation of the Constitution.

held by this supreme authority, from the competencies assigned by its highest act - the Constitution. However, without enjoying full organizational, administrative and financial independence, the Constitutional Court cannot accomplish the tasks assigned by itself. On the other hand, the judges of the Constitutional Court are those that while exercising their duties, must only abide to the Constitution and be independent from any influence that may be caused by any state institution, person or organization. Nowadays, there is no dilemma that the principle of independence of the Constitutional Court is one of the fundamental principles of its work.¹

This principle must be foreseen and guaranteed by the constitution or by the laws of the respective countries. Such principles are foreseen by the constitutions of the Republic of Macedonia and the Republic of Albania. Anyhow, the implementation of this fundamental principle of the work of the Constitutional Court in real life does not imply its automatic implementation in the work of the Constitutional Court. I consider that the elaboration of this topic in our paper will be only a modest contribution in terms of analysing its implementation in the realities of the countries subject of this research.

This principle must be foreseen and guaranteed by the Constitution or by laws of the respective countries. Such principle is foreseen by the Constitution of the Republic of Macedonia and the Republic of Albania. But the implementation of this fundamental principle of the work of the Constitutional Court in the real life does not imply its automatic implementation in the work of the Constitutional Court. I think that the elaboration of this topic in our work will be only a modest contribution in terms of analysing its implementation in the countries subject of our research.

This topic of independence of the work of the Constitutional Court will not be treated only from the theoretical and normative aspect, but also from the practical one, by analysing various factors that we consider as important in the realization of this working principle of the Constitutional Court. In fact, this topic, which is very significant for the work of the Constitutional Court, will not be approached solely from the aspect of normative regulation or the possibilities of intervention by the legislative and the executive power, but it will encompass social factors that can have impact on it, such as political parties (in power or in opposition); the media (whether domestic or foreign); the civic sector; various social and in particular ethnic groups. Only a Constitutional Court with uncontested authority before the public will be able to play its role of protecting the constitutional legal order.

Basically court decisions sustain strong commandments about the rule of law and the development of democracy, as well. It should be acknowledged that due to their influence, judgments with special value also play a role in the development of the justice. If there is no good opinion about the work of the Constitutional Court, its authority as a protector of the constitution and the law would be undermined. In the last years, in the Republic of Macedonia, the role and the position of the Constitutional Court has been understood in different ways, depending on the rules it has undertaken, which in certain cases have been subject of attacks on based political and ethnic approach. All this has had impact on the perception of the role and the position it enjoys.

There is a strong reason for urgent debate on the Constitutional Court of the Republic of Macedonia: uninterrupted and aggressive attacks by the executive and legislative powers are very frequent... we should emphasize that the reason behind this is not due to the deficiencies of the normative regulation of the position and functioning of the CC of RM, so we should not focus in detecting them. I was concerned in the past, but nowadays I am even more concerned because of the lack of: knowledge and understanding by the political elite of the state regarding the role of the Constitutional Court of the Republic of Macedonia. More arguments can be mentioned, but the main one that must be raised is the challenging of the legitimacy of the Constitutional Court, rather challenging its independence against the legislative and executive power ... If the legitimacy of the legislative and executive power is not disputable at all, the legitimacy of CC of RM has often been treated as a problem. This statement should only be taken as an assertion and there is no need to argue against this argument... The politicians do not accept the role of the Constitutional Court as an independent body with all its specifics, due to the superior authority towards the legislative and executive power from the context of the implementation of the Constitution and the laws. The main reason for such attitudes towards CC of RM should be sought in the mentality and the prejudices of the legislative and executive power considering that the Constitutional Court limits their right to action... Namely, today powerful campaigns are coordinated against the Constitutional Court. In the attacks against CC of RM we may notice hard standpoints that: a) the Constitutional Court works in favour of the other option (political opponent) and b) a part of the judges are incompetent to exercise the function of the constitutional judge.²

Challenging decisions, various reactions, party allegations, - shows the manner how the work of CC was assessed in the past. While the opposition welcomes the decisions of constitutional judges, the governing party

¹ For the constitutional court work principles see more at Sokol Sadushi, *Drejtësia kushtetuese në zhvillim*, published in Teona, Tirana, p. 329-349.

² Për sulmet ndaj Gjykatës Kushtetuese të Republikës së Maqedonisë më gjërësisht shih Prof.dr. Milan Netkov, ‘*Marginalii za položbata I za funkcioniranjeto na Ustavniot Sud denes i ovde*’, në Forum Europaeum 10 Ustavnoit Sud na Republika Makedonija – status, dilemi i prespektivi, Fakulteti i Drejtësis “Justiniani i I” Shkup, Prill 2010, faqe 19-21.

has attacked and accused for political affiliations the judges from the Constitutional Court, obliged to assess the constitutionality of laws and other bills.¹

1.The Independence of Constitutional Courts in Transition Countries

The existence and function of the rule-of-law state is based on the principle of the rule of law. The constitution represents the fundamental act of the rule of law and the presumption of the realization of constitutionality. It is a fact that this basic document, which guarantees the citizens' rights and freedoms and which foresees and determines the organization of the state power, exists in the Republic of Macedonia and in the Republic of Albania as states that will be an object of study in our work. In such circumstances, it should be noted that the lawmakers' freedom in the normative law-making field can only be achieved within the framework of certain constitutional principles. This freedom of the lawmaker is determined by the fundamental values proclaiming and safeguarding the constitution, i.e. by the constitutional principles. This freedom of the legislator and the framework for the realization of individual constitutional rights are determined by the fundamental values proclaimed and protected by the concerned constitution, whereas in a portion of exercising power constitutional constraints are created in those relations that are directly regulated by the constitution itself. Taken together, these defining principles, such as legislative activity, ways of realizing individual constitutional rights, and constitutional constraints in the exercise of political power, create the core of what is called legal certainty. Legal security, at the same time, constitutes the essence of the principle of the rule of law.² The two countries that are subject to our study sanction the same constitutional values in their constitutions on which the rule of law is based.

Based on the above-mentioned, the question as to what kind of constitutions there are in the countries under study is raised. Other questions include the way of their implementation and the existence of any serious issues that might hinder or limit the application of constitutionality in the mentioned countries.

The Constitution of the Republic of Macedonia and of the Republic of Albania (as well as the constitutions of the countries of Southeast Europe), have certain common features, which in a way, is said to represent a kind of constitutional system of these countries that contain "copies" of their common "goals" related to their common path towards the Euro-Atlantic integration. In fact, these constitutions guarantee nearly all the freedoms and rights that are applicable in developed democracies of the west. However, the economic grounds, i.e. the material conditions for realizing those rights and freedoms are quite inadequate. These constitutions guarantee the free market economy, private property, civic security, etc. Since the beginning of political pluralism, after the collapse of communism, these postulates have not been put in practice so that the citizens of almost all former communist countries could see and enjoy. In such circumstances, the constitutions of the two countries being studied, as well as of the overwhelming majority of the former communist countries, seem to be a result of "illusory desires" for building societies according to the model of western democracies, because of the fact that the means to change the current situation are very limited. In such circumstances, it is obvious that there have been problems in the realization of constitutionality and its protection. In addition to the material (economic) conditions, the legal culture of these countries has also played a major role in stalling the realization of constitutionality according to western standards.³

The influencing factors in the realization of judicial-constitutional protection include exactly the circumstances in which the principle of the rule of law and the functioning of the rule of law is realized. These circumstances are numerous and, each state has its own specifications, which affect the realization of the function of protecting the constitutional justice. Such specifications are directly determined by political, economic, and social circumstances. However, some factors may be considered as common to these countries: the real power of the state, the stagnation in the path of Euro-Atlantic integrations, political and security instability, the mismatch between the real and the normative, and the level of independence and professionalism of the Constitutional Court in decision-making processes. We will specifically dwell on each of these factors influencing the realization of judicial-constitutional protection in the following sections of this paper.

Same as the guarantees of the independence of the judiciary, the guarantees of the independence of the constitutional judiciary must be considered in two respects: external and internal. In the first case, we are dealing with the institutional aspect of the independence of the constitutional courts in relations to the other authorities of the state political system. In the second case, however, we are dealing with the normative aspect of the independence of the constitutional courts, which is related to the autonomy of their work. In other words, the constitutional judges must be personalities of high moral and social credibility, regardless of their beliefs about life, so they can carry judicial and constitutional responsibility and resist any pressure or other form of interference in their work. These two aspects are inseparable in the sense of the role of the constitutional courts

¹ <http://www.vecer.com.mk/?ItemID=95970F382634314FA9F8F8FE4628CAE> (informata ka qen e qasur me date 12.09.2017).

² Further reference related to the rule of law in the comparative aspect can be seen in Pietro Costa and Danilo Zolo (ed.), *The Rule of Law: History, Theory and Criticism* (Springer: The Netherlands, 2010).

³ See footnotes 7, 8 and 9 above for further reference in this matter.

independence.

The independence of the constitutional courts is of particular importance in the countries of South East Europe, which after the fall of socialism began to build their societies on the basis of the principles of western democracies. Understandably, for different historical reasons, the capacities and the constitutional structure were very fragile in these countries. Prior to these fragile structures, these countries were faced with a challenge of assimilating the socialist mentality that existed in these countries and building new constitutional and democratic liberal values such as the western democracies. Under these new constitutions, these countries institutionalized their goal of integration into the European constitutional scope, which also implied the acceptance of the “common European constitutional heritage”.

After the changes in these countries occurred, it should be noted that the role of the constitutional courts changed (as it was the case with the states that gained independence from the former Yugoslavia that even previously had foreseen constitutional court within their legal systems, including the Constitutional Court of the Republic of Macedonia, but due to the well known events such change will take place some years later with the Constitutional Court of the Republic of Kosovo, respectively after its declaration of independence, whereas in the Republic of Albania it will be established only after the democratic changes), so they will gain special significance in terms of filling the “gap of constitutional culture” under the new order that was under development process.

In such historical circumstances, the independence of the constitutional courts in these states with “fragile democratic institutions” was and will remain as one of the main political and legal aims of these countries.

If we approach comparatively to the first aspect of the independence of the constitutional courts, that is, the aspect of their institutional establishment of these courts and their position in the political and constitutional system of each state, we will see that today in all these countries of the Central and Eastern Europe (states that came out of the socialist system) are in place control and protection systems of constitutionality and legality determined by the constitutional courts.¹

From the comparative analysis of the position of the Constitutional Court of these countries, we can outline these common features:

- Judicial-constitutional control in these states is accomplished with some features that are conditioned by the specific national system of the respective state;
- The Constitutional Court has a special constitutional position characterized by administrative and financial autonomy, which is also one of the presumptions of the independence of the constitutional judiciary;
- There is a monopoly on judicial-constitutional control and protection – i.e. the concentration of such powers in only one body;
- The constitutional-judicial control of the laws is the essence of the work of the constitutional courts. Its has the authority to abrogate the laws adopted by that the legislative power;
- In general terms, the constitutional-judicial control in these countries is repressive; although in some countries we have the possibility of prior law control before it comes into force;
- If they have foreseen, the procedure by which is decided on the constitutional suit, it is separated from the regular courts;
- The constitutional court's jurisdictions have a special character: Constitutional court judgments have a legal-political character, but in certain cases they may only have advisory role.

2. Independence of the Constitutional Court of the Republic of Macedonia

The guarantee of the independent judiciary has been and will remain a very controversial issue in the coming years in the Republic of Macedonia. It would be ideal to achieve such a goal, but it should be ensured, first of all, strong constitutional and legal mechanisms, as well as working towards the acceptance of this ideal in the highest perspective of all elements that comprise the society in general. Repeating this idea at times when it is necessary to clarify that the guarantees for the independence of the judges and the Constitutional Court do not serve to “increase their power”, but to realize the ideal of the rule of law, which cannot be achieved without the impartiality of the judiciary. Certainly, the perceptions on the constitutional court depend from a specific fact that when the judges exercise their powers are in the “boundaries” of what divides politics from the law. Understandably, to achieve such a goal, a new specific and complex system is required for having an independent constitutional judiciary, which draws a certain set of different factors, so the possibility for the judge to exercise the authorizations beyond his influence on others can be eliminated.

In the Constitution of the Republic of Macedonia is recognized the system of safeguard, or constitutional

¹ Nowadays, Constitutional Court as a separate body of constitutional control, according to the European continental model are established in these countries of Central and Eastern Europe: Albania, Bosnia and Herzegovina (with the Constitutional Court of Bosnia and Herzegovina and the Constitutional Courts of the Federation of Bosnia and Herzegovina and Republika Srpska), Bulgaria, Montenegro, Croatia, Kosovo, Hungary, Macedonia, Slovenia, Serbia.

selection that is aimed at securing the independence of the Constitutional Court. Below on this paper, we will present and analyse the factors that have an impact on achieving the independence of the work of the Constitutional Court of the Republic of Macedonia. These factors will be presented and classified into three categories: the factors that influence the independence of the Constitutional Court during the selection of judges; the factors that influence on the individual assurance and independence of constitutional judges and the guarantees for the independence of the Constitutional Court as a specific institution for the protection of the constitution, along with the challenges that affect it. It should be noted that the Constitutional Court of the Republic of Macedonia within the Constitution of 1991, article 108 is defined as “the body of the Republic of Macedonia, which protects the constitutionality and legality”, without prejudice to the decisive provision that the Constitutional Court is a separate and independent body and that within its scope decides exclusively on the basis of the constitution and the law. Similar provisions are found in several constitutions of other countries.¹ Although the Constitution of the Republic of Albania does not explicitly stipulate the same, still in the Article 124 it is foreseen that the Constitutional Court guarantees the respect of the Constitution and provides its final interpretation. Paragraph 2 envisages that “the Constitutional Court is accountable to the Constitution only”.

Such definition, in the constitutions where it is envisaged, has no formal meaning only, but it also represents a constitutional obligation to respect the Constitutional Court's independence from all aspects, especially by the governing authorities. Although such a thing is not expressly foreseen, this should not be disputed in any way regarding the independence of the Constitutional Court. It should be noted that the issues pertaining to and presenting the matter of the Constitutional Court are regulated only by the Constitution and the Court's act.

3. Terms and procedures for election of the constitutional judges as a factor of independence

The Constitutional Court of the Republic of Macedonia consists of nine (9) judges, among well-known lawyers. The Constitution of 1991, in a balanced manner, stipulates the composition of the Constitutional Court from the aspect of state bodies that are authorized in the process of electing judges and the multi-ethnic composition of the population structure. Although all nine judges are elected by the Parliament of the Republic of Macedonia, the process of their proposal is combined, and the procedure of voting process for a part of judges is different.² This principle of electing the body of the Constitutional Court of the Republic of Macedonia represents the idea and purpose of involving the legislative, executive and judicial authorities in the process of electing judges, in order to reach a broader basis of legitimacy and acceptance of the composition of the court, which in principle should imply greater respect for its independence, especially by the political authorities. The dual vote for three judges also extends its legitimacy from the aspect of the multi-ethnic composition of judges, especially because this rule in practice resulted in fair and adequate representation of communities from non-majority community within the Constitutional Court. As we know all this is in line with the standards accepted by the Venice Commission.

The role of the Assembly as an exclusive body for the composition of the Constitutional Court of the Republic of Macedonia is not a problem in the aspect of the democratic principle. As such it exists in constitutional comparative law. This is not affected by the fact that in the Assembly there are rare cases of failure to submit proposals by the President of the Republic and the Judicial Council. We consider that the change we should be focused on is the majority required for the election of judges. Certainly, from the current parliamentary practice the majority required for the election of judges is ensured within the governing majority, without the need for support of any opposition party. Due to that, the election of judges at the time of a parliamentary majority constitutes a good case for attacks and labels of the Constitutional Court and judges, if due to legal reasons they repeal any law adopted by the parliaments' majority, which in opposition, when the composition of the Constitutional Court was selected.”³ The option that would eliminate this possibility of attacking the Constitutional Court and would protect its authority could be achieved by the participation of the opposition MPs in the Assembly during the election of the judges, rather stipulation of qualified majority for their election. However, such a choice, in the circumstances of the extreme politicization of political relations in society in general, would perhaps mean “an additional headache”, so the majority wouldn't be achieved and due to that would remain the vacant positions on any ground in the Constitutional Court. This reminds us the situation with the Constitutional Court of the Republic of Macedonia, from November 2007 to October 2008, when it worked with 7 respectively 6 judges, where the state authorities in charge to elect the judges needed almost one year to complete the composition of the Court.

In addition, there should be considered and directly taken into account the conditions that the candidate

¹ The Constitution of the Republic of Kosovo, article 112 stipulates:

1. The Constitutional Court is the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution.
2. The Constitutional Court is fully independent in the performance of its responsibilities.

² See, Amendment XV of the Constitution of RM

³ See more in <http://www.vecer.com.mk/?ItemID=95970F382634314FA9F8F8FE4628CAE7>, checked on 23.10.2017

must meet in order to be elected as a judge. The constitutional notion “affirmed lawyer”, as a condition to be fulfilled, leaves broad room for interpretation and comprises the main element that a candidate must fulfil in order to be elected as a judge of the Constitutional Court of the Republic of Macedonia. I consider that this formulation needs to obtain a real and objective understanding in correlation with the authorizations that will be after the judge's election and in particular there should be set some professional and ethical criteria that the candidate must meet.

3. Guarantees for individual independence of constitutional judges

The mandate of judges is a very strong guarantee for the independence of constitutional judges of the Constitutional Court of the Republic of Macedonia. The mandate of the judges of the Constitutional Court is nine years without a right to re-election.¹ This type of election related to the duration of the mandate and the no eligibility to be re-elected is in line with European standards proclaimed by the Venice Commission.

The terms for termination of the mandate are too restrictive. The mandate of the Constitutional Court judge will be terminated if he resigns. Also, he will be dismissed from office if convicted of a criminal offence of unconditional imprisonment for at least six months or whenever he/she will forever lose his/her ability to exercise his/her function determined by the Constitutional Court (article 111, line 3 of the Constitution of the Republic of Macedonia). The Constitutional Court judge in the Republic of Macedonia has no disciplinary responsibility. According to the Regulation of the Constitutional Court (article 67), the Court itself decides on such matters within its sessions. The Court establishes a commission composed of three judges that will examine the facts and the circumstances important in the decision-making process.

The judges enjoy immunity. The Constitutional Court decides on their immunity (article 111, paragraph 2 of the Constitution of Republic of Macedonia). The Court regulation determines that the judges of the Constitutional Court enjoy immunity, same as the deputies of the National Assembly. They can not be held criminally liable or imprisoned for the said opinion or for voting in the court. The judge can not be imprisoned without the permission of the Court, except that he has been caught while committing a criminal offence, with punishment foreseen for more than five years. The Constitutional Court may itself decide to invoke the immunity of a judge even in cases where he is not relying to it, if this is necessary to exercise his or her function.

Additional important guarantee of the independence of judges is the provision of the Constitution that envisages as incompatible the exercise of the function of the Constitutional Court judge with the exercise of any other public function or profession or with the membership in political parties. This eliminates the possibility of influencing the interests of judges that could occur during the impartial decision making.

Voting, without the presence of the public, is also a guarantee of independence of the judge. This issue is regulated by articles 48-50 of the Constitutional Court regulation of Republic of Macedonia, which contain provisions for preserving the minutes for consultation and voting, in closed and sealed envelopes, which can be opened only upon request court. The publication of data about the voting of judges on certain issues is not permitted and is considered as a serious violation of the independence of the Court that would put them in front of different pressures from stakeholders and groups of interest. In the judgments and decisions of the Court, however, lies the fact that they have been brought unanimously or by majority vote, but there are no reports on the voting process. This option is directly linked to the college principle, which implies that the decisions are brought by a majority of votes, but the decision is always brought by the Court as a single body and has the same value, whether it is taken by a very close majority or unanimously. The obligation to respect the decision taken applies not only to the public and juridical subjects but also to the judges who have different opinions. In this regard, it should be noted that the judges of the Constitutional Court of the Republic of Macedonia have the right to a separate written opinion, which is announced together with the Judgment or the decision of the Court. Although there are opinions that the judge's different opinion reduces the validity of the court's decision and counteracts the principle of collegiality of the work of the Court, we are of the opinion that the admission of this institute implies a strong instrument in the hands of judges and a robust guarantee of individual independence of judges, not only from outside pressures but also from within the Court itself. Different thought as a particular institute, especially qualitative thinking, can only enhance the level of court decisions. This means that there is no judge in the Court who will only vote for the decisions they make, but they discuss serious and complex issues, confront different opinions and interpretations in the process of making the right decision. I believe that this fact has given rise to the opening of various scientific, debates on the basic issues of the constitutional regulation. From the practice of the Constitutional Court of the Republic of Macedonia, we will see that the institute of different opinion has found its widest scope, especially during the last 10 years, where we have over 30 opinions of judges, where in the past from 1963 to 2003 we had only 6 such opinions.

Judges of the Constitutional Court have the right to salary and other benefits provided by the law (Law on salaries and other allowances of elected officials by the National Assembly). The salary of the President of the

¹ See the part related to the role and the position of the Constitutional Court of the Republic of Macedonia

Court is equal to the salary of the Speaker of the National Assembly, while the salary of the judges is equal to the salary of the ministers or the one of Judicial Council members.

Unfortunately, the financial independence is not at the right level and represents a controversial point in the correlation of the independence of the Constitutional Court. In principle, its weak position is due to the strong position of the Government as the exclusive budget proposing authority. The Constitutional Court of the Republic of Macedonia does not have a specific position in the Law on budget, so as all other institutions, it should also negotiate with the Minister of Finance and the Government on the amount of funds that the Government will project in the draft budget for the Constitutional Court.

We should mention an important element that when the lawmakers adopt laws regulating financial matters, should be careful in order to avoid the interference in the autonomy of the Constitutional Court.¹ When the President of the Constitutional Court of the Republic of Macedonia addressed the public for her work in 2012, emphasizes that “the Constitutional Court faces great financial and staffing difficulties and that the situation is alarming”. He then states that due to financial procedures and problems he can not fill the vacancies of the retired persons and that the number of employees in the Court has drastically decreased and cannot fulfil the obligations with the existing number of employees. He also stressed the reduction of the budget.²

After the termination of their mandate, the judges have the right to salary even up to one year, until the next employment or until the pension is realized. They also have the right to return to the work they have done until the moment of appointment, adequate to their professional preparation. In addition the issue of the lifelong mandate of the Constitutional Court judges is an option to be considered.

4. Constitutional Court and external influences

Constitutional Courts must be definitely protected from external influences, or external pressures. There are no explicit legal norms in the legal order of the Republic of Macedonia that will regulate this issue with the Constitutional Court of the Republic of Macedonia. We consider that the Constitutional Court of the Republic of Macedonia in its practice has created a standard that implies that with “prohibited external influences” or “pressures” it will not mean criticism, rather critical opinion, but is always welcomed, as long as it remains within the limits of what is accepted as critics.

Due to the constitutional role of the Constitutional Court of the Republic of Macedonia and the effects arising from its decisions, which are always directed at the organs of the state or the public power, authorized for their implementation, the critics of the of the subjects against the Constitutional Courts is justified. We should imply a rule that the criticism directed by media, civil society representatives, or civilians, should not be considered as “prohibited external influences” or pressure against the work of the Court.

Anyhow, it is not appropriate the representatives of state institutions, as well as persons who participate in political decision-making process, such as members of the government or MPs of the National Assembly, to comment on the actions or verdicts of the Constitutional Court, whether approving or criticizing them. Up to now such approach towards the practice of the Constitutional Court has not been respected. There were reactions from different people, publicists, functionaries, holders of different functions against its decisions. “The Prime Minister goes beyond his constitutional powers, because he has no right to assess the legitimacy of Constitutional Court decisions but is only liable to ensure their implementation. The Court advises that this behaviour is an indication of the lack of basic knowledge or of no respect of the constitutional order until its complete infringement. Unprecedented attacks against the Court essentially affect the constitutional order, and in particular the fundamental value of the separation of state power.”³ resulted with the resignation of President of the Constitutional Court of the Republic of Macedonia and of one of the judges due to disagreement with the decision taken.⁴

¹ The Constitutional Court of Bosnia and Herzegovina, by the decision of 6/6 of 2008, established the Law on salaries and other compensation in the judicial and prosecutorial institutions at Bosnia and Herzegovina (“Official Gazette of Bosnia and Herzegovina”, no. .90 / 05), regarding the Constitutional Court and Bosnia and Herzegovina is not in violation of the Constitution of Bosnia and Herzegovina because it violates the principle of independence of the Constitutional Court. In its decision, the Constitutional Court emphasizes the position that the legislator, despite the autonomy of the Constitutional Court in regulating matters of organization, procedure and other important issues, has the right to bring laws that, inter alia, relate to the Court's financial position Constitution of Bosnia and Herzegovina. However, the legislator in the adoption of laws certainly respects the autonomy of the Constitutional Court, keeping in mind the position and role the Court has in the Constitutions of Bosnia and Herzegovina. The Constitutional Court of Bosnia and Herzegovina considers that this issue involves not only the issue of judges' salaries, but also of other employees in the court, which means full guarantee of financial independence, which is summed up in the independent budget planning and proposal of the court budget, as well as in the independent allocation of allowed budget means, to which the applicant will be subject to the relevant control of the competent state body.

² <http://www.trtbosanski.com/bs/news/detail/region/2/makedonski-ustavni-sud-u-2012-objavio-335-podnesaka/17199>

³ Press release of CC of RM against the statements of the Prime Minister, <http://www.youtube.com/watch?v=NcfKqEXq994>, checked on 22.12.2016

⁴ Please see more the Decision no.133/2005 of the Constitutional Court of Republic of Macedonia

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