



Constitutional Judiciary in the Republic of Macedonia under the shadow of its Fiftieth Anniversary-Situation and Prospects

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Abstract: In this paper, the author analyzes the position, prospects and challenges of the Constitutional Court of the Republic of Macedonia, in light of the fiftieth anniversary of the existence of this institution which in the socialist past suffered from complete marginalization, and people's conscience of its significance is yet to be built. This article aims to explain and assess the constitutional concept of the Constitutional Court of this country as a public authority which consists of the organizational and functional aspects. The organizational aspect involves the composition of the Constitutional Court, the election of the judges and their legal position. The functional aspect involves the issue of jurisdiction of the Constitutional Court, the legal procedure for carrying out such responsibilities and the legal effect of its decisions. Finally, the paper refers to the functioning of the Constitutional Court in the period 2008-2012, analyzing statistical data on the structure of the Court's decisions by various parameters, by highlighting the relevant findings on its situation and prospects.

Keywords: judicial review; constitutional jurisdiction; comparative aspects of the constitutional justice

"The constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and like other acts, is alterable when the legislature shall please to alter it. ...If the former part of the alternative be true, then a legislative act contrary to the constitution is not law: if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power, in its own nature illimitable."

Chief Justice John Marshall

1. General Historical and Theoretical Aspects

According to the practical approach, the first form of judicial review of the constitutionality appeared in the United States of America in the dispute case *Marbury vs. Madison* (1803). This dispute was presented when John Adams was the second President of the United States (1797-1801) after George Washington. Adams which was a prominent federalist lost the 1800 elections by his former vice-

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president, the Republican Thomas Jefferson. Adams being removed from the office used this period of the delivery of the function by appointing some individuals for judges by his party. The US Congress confirmed those appointments but, then Secretary of State, James Madison refused to give certificates. One of the judges appointed by this way was William Marbury who asked the Supreme Court to order Madison to give the certificate.

The chairman of the Supreme Court was the well-known judge John Marshall, which although was a relative of Jefferson, they were political opponents. Marshall proposed to other judges the approach that Marbury became a judge according to the fact that he was appointed by the President. Thus, in the judgment that was pronounced unanimously, Marshall presents the issue of the constitutionality of the law, with the question that can a law that contradicts to the country's constitution, become law, answering that the constitution or is the higher law that cannot be changed by ordinary means or is the ordinary legislative act and can be modified as other acts, and finally concluding that, it is emphatically the province and duty of the judicial department to say what the law is. Thus, by this precedent, the Supreme Court earned the right to decide on the constitutionality of laws and other acts if they exceed the powers prescribed by the Constitution.

Thus, through the above-mentioned case, came into effect the principle that the Supreme Court not to enforce federal law if it considers that it is contrary to the Constitution, by which this court became the exclusive interpreter of the U.S. Constitution. So today, the doctrine on which the constitutional justice is supported is known as the: "Marshalls Doctrine"¹. According to the theoretical approach, judicial review of the constitutionality is based on the legal observation of Hans Kelsen (founder of the constitutional court) which underlines that, a constitution that is missing the guarantee of nullification of unconstitutional acts is not, in a theoretical sense, completely binding. (Kelsen, 1928)

Regarding the historical aspect of constitutional justice in the Republic of Macedonia, it should be noted that the constitutional judiciary in the Republic of Macedonia for the first time, was inaugurated by the Constitution of the Socialist Republic of Macedonia in 1963 (as a federal unit of former Yugoslavia), whereas, the Constitutional Court was established and began operation in 1964. In this regard, it is worth noting that prior to the incorporation of the Constitutional Court,

¹ For more on this case, see: Reinstein, J. Robert and Mark C. Rahdert *Marbury's Myths: John Marshall, Judicial Review and the Rule of Law*, 2004, available at: <http://law.bepress.com/cgi/viewcontent.cgi?article=1557&context=expresso>.

as a function of its carrier, was the representative body (the legislature) because as the creator of the law it was also considered as the creator of the constitutionality of the law itself, which featured an all accepted model in the former communist systems based on the principle of unity of power. In this regard, the basic need for the formation of the Constitutional Court consisted in determining the competence of the courts in administrative cases, whereby the inauguration of an administrative dispute respectively judicial control of the legality of the individual legal acts, completed the ordinary judiciary functions including so criminal law, civil law and administrative law¹.

Regarding the principal aspects, the Constitutional Court is more related to the principle of the rule of law than the principle of separation of powers, which is logical because the rule of law is a principle broader than that of the separation of powers.

The Constitutional Court is a state body with a higher authority because its decisions are binding on all other subjects without the right of appeal, in which derives its authority from its right to revoke or annul unconstitutional laws and other provisions, while, on the other hand, the Constitutional Court is independent from other state bodies, such as Parliament, the Government, the President of the Republic and the ordinary courts, and also from the laws because they may be abrogated or annulled if are not in accordance with the state Constitution so, the Constitutional Court only depend on the Constitution of the Republic of Macedonia because it is the guarantor of its implementation, but, in this regard, the legislative and the executive power can be protected from the empire of the Constitutional Court only through the issuance of new constitutional amendments or complete change of the state Constitution. (Škari , & Davkova-Siljanovska, 2009, pp. 699-700)

The constitutional concept of the Constitutional Court as a public authority consists of the organizational and functional aspects. The organizational aspect involves the composition of the Constitutional Court, the election of the judges and their legal position. The functional aspect involves the issue of jurisdiction of the Constitutional Court, the legal procedure for carrying out such responsibilities, which means the passing laws in their jurisdiction and the legal effect of the decisions of this court. Part IV of the Articles 108-113 of the Constitution of RM

¹ The web page of the Constitutional Court of Republic of Macedonia, available at: <http://www.ustavensud.mk/domino/WEBSUD.nsf>.

regulates these issues¹. The Constitution of the Republic of Macedonia, determines the Constitutional Court as a specialized body for the protection of constitutionality and legality, unlike the previous constitution of 1974, which this court defined as limited protector of constitutionality and legality.

2. The Organizational Aspects of the Constitutional Court of RM

The issue concerning the election of judges to the Constitutional Court is regulated by the Constitution of the RM, namely the provision of Article 68 which regulates the functions of the Parliament of RM, where among other, specifies that, Parliament elects the judges of the Constitutional Court. Also, in this regard, in chapter six of the Constitution, which is dedicated to the Constitutional court, Article 109 stipulates that, the Parliament elects the judges of the Constitutional Court. The Parliament elects six of the judges to the Constitutional Court by a majority vote of the total number of Representatives.

The Parliament elects three of the judges by a majority vote of the total number of Representatives, within which there must be a majority of the votes of the total number of Representatives who belong to the communities not in the majority in the population of Macedonia. The term of office of the judges is nine years without the right to re-election. Judges of the Constitutional Court are elected from the ranks of outstanding members of the legal profession.

However, the term “outstanding member” as a constitutional condition that must be met, remains vague and imprecise, therefore, needs a closer qualification in the future, for example, more than a few years of professional experience in the field of law, as for example, the Constitution of Kosovo, which stipulates that the Constitutional Court shall be composed of nine judges who shall be distinguished jurists of the highest moral character, with not less than ten years of relevant professional experience² or the Constitution of Bulgaria, which stipulates that the judges of the Constitutional Court shall be lawyers of high professional and moral integrity and with at least fifteen years of professional experience³. As noted by Professor Jovan Djordjevi : “A judge of the Constitutional Court is not an ordinary

¹ Constitution of the Republic of Macedonia (17 November 1991), available at: <http://www.sobranie.mk/en/default-en.asp?ItemID=9F7452BF44EE814B8DB897C1858B71FF>.

² Constitution of the Republic of Kosovo (15 June 2008) Article 114, available at: <http://www.gjks.org/repository/docs/Constitution.of.the.Republic.of.Kosovo.pdf>.

³ Constitution of the Republic of Bulgaria (12 July 1991) Article 147, available at: <http://www.constcourt.bg/Pages/LegalBasis/default.aspx?VerID=221>.

lawyer or whatever successful “official”, because they are usually deadly for the reputation of the court. Constitutional Court judges must be both a lawyer of great culture and professional knowledge, and human dignity and moral support to the general public. A man who is respected, who listens and who is appreciated. This judge can only provide standards that are required for the assessment and protection of constitutionality”. (Djordjevi , 1986, p. 19)

It should be noted that the composition of the Constitutional Court of RM is set by three state bodies, including: the Parliament of RM (as its commission for elections and appointments proposes five candidates for judges of the Constitutional Court), President of the Republic (as proposed two candidates for judges of the Constitutional Court-Article 84, paragraph 4 of the Constitution) and the Judicial Council of the RM (since proposes two candidates for judges of the Constitutional Court-Article 105, paragraph 4 of the Constitution).

Hereinafter, Article 111 of the Constitution stipulates that, the office of judge of the Constitutional Court is incompatible with the performance of other public office, profession or membership in a political party. Judges of the Constitutional Court are granted immunity. The Constitutional Court decides on their immunity. Judges of the Constitutional Court cannot be called up for duties in the Armed Forces. The office of a judge of the Constitutional Court ceases when the incumbent resigns. A judge of the Constitutional Court shall be discharged from office if sentenced for a criminal offence to unconditional imprisonment of a minimum of six months, or if he/she permanently loses the capability of performing his/her office, as determined by the Constitutional Court.

As seen, the Republic of Macedonia in terms of the role of the Parliament in the election of judges of the Constitutional Court, belongs to the group of states where the Parliament has an exclusive power to elect judges of the Constitutional Court. According to a comparative study of this issue by Tudorel Toader and Marieta Safta¹, this group of states also includes: Germany, where all constitutional judges are appointed by the Parliament; Switzerland, where the federal Parliament elects the judges of the Swiss Federal Supreme Court, based on proposal by the Judicial Committee; Poland, where the fifteen constitutional judges are individually appointed for a nine-year term of office, by the first Chamber of Parliament;

¹ Tudorel Toader and Marieta Safta, “*Constitutional Justice: Functions and Relationship with the other Public Authorities*”, General report prepared for the fifteenth Congress of the Conference of European Constitutional Courts by the Constitutional Court of Romania, 2011, p. 1, available at: <http://193.226.121.81/congres/raportgeneraleng.pdf>.

Hungary, where the eleven constitutional justices are elected by the Parliament; Croatia, where all thirteen justices are elected by the Parliament; Montenegro, where the Constitutional Court judges are appointed by the Parliament; Lithuania, where all justices of the Constitutional Court are appointed by the institution of legislature. In this regard, it is important to mention the other four comparative constitutional solutions to this issue, based on the above study (Toader & Safta, 2011) respectively, the group of the states where the Parliament appoints part of the judges to the Constitutional Court: as in France, where all nine members of the Constitutional Council are appointed for a nine-year term of office, three of them being replaced every three years.

Upon each renewal, one appointment is made by the President of the Republic, the president of the National Assembly, and the president of the Senate; Latvia, where the seven judges of the Constitutional Court validated by the Parliament, three are proposed by at least ten members of the Parliament; Moldova, where the procedure for appointing judges to the Constitutional Court takes account of the principle of separation of powers, thus, two judges are appointed by the Parliament, two by the Government and two by the Superior Council of Magistracy; Portugal, where the Parliament appoints ten out of the thirteen judges; Romania, where three judges are appointed by the Chamber of Deputies, three by the Senate, and three by the President of Romania; Spain, where of the twelve constitutional judges, four are appointed by the Congress of Deputies and four by the Senate; Armenia, where the National Assembly appoints five of the nine members of the Constitutional Court; Belarus, where of the twelve constitutional judges, the Council of the Republic (one of the Houses of Parliament) elects six and gives consent to the appointment of the Chairperson of the Constitutional Court; the other six are appointed by the President of the Republic; Turkey, where three of the seventeen justices of the Constitutional Court are elected by the Turkish Grand National Assembly, while the others are selected by the President of the Republic from different sources (members of the judiciary and high public officials).

Onward, the group of states where Parliament appoints constitutional judges based on proposal of the Head of State, as in: Russia, where the judges of the Constitutional Court are appointed by the Federation Council by secret ballot, upon the submission of the President of the Russian Federation; Slovenia, where judges of the Constitutional Court are elected by the National Assembly, by secret ballot and with a majority vote of all Deputies, on the proposal by the President of the Republic; Azerbaijan, where the appointment of Constitutional Court's judges is

made by the Parliament, based on recommendation by the President of the Republic. The group of states where the Parliament makes proposals to the Head of the State with respect to the appointment of judges to the Constitutional Court, as in: Austria, where the constitutional judges are appointed by the Federal President who, however, is bound by the recommendations made by the other constitutional bodies; Belgium, where all twelve judges of the Constitutional Court are appointed by the King based on a list that is alternatively presented to him by the House of Representatives and the Senate.

The group of states where Parliament gives its consent in connection with proposals of the Head of State concerning the appointment of judges to the Constitutional Court, as in: Albania, where the members of the Constitutional Court are appointed by the President of the Republic, with the consent of the Assembly; Czech Republic, where the Constitutional Court's judges are appointed by the President of the Republic, with the consent of the Senate.

And, the group of states where Parliament does not participate in the appointment of judges to the Constitutional Court, as in: Luxembourg, where the Parliament is not involved in the procedure of appointment of judges; Ireland, where the Parliament has no direct role in the appointment of justices to the Supreme Court; Cyprus, where the President of the Republic makes the appointment of judges to the Supreme; Malta, where the President of the state appoints all members of the Judiciary on the advice of the Prime Minister.

In this regard, it should be noted that the current constitutional settlement on the election of constitutional judges in the Republic of Macedonia, is not immune to political and party interference to activity of the court which is due to the fact that Parliament as a holder of legislative power, elects all the judges, whereby the President of the Republic as the executive branch proposes two of them.

So, in the near future, must be assumed that, according to the principle of separation of powers, to find an adequate and balanced solution to prevent political influence of the legislative and executive power on the Constitutional Court, for example, three judges to be elected by Parliament, three judges to be elected by President of the Republic and three judges to be elected by the Judicial Council of the RM from among the judges, because the best form for election of the judges is when all three segments of the state power (legislative, executive and judicial) are equally involved in this process. In this way, the possible influence of other

branches of the power would be weaker, while, on the other hand, is expected to strengthen the independence of the Constitutional Court.

The Bulgarian Constitution provides such a solution, which determines that the Constitutional Court shall consist of 12 judges, one-third of who shall be elected by the National Assembly, one-third shall be appointed by the President, and one-third shall be elected by a joint meeting of the judges of the Supreme Court of Cassation and the Supreme Administrative Court¹.

3. The functional Aspects of the Constitutional Court of RM

3. 1. The Jurisdiction of the Constitutional Court and the Legal Effect of its Decisions

The jurisdiction of the Constitutional Court is regulated by Article 110 of the Constitution, which stipulates that the Constitutional Court of the Republic of Macedonia: decides on the conformity of laws with the Constitution; decides on the conformity of collective agreements and other regulations with the Constitution and laws; protects the freedoms and rights of the individual and citizen relating to the freedom of conviction, conscience, thought and public expression of thought, political association and activity as well as to the prohibition of discrimination among citizens on the ground of sex, race, religion or national, social or political affiliation; decides on conflicts of competency among holders of legislative, executive and judicial offices; decides on conflicts of competency among Republic bodies and units of local self-government; decides on the responsibility of the President of the Republic; and decides on the constitutionality of the programs and statutes of political parties and associations of citizens.

On the other hand, Article 112 of the Constitution regulates the legal effect of its decisions, which states that the Constitutional Court shall abrogate or annul a law if it determines that the law does not conform to the Constitution. The Constitutional Court shall abrogate or annul a collective agreement, other regulation or enactment, statute or program of a political party or association, if it determines that the same does not conform to the Constitution or law. The decisions of the Constitutional Court are final and executive.

¹ Constitution of the Republic of Bulgaria (12 July 1991) Article 147, available at: <http://www.constcourt.bg/Pages/LegalBasis/default.aspx?VerID=221>.

In comparative terms, the Constitutional Court of the Republic of Macedonia, has no jurisdiction in the following issues: To decide on the petitions of unconstitutionality brought by citizens against acts amending the Constitution and on the constitutionality of international treaties and the laws approving them, as it has these functions, for example, the Constitutional Court of Colombia (one of the world's most active courts); To solve the constitutional disputes regarding the violation of the fundamental rights of citizens, which are initiated through constitutional complaint (*recursos de amparo*), an institute which is well known in Switzerland, Germany, Spain and Austria; Unlike the constitutional courts in Austria, Germany and Italy, the Constitutional Court of RM has no function to decide on criminal responsibility of ministers and other stakeholders to state functions but, for this decides the ordinary courts; Unlike the constitutional courts of Germany, Serbia and Croatia, the Constitutional Court of the RM is not competent to stop the political party or association that acts contrary to the Constitution, because this decision is issued by the ordinary courts; Constitutional Court of the RM has no function in the resolution of disputes relating to the elections as this is the case with the courts of Austria, Germany, France and Croatia, because in RM these disputes are under the jurisdiction of the electoral commissions and the Administrative Court; Constitutional Court of RM has no function to solve the constitutional disputes on withdrawal rights which are guaranteed by the Constitution, as for example in Germany, where the constitutional court can deprive or restrict the basic rights of those individuals who abuse the freedom of expression of opinion, freedom of association, the right to asylum, etc.; Constitutional Court of RM does not have jurisdiction to provide legal opinion on certain constitutional issues, as for example in Germany, where the Federal Constitutional Court at the request of both parliamentary chambers and the Federal government provides legal opinions on certain constitutional issues; Constitutional Court of RM has not the function of binding interpretation of the Constitution, as for example in Austria, where the Constitutional Court gives preliminary mandatory constitutional interpretations, at the request of the Federal government or the governments of the federal entities, when determining that the adoption of the law, is within the competence of the federation or the federal unit.

The normative control of general legal acts constitutes the basic function of the Constitutional Court of RM which is realized in two levels: the control of the constitutionality of laws and control of constitutionality and legality of regulations and other general acts. This control is general because it includes all general legal

acts, with the exception of constitutional amendments (because they have the power of the Constitution) and international agreements (because according to the Constitution of the RM, international law has primacy over its domestic law).

The control of the constitutionality of laws includes all kinds of laws and the control of constitutionality and legality of regulations and other general acts include: sub-legal provisions (such as the Government decrees and decisions, guidelines, instructions and regulations of state administration bodies, etc.) and general acts that are more in number (such as municipal statutes, decisions and conclusions of the municipal councils; acts of public institutions, laws and regulations of educational and health institutions, etc., statutes and regulations of public enterprises and collective employment contracts, declarations, resolutions and recommendations of the Parliament of RM, etc.).

Normative control of constitutionality and legality is realized in the form of abstract dispute, because the dispute before the Constitutional Court is guided between general legal norms, because it is not concrete dispute between people.

In terms of consequences, court decisions can abrogate or annul. With the decision to abrogate the law or other regulations or other general legal act shall cease to apply from the moment of publication of the decision of the Constitutional Court in the "Official Gazette" meaning that repeal acts (*ex nunc*)-since now i.e. only in the future, meaning that excludes the existence of the unconstitutional act for the future, well, without retroactive effect.

On the other hand, with the decision to annul, Constitutional Court nullifies not only the act, but also all the consequences caused by its practical application until the moment of the decision, well this kind of decision acts (*ex tunc*)-since then, respectively, from the day of entry into force of the unconstitutional act meaning that the decision to annul has a retroactive effect because it cancels the effects. In this regard, the Court's decisions are final because they cannot be hit by an appeal which means that, unlike regular court proceedings, proceedings before the Constitutional Court is a one stage procedure, because the court decides in the first and the last instance, and therefore it should have a special care not to err because there is no remedy and extraordinary tools against its decisions.

In terms of performance, decisions of the Constitutional Court are enforceable because they begin to be realized immediately after publication in the "Official Gazette of RM", and in case of resistance or ignoring the execution of the Constitutional Court decisions, then their execution are provided by the

Government of RM as an executive power. So, Constitutional Court decisions are binding as well as laws, however the Court's decisions do not mean new law regulating because in this way the Constitutional Court would embrace the function of the legislature, but the decision to change the new law or regulation remains a matter of legislators, therefore, the Constitutional Court represents a “negative legislator”¹.

4. The Functioning of the Constitutional Court of RM in the Period 2008-2012

The Constitution of RM contains no provisions on how to initiate court proceedings, because according to Article 113 of the Constitution, the Constitutional court regulates itself the procedure and the mode of its work by an its enactment, which is done with the Rules of Procedure of 1992, under which, the procedure starts with the decision of the Court on the basis of the initiative which anyone can do (*actio popularis*), i.e. every citizen and any legal person in RM, whereby the Court itself may initiate proceedings on its own initiative. Regarding the issue what kind of legal act should regulate the organization and functioning of the Court (the law or the Rule of the Court), there are divergent opinions between practice and theory in RM, respectively, on the one hand, it's the supportive opinion by Igor Spirovski (former constitutional judge) which states that: “The strongest guarantee of the independence of the Constitutional Court as an institution is its regulatory autonomy allocated to it by the Constitution. Unlike in the other countries, the legal sources of the position and the work of the Constitutional Court are the Constitution and the Rules of Procedure of the Constitutional Court.

This constitutional solution proved to be a key guarantee of its independence in a time of strong pressures and clear desires and attempts to limit the power of the Court that would not have been possible if it would have depended on the Parliament”². On the other hand, it's the dissenting opinion of the professor Treneska which states that: “The constitutional provisions, which are too basic and too modest, and non-existence of the Law, which will regulate the questions

¹ Saliu, Kurtesh, *Constitutional law* (in Albanian), 2004, p. 199; Škari, Svetomir&Davkova-Siljanovska, Gordana, *Constitutional Law* (in Macedonian), 2009, p. 714-716; Shasivari, Jeton, *Constitutional law* (authorized lectures in Albanian), 2010, p. 364.

² Spirovski, Igor, “*The Independence of the Constitutional Court of the Republic of Macedonia: Guarantees and Challenges*” p. 7-8, available at: http://www.venice.coe.int/WCCJ/Rio/Papers/MKD_Spirovski_E.pdf.

connected with the Constitutional Court, gave a lot of space to the Constitutional Court to regulate its status by itself. It is not a positive characteristic of the constitutional system of RM, because it contains possibility the principle of “check and balance” to be violated”¹.

Also, the professor Karakamiseva has a dissenting opinion, when she states that: “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”².

On this issue, it should be noted the assessment of a comparative study by Tudorel Toader and Marieta Safta (2011)³ stating that, particular cases are highlighted in the report of the Constitutional Court of Bosnia and Herzegovina where in it is emphasized that the Constitution of Bosnia and Herzegovina does not provide that a Law on the Constitutional Court shall be enacted but it provides that the Constitutional Court shall adopt its own Rules of the Court. Thus, the only act, in addition to the Constitution of Bosnia and Herzegovina, which regulates the activity of the Constitutional Court are the Rules of the Court which have force of an organic law. Also, in this study, its highlighted that, the general rule that may be emphasized is that the organization and functioning of the Constitutional Courts is governed by a law, adopted by the legislator, which may be amended without the consultation of the Constitutional Court, in the sense that there is no regulation that might oblige the legislator to undertake such an action, a rule resulting from of the general principle of separation of powers. Furthermore, to determine the activity findings on the Constitutional Court of RM, it will be analyzed the statistical data

¹ Treneska, Renata, “*The Constitutional Court of the Republic of Macedonia: Proposals for Legislative and Administrative Reform*” IPFP, 2004. p. 17 available at: <http://pdc.ceu.hu/archive/00001916/01/treneska.pdf>.

² Karakamiševa, Tanja, *Different Models for Protection of Constitutionality, Legality and Independence of Constitutional Court of the Republic of Macedonia*, p. 4, available at: http://www.venice.coe.int/WCCJ/Rio/Papers/MKD_Karakamiseva_E.pdf.

³ Tudorel Toader and Marieta Safta, *Constitutional Justice: Functions and Relationship with the other Public Authorities*, General report prepared for the fifteenth Congress of the Conference of European Constitutional Courts by the Constitutional Court of Romania, 2011, pp. 9-10, available at: <http://193.226.121.81/congres/raportgeneraleng.pdf>.

according to the annual reports of the Court for the period 2008-2012¹, based on the number and the structure of the cases, by: a) the type of applicant's initiative; b) the type of the contested act; and c) the jurisdiction of the Court.

In 2008, the Court has processed a total of 385 cases, of which 263 were admitted in 2008, while 122 were transferred as pending since 2007, whereby from a total of 385 cases, 252 of them were completed, while 133 cases were not completed.

In 2009, the Court has processed a total of 423 cases, of which 290 cases were admitted in 2009, while 133 were transferred as pending since 2008, whereby from a total of 423 cases, 282 of them were completed, while 141 cases were not completed.

In 2010, the Court has processed a total of 371 cases, of which 230 cases were admitted in 2010, while 141 were transferred as pending since 2009, whereby from a total of 371 cases, 245 of them were completed, while 126 cases were not completed.

In 2011, the Court has processed a total of 361 cases, of which 236 cases were admitted in 2011, while 125 were transferred as pending since previous years, whereby from a total of 361 cases, 231 of them were completed, while 130 cases were not completed. In 2012, the Court has processed a total of 335 cases, of which 205 cases were admitted in 2012, while 130 were transferred as pending since previous years, whereby from a total of 335 cases, 239 of them were completed, while 96 cases were not completed.

Table 1. Structure of the cases by the type of applicant's initiative in the period 2008-2012

Applicant	2008	2009	2010	2011	2012
Citizens	214	243	194	203	166
Political parties	3	3	3	1	4
Government	1	3	2	/	5
Enterprises	13	17	4	9	6
Local Government	17	12	2	3	5
Associations	13	7	15	10	9
Constitutional Court	/	/	1	/	/
Other	2	5	9	10	10
In total	263	290	230	236	205

¹ Annual Reports of Constitutional Court of RM 2008-2012, available at: <http://www.constitutionalcourt.mk/domino/WEBSUD.nsf>.

Table 2. Structure of the cases by the type of the contested acts in the period 2008-2012

Type of contested act	2008	2009	2010	2011	2012
Laws	164	191	155	143	103
Local acts	43	37	30	27	38
Acts of Government and ministries	19	22	17	17	13
Collective agreements	5	2	3	3	1
Freedom protection	5	15	9	23	25
Acts of public enterprises	4	6	2	10	6
Acts of public services	3	5	3	6	3
Acts of political parties	/	/	/	/	/
Other	20	12	11	7	16
In total	263	290	230	236	205

Table 3. Structure of the cases by the jurisdiction of the Court in the period 2008-2012

Type of the competence	2008	2009	2010	2011	2012
I. Assessment of constitutionality and legality by fields	257	273	220	213	179
1. Organization and work of state bodies	35	30	40	36	24
2. Finances and Taxes	25	18	16	13	4
3. Urban planning	27	26	16	24	17
4. Labor relations	25	16	21	18	15
5. Local self-government	22	21	14	8	17
6. Economy	16	14	6	9	3
7. Property legal relations	17	11	8	11	12
8. Pension and Disability Insurance	10	17	5	6	3
9. Health and Social Care	10	20	14	17	13
10. Safety and security	4	5	13	14	6
11. Public enterprises	5	4	1	1	4
12. Political parties	5	4	6	5	4
13. Religious freedom	1	3	1	/	/
14. Transportation	5	14	4	2	1
15. Environment	4	3	/	/	2
16. Education and science	11	11	6	3	7
17. Communal activity	4	3	3	4	8
Other	31	48	45	41	39
II. The request for the protection of rights and freedoms	5	15	9	23	25
III. Conflicts of competency	1	1	1	/	/
IV. The responsibility of the President of the Republic	/	/	/	/	/
V. Constitutionality of the programs of political parties and associations	/	1	/	/	1
In total	263	290	230	236	205

According to statistical data presented in the tables above regarding the activity of the Court in the period 2008-2012, it can be draw the following findings:

Regarding the structure of the cases by the type of applicant's initiative it can be seen that evidently dominates citizens (even if it decreased in 2010 and 2012), followed by associations, local government and enterprises. In this regard, it should be noted that during the last five years, only in one case in 2010 a court initiated proceedings under its own initiative, which means that the Court very rarely initiate the procedure *ex officio*. When talking about the citizens as the largest submitter of the initiatives to the court, it is worth mentioning the example of the retired lieutenant, the so-called "law breaker" Stamen Filipov, which is recorder not only in RM but also abroad, because since 1993 he submitted more than 1,000 initiatives, so on its initiatives, so far are abrogated 236 law provisions, 9 plenty laws and 64 by-law acts, so, at the moment 60 other his initiatives are awaiting for Constitutional court decisions¹.

Regarding the structure of the cases by the type of the contested acts, it should be noted that evidently dominates laws (even if it decreased in recent years), followed by freedom protection (which rises in recent years), local acts, acts of Government and ministries and acts of the public enterprises.

Regarding the structure of the cases by the jurisdiction of the Court, it should be noted that evidently dominates the assessments of constitutionality and legality (even if it decreased in recent years), followed by the requests for the protection of rights and freedoms (which rises in recent years). Also, it should be noted that, very rarely are shown the functions of the Court on conflicts of competency and the constitutionality of the programs of political parties and associations, while, on the other hand, in any case has not shown the function on the responsibility of the President of the Republic. When talking about the assessments of constitutionality and legality by fields, it should be noted that dominates organization and work of state bodies (even if it decreased in recent years), followed by urban planning, labor relations, local self-government, health and social care, property legal relations, economy and finances, and taxes.

A general conclusion of the functioning of the Constitutional Court consists of apparent citizen activism about its activity, whereby citizens clearly dominate as

¹ "Fighter against the stupid laws" VESTI online 09 April 2013 available at <http://www.vesti-online.com/Vesti/Ex-YU/304956/Borac-protiv-glupih-zakona>. "Stamen–The "No"-Sayer", available at: <http://www.facethebalkans.com/site/stamen-the-no-sayer/>.

the initiator of the proceedings, and, on the other hand, freedom protection is increasing in recent years. Therefore, in the near future, it should be seriously considered the possibility of incorporating the constitutional complaint in RM as a remedy of fundamental rights protection before Constitutional court, according to the experiences of Hungary, Slovenia, Germany, Slovakia, Spain and Croatia.

In addition, along with above conditions of the court, it should be emphasized the considerable number of cases transferred from year to year, which raises the issue of the factors which causes such a situation. In this context, it should be noted that according to the annual report on financial situation and working conditions of the Constitutional Court for 2012¹, during this year the activity of the Constitutional Court was carried out with a budget of around 574,510 Euros, of which is mostly for salaries of employees (about 69 percent), whereas, the revised budget reduced funding for the Court to 7.46 percent. Also, the Court is one of the few state bodies which in recent years receive 20% less than the funds needed, whereby in recent years continues the trend of reduction of the staff personnel. Thus, as noted in this report, limited financial and personnel resources of the Court negatively affects its functioning, whereby these factors also has negative affect on modernization of information technology, audio recording of sessions, training of professional staff and finally, on meeting the financial obligations of membership in international organizations.

5. Conclusions

After analyzing the organizational and functional aspects of the Constitutional Court of the RM, it can be drawn the followed conclusions:

Regarding the selection of judges, according to the principle of separation of powers, it needs to find an adequate and balanced solution to prevent political influence of the legislative and executive power on the Constitutional Court of RM, for example, three judges to be elected by Parliament, three judges to be elected by President of the Republic and three judges to be elected by the Judicial Council from among the judges, because the best form for election of the judges is when all three segments of the state power (legislative, executive and judicial branches) are equally involved in this process.

¹ Annual Report of Constitutional Court of RM for 2012, available at: <http://www.ustavensud.mk/domino/WEBSUD.nsf>.

In addition, on the constitutional requirement which consists of the term “outstanding member” of the legal profession that must be met for the candidates for constitutional judges, this term remains imprecise, therefore, needs a closer qualification in the near future, for example, more than a few years of professional experience in the field of law, as for example, the Constitution of Kosovo, which stipulates that the Constitutional Court shall be composed of nine judges who shall be distinguished jurists of the highest moral character, with not less than ten years of relevant professional experience.

Finally, a general conclusion on the functioning of the Constitutional Court of RM for the period 2008-2012 consists of apparent citizen activism about its activity, whereby citizens clearly dominate as the initiator of the proceedings, and, on the other hand, freedom protection is increasing in recent years. Therefore, in the near future, it should be seriously considered the possibility of incorporating the constitutional complaint as a remedy of fundamental rights protection before Constitutional court, according European standards and experiences.

6. References

- Alec, Stone Sweet (2000). *Governing with Judges: Constitutional Politics in Europe*. Oxford University Press.
- Alec, Stone Sweet (2012). *Constitutional Courts. Oxford Handbook of Comparative Constitutional Law*. Oxford University Press.
- Alec, Stone Sweet (2011). *Constitutionalism, Rights, and Judicial Power. Comparative Politics*. Oxford University Press.
- Barent, Eric (1998). *An Introduction to Constitutional Law*. Oxford University Press.
- Bajrami, Arsim (2005). *Parliamentary democracy, (in Albanian)*. Priština.
- Cappelletti, Mauro & William, Cohen (1979). *Comparative Constitutional Law: Cases and Materials*. Indianapolis: Bobbs-Merrill.
- Corrado, Michael Louis (2005). *Comparative Constitutional Law: Cases and Materials*. Carolina Academic Press.
- Djordjevi , Jovan (1986). *The position and role of constitutional courts in Yugoslavia (in Serbian)*. Beograd.
- Elliot, Mark (2001). *The Constitutional Foundations of Judicial Review*. Hart publishing.
- Forsyth, Christopher (2000). *Judicial review and the Constitution*. Hart publishing.
- Kelsen, Hans (1942). *Judicial Review of Legislation: A Comparative Study of the Austrian and the American Constitution. Journal of Politics*.
- Banker, Hames Joanne & Ekern, Yvonne (2012). *Constitutional Law: Principles and Practice*. Delmar Cengage Learning.

Horowitz, Donald (2006). Constitutional Courts: A Primer for Decision Makers. *Journal of Democracy*, issue 4, Vol. 17.

Ismaili, Osman (2011). *Introduction to law* (in Albanian). Priština.

Kuli , Dimitrije (1982). *Constitutional judiciary in the world* (in Serbian). Beograd.

Sadushi, Sokol (2012). *Constitutional Justice in Development* (in Albanian), Toena, Tirana.

Saliu, Kurtesh (2004). *Constitutional law* (in Albanian). Priština.

Škari , Svetomir & Davkova-Siljanovska, Gordana (2009). *Constitutional Law (in Macedonian)*. Skopje.

Shasivari, Jeton. (2010). *Constitutional law* (authorized lectures) (in Albanian). Tetova.

Ginsburg, Tom. (2003). *Judicial Review in New Democracies: Constitutional Courts in Asian Cases*. Cambridge University Press.

Traja, Kristaq (2000). *Constitutional justice* (in Albanian). Tirana.

Tudorel, Toader & Safta, Marieta (2011). *Constitutional Justice: Functions and Relationship with the other Public Authorities, General report prepared for the fifteenth Congress of the Conference of European Constitutional Courts by the Constitutional Court of Romania*. Bucharest.

Vanberg, Georg (2005). *Constitutional Review in Comparative Perspective*. Cambridge University Press.

Sadurski, Wojciech (2001). *Post-communist Constitutional Courts in Search of Political Legitimacy*. *EUI Working Papers, Law No. 2001/11*.

***Annual Reports of Constitutional Court of RM 2008-2012.

Constitution of the Republic of Macedonia, 17 November 1991.

Constitution of the Republic of Kosovo, 15 June 2008.

Constitution of the Republic of Bulgaria, 12 July 1991.

***Rules of Procedure of the Constitutional Court of RM (7 October 1992).