

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF NORTH MACEDONIA AND THE JUDGMENTS OF THE REGULAR COURTS

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-Abstract-

The subject of this paper is one of the primary tasks of constitutional courts: to ensure that human rights guaranteed by the constitution are respected and implemented in everyday life. This is achieved by adhering to two critical aspects of the process of resolving disputes related to fundamental rights: determining whether a rights violation has occurred and deciding on appropriate measures for restoring or compensating for the violated rights. To strengthen this role of constitutional courts, it is recommended to introduce the possibility of annulling unconstitutional judicial decisions. The constitutional court should have the authority to nullify court decisions that conflict with the constitution, thereby providing greater protection of fundamental human rights. This text focuses on the two critical aspects of proceedings before constitutional courts, as well as the need to introduce a mechanism for the annulment of unconstitutional court decisions. Therefore, the aim of this paper is to examine the legal concept of introducing the possibility of annulling unconstitutional judicial decisions and analyze its significance for legal certainty and the protection of human rights. Additionally, an analysis will be conducted on the situation in the Republic of North Macedonia, with a particular focus on existing mechanisms for human rights protection and opportunities for enhancing constitutional oversight over judicial decisions.

Keywords: Constitutional Court, regular courts, annulment of judgments, human rights and freedoms, Rules of Procedure of the Constitutional Court, Act of the Constitutional Court.

I. THE ROLE OF CONSTITUTIONAL COURTS AS GUARDIANS OF CONSTITUTION

Introductory Remarks

In modern legal systems, the protection of human rights and fundamental freedoms is a fundamental imperative. These rights are guaranteed by the Constitution, and constitutional courts play a crucial role in safeguarding them, ensuring that laws and court decisions align with constitutional principles. In this context, one of the most important debates in constitutional law revolves around the jurisdiction of constitutional courts to annul decisions of ordinary courts that are unconstitutional. The model in which a constitutional court can overturn unconstitutional

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judicial decisions is not universally applied in all legal systems. However, legal systems like those in Germany and Austria already have mechanisms allowing such interventions. This authority places constitutional review at the core of protecting constitutionally guaranteed rights and establishes constitutional courts as the ultimate guarantors of human rights.

One of the primary tasks of constitutional courts is to ensure that human rights guaranteed by the Constitution are respected and implemented in everyday life. It can be said that the process of resolving disputes related to fundamental human rights and freedoms consists of two critical aspects: determining whether a rights violation has occurred and deciding on appropriate measures for restoring or compensating for the violated rights. Effective and efficient protection of human rights lies at the core of introducing constitutional complaints before constitutional courts.¹ To strengthen this role of constitutional courts, it would be advisable to introduce the possibility of annulling unconstitutional judicial decisions. The Constitutional Court should have the authority to overturn court decisions that contradict the Constitution, thus providing greater protection of fundamental human rights.

This text focuses on the two key aspects of proceedings before constitutional courts, as well as on the need to introduce a mechanism for the annulment of unconstitutional judicial decisions. Therefore, the aim of this paper is to examine the legal concept of introducing the possibility of annulling unconstitutional judicial decisions and to analyze its significance for legal certainty and the protection of human rights. Additionally, an analysis will be conducted of the situation in the Republic of North Macedonia, with a particular focus on the existing mechanisms for human rights protection and opportunities for enhancing constitutional oversight of judicial decisions.

1. Competence of Constitutional Courts to annul or abolish judicial decisions of regular courts

The primary competence of constitutional courts is to assess the constitutionality of laws and other legal regulations, but in some systems, they also have the competence to annul or abolish judicial decisions of regular courts that they deem unconstitutional. The annulment of unconstitutional decisions by constitutional courts is a complex legal process involving intervention by the highest legal authority in the country in the decisions of regular courts. In constitutional law theory, this issue is debatable and leads to divisions in legal thought. On one hand, the annulment of regular court decisions by the constitutional court is seen as necessary to protect the constitutional rights of citizens. On the other hand, this may be considered excessive intervention in the independence of regular courts.

In the legal systems of various European countries, there are variations of this competence of constitutional courts.

Germany, for example, has a developed system of constitutional complaints, where the constitutional court can annul the decisions of regular courts if it finds that they violate the constitution. In Germany, the Federal Constitutional Court (Bundesverfassungsgericht) plays a key role in protecting constitutionality. It has the right to annul judicial decisions if they violate individuals' constitutional rights. The German model is highly influential in European legal

¹ Report limits of fact, law and remedies: Myths and realities of constitutional review of judicial decisions constitutional court of Spain experience by Ignacio Borrajo Iniesta, Constitutional Tribunal, Spain, page 13, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-JU\(2005\)068-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-JU(2005)068-e)

practice, and its competence is considered one of the strongest when it comes to protecting citizens' rights through constitutional complaints.

In Germany, the Federal Constitutional Court has the authority to rule on constitutional complaints filed by individuals who believe their fundamental rights have been violated by state bodies, including regular courts. The constitutional complaint is an effective mechanism for protecting constitutional rights because the constitutional court can annul decisions of regular courts if it finds that they violated the constitutional rights of the complainant. According to the German model, the constitutional court can not only annul judicial decisions but also order regular courts to reconsider the case in light of constitutional principles. This model provides double protection: the constitutional court protects constitutional rights, while regular courts implement the judgment in accordance with constitutional principles. Specifically, the German Constitutional Court has clear authority to annul judicial decisions that are contrary to the constitution. According to the German Basic Law, this court can abolish a decision of a regular court if it was made in a way that violates the fundamental rights guaranteed by the constitution. The constitutional court can also order the case to be reconsidered by the regular court, ensuring correction of errors and protection of fundamental rights.

Croatia has a legal mechanism similar to Germany's. The Constitutional Court of the Republic of Croatia has the authority to annul decisions of regular courts if they have violated the constitutional rights of the complainant.² The constitutional complaint is the primary tool through which citizens can seek protection from the constitutional court, and the rulings of the constitutional court are binding on regular courts. In practice, this means that the Croatian Constitutional Court can annul judicial decisions that are in violation of the constitution and order a reconsideration of the case by the regular courts.

The Spanish Constitutional Court, within the constitutional complaint procedure, can annul decisions of regular courts if they violate the constitutional rights of citizens. According to the Spanish Constitutional Court Law, the court has the ability to impose measures that restore the complainant to a state of full protection of their rights, as well as to issue a public act recognizing the violation.

The Austrian Constitutional Court plays a similar role, where the court can annul or declare invalid any decision of regular courts if it is contrary to constitutional provisions. This system allows citizens to directly file a constitutional complaint in cases of violation of their rights. The Constitutional Court of Austria also has the authority to annul decisions of regular courts if they are in conflict with constitutional provisions. In cases where the complainant seeks the annulment of a decision, the court must rule on the constitutionality of that decision and determine whether it is in accordance with constitutional principles.

1.1. The Role of Constitutional Courts in Protecting Constitutionality of legal acts

Constitutional courts are established to safeguard constitutionality and ensure the rule of law in accordance with constitutional principles. In modern democracies, constitutional courts are considered guardians of fundamental human rights, as they serve as the ultimate authority on the constitutionality of laws, acts, and decisions of public institutions, including those of regular courts.

² Decisions of the Constitutional Court of the Republic of Croatia number: U-III-420/2023 Zagreb, April 27, 2023; Number: U-III-1/2023 Zagreb, March 7, 2023; U-III-129/2023 Zagreb, June 14, 2023; U-III-164/2023 Zagreb, December 6, 2023; U-III-334/2023 Zagreb, March 5, 2024; U-III-399/2023 Zagreb, March 9, 2023.

In some legal systems, constitutional courts have direct authority to annul judicial decisions deemed unconstitutional. This authority stems from their primary role in protecting the fundamental rights and freedoms of citizens. In such systems, constitutional complaints are one of the main tools through which citizens seek protection of their constitutional rights when regular courts issue decisions that violate these rights.

In systems where the constitutional complaint is introduced, the constitutional court has the ability not only to determine that a violation of constitutional rights has occurred but also to take appropriate measures, such as annulling the unconstitutional decision or “rehabilitating” the rights of the complainant. In some legal systems, this competence of the constitutional court is explicitly prescribed in the constitution or in the laws regulating the functioning of the constitutional court.

The constitution is the highest legal act in a state and has primacy (supremacy) over all other laws and decisions. The primary function of the constitutional court is to ensure the compliance of all laws and acts with the constitution. This means that the court controls the normative order in the state, ensuring that no legal act or decision violates the fundamental constitutional principles, including the rights and freedoms of citizens. Constitutional courts ensure control over the constitutionality of laws, as well as judicial decisions made by regular courts. The competence of constitutional courts to annul judicial decisions is based on the need to ensure that the judiciary does not violate the constitution and that justice is carried out in accordance with constitutional principles.

In many legal systems, including European ones, constitutional courts are called upon to take measures when judicial decisions violate constitutional rights. This not only strengthens the legal protection system but also ensures that the constitution remains the highest norm governing all aspects of law.

1.2. Concept and Function of Constitutional Complaint

In many legal systems, the constitutional complaint is considered a mechanism through which individuals (natural and/or legal persons) can directly address the constitutional court in the event of a violation of their constitutionally guaranteed rights. The constitutional complaint is a legal instrument that allows citizens to seek legal protection from the constitutional court if they believe their rights have been violated by state bodies, including decisions made by regular courts.

In European legal systems, the constitutional complaint has four main characteristics:

- a) Providing a legal remedy against violations of constitutional rights;
- b) Focusing on the constitutionality of the disputed act or decision, without addressing other legal issues related to the same case;
- c) Filing a constitutional complaint by the person affected by the unconstitutional decision, and
- d) Empowering the constitutional court to “restore” the rights of the complainant through the annulment of the unconstitutional decision.

In many European legal systems, the constitutional complaint is a legal remedy through which citizens can initiate a constitutional dispute and seek the annulment of unconstitutional decisions. The constitutional complaint is one of the main tools that enables direct intervention of constitutional courts in judicial decisions. Through the constitutional complaint, individuals whose rights have been violated by decisions of regular courts can seek their annulment. This procedure does not aim to reexamine factual matters or the application of laws, but solely

focuses on the constitutionality of the decision. This mechanism is particularly important in the context of protecting fundamental human rights, as provided in several European constitutions. For example, in Germany, the constitutional complaint is an essential element of the constitutional order, where citizens have the right to “appeal” any judicial or administrative decision they believe violates their constitutional rights.

2. Determination of Rights Violations

The first and fundamental step in proceedings before the Constitutional Court is to determine whether the citizens whose rights are at issue have indeed been subjected to violations of their constitutionally guaranteed rights and freedoms. In this phase, the Constitutional Court must carefully examine all facts, circumstances, and legal grounds upon which the constitutional complaint is based.

Providing legal protection to individuals in cases of rights violations stemming from administrative or judicial decisions is the main justification for the introduction of constitutional complaints from a European perspective.³ In European legal systems, the constitutional complaint serves as a legal mechanism to protect individual rights and freedoms. The primary rationale for its introduction is to provide effective legal protection in cases where individuals face violations of their rights resulting from decisions made by administrative or judicial bodies. This legal institution is particularly significant for citizens who lack other effective legal means to address injustices and protect their constitutional rights.

The overarching function of constitutional complaints is to ensure effective protection of fundamental rights by providing legal remedies to individuals in cases of rights violations by administrative or judicial decisions. From a European perspective, constitutional complaints are characterized by four factors: They provide judicial remedies against violations of constitutional rights. They lead to separate proceedings focusing exclusively on the constitutionality of the contested act in question, rather than other legal issues related to the same case. They can be filed by the person adversely affected by the contested act. The court deciding on constitutional complaints has the authority to restore the "victim's" rights.⁴

Factual and Legal Assessment

The Constitutional Court, as the highest guarantor of human rights, does not assume the role of a regular court when reviewing the facts and legal aspects of everyday disputes. Instead, its task is to evaluate whether there has been a violation of the fundamental rights and freedoms guaranteed by the Constitution. This includes verifying whether the procedural rights of the parties were respected, whether equal treatment before the court was ensured, and whether the principles of legal certainty and fair trial were followed.

3. Measures to Restore or Compensate Violated Rights

³ Prof. Dr. Ayşe Özkan Duvan, „Possible Effects of the Constitutional Complaint Mechanism on Human Rights Practices Assist.“, page 30, available at: <https://dergipark.org.tr/tr/download/article-file/7070>

⁴ Gerhard Danneman, "Constitutional Complaints: The European Perspective," *The International and Comparative Law Quarterly*, Vol. 43, No. 1 (Jan. 1994), p. 142, available at: <https://www.istor.org/stable/760826>

Once it is determined that a violation of rights exists, the next critical step is to determine appropriate measures to restore the violated rights or compensate for the harm caused by the violation. This process is essential because effective protection of human rights cannot be limited to merely identifying the violation—it is necessary to rehabilitate the rights of the affected citizens.

3.1. Annulment of Decisions by Regular Courts

One of the most common measures applied by the Constitutional Court is the annulment of decisions made by regular courts or other public bodies responsible for the violation of rights. By annulling such a decision, the Constitutional Court restores partial justice and refers the case for reconsideration by regular courts, this time in accordance with constitutional standards. This has an effect not only on the specific case but also sends a clear message to courts and other public bodies about the limits of permissible actions and how to proceed to avoid future violations.

3.2. Amendment or Revocation of Laws and Regulations

If the Constitutional Court determines that a specific law or regulation is unconstitutional, it has the authority to repeal or annul that law. This measure is of particular importance because it prevents further violations of human rights through the same law or regulation, which could otherwise be applied to other citizens. Thus, the court ensures that similar legal violations will not occur in the future.

3.3. Compensation for Damages

In certain cases, especially when the violation of rights has caused significant material or non-material damage, the Constitutional Court may decide that the citizen is entitled to compensation. This measure not only provides fair compensation to the specific citizen but also acts preventively on public bodies to avoid similar violations in the future.

Hence, there is a need to introduce the possibility of annulling unconstitutional judicial decisions, justified by the following reasons:

1. Swift and Effective Protection of Human Rights

One of the primary reasons for introducing this possibility is the necessity of ensuring the prompt protection of citizens' rights. In situations where regular courts render decisions inconsistent with the Constitution, citizens may find themselves in positions where their rights are violated without an effective mechanism for immediate redress. While constitutional complaints, available in certain legal systems, provide some form of protection, without the authority to annul decisions, this protection may remain incomplete.

2. Maintaining Legal Certainty

Legal certainty is a fundamental principle of any legal system. Therefore, introducing this mechanism must not compromise the stability of legal relations. To strike a balance between protecting constitutional rights and ensuring legal certainty, it is essential to strictly define the criteria for annulling decisions. This balance could be achieved by limiting the jurisdiction of the constitutional court to cases where there is a gross and manifest violation of constitutional rights.

II. THEORETICAL ASPECTS OF ANNULING JUDICIAL DECISIONS

1. Constitutional Oversight of Judicial Decisions

Constitutional oversight involves the process by which constitutional courts verify the compliance of laws and other legal acts with the Constitution. Regular courts play a significant role in applying the law, but the issue arises when certain judicial decisions deviate from constitutional principles. In such cases, citizens often lack an effective legal remedy to ensure swift and efficient protection of their rights. Annuling judicial decisions by constitutional courts could become a necessary legal tool in these situations.

2. Delimitation of Jurisdiction between Constitutional and Regular Courts

In many legal systems, there is a clear demarcation between the jurisdictions of constitutional and regular courts. Regular courts interpret and apply laws in day-to-day judicial practice, while constitutional courts focus on the legality and constitutionality of acts without directly intervening in individual judicial proceedings, except in cases of abstract constitutional review. Introducing the possibility of annulling unconstitutional decisions represents a critical turning point in this relationship.

3. Practical Aspects of Introducing the Possibility of Annuling Unconstitutional Judicial Decisions

3. 1. The Need for Swift and Effective Protection of Human Rights

In legal systems where constitutional courts lack direct authority to annul judicial decisions, the process of protecting human rights can become prolonged and complex. Citizens may face years-long legal processes before exhausting all regular legal remedies while their rights remain violated. Introducing the possibility of directly annulling unconstitutional judicial decisions would ensure faster rights protection and reduce the time citizens spend in legal uncertainty.

3. 2. Balancing Legal Certainty and the Protection of Constitutional Rights

Conversely, introducing this mechanism must not endanger the principle of legal certainty. Regular courts, as the primary entities responsible for law application, must maintain autonomy and independence in their decisions. Excessive intervention by constitutional courts in judicial decisions could create legal uncertainty and disrupt the separation of powers. To maintain the balance between legal certainty and constitutional rights protection, this mechanism should be strictly limited to cases where a gross and evident violation of constitutional rights is established.

4. The Jurisdiction of Constitutional Courts to Annul Unconstitutional Decisions: Analysis and Challenges

Introducing a mechanism for annulling judicial decisions by constitutional courts should be accompanied by clear and precise criteria. These criteria could include:

- **Gross Violation of Constitutionally Guaranteed Rights:** This criterion would apply to cases where a citizen's rights are violated in a manner intolerable from a constitutional perspective.

- **Inability for "Rehabilitation" Through Regular Legal Remedies:** The constitutional court should act only in cases where regular legal remedies fail to provide effective rights protection.
- **Risk of Repeating the Violation:** Annuling judicial decisions could also serve a preventive function, ensuring that similar legal violations are not repeated by regular courts.

The authority of constitutional courts to annul decisions by regular courts that are unconstitutional is a crucial element in the protection of constitutional rights. This competence is among the most controversial topics in modern constitutional law. While this issue raises legal and institutional debates, it is essential to find a balance between safeguarding constitutional rights and preserving the independence of regular courts. Examples from international practice demonstrate that such competence is both feasible and necessary. In North Macedonia, legal reform is indispensable to improving mechanisms for protecting fundamental rights. This issue is increasingly relevant, as the legal protection of fundamental rights is not solely the responsibility of regular courts but also of constitutional courts.

III. DECISIONS OF THE CONSTITUTIONAL JUDICIARY VIS A VIS JUDGMENTS OF THE REGULAR JUDICIARY REGARDING THE ANNULMENT OF UNCONSTITUTIONAL COURT DECISIONS BY THE CONSTITUTIONAL COURTS

The relationship between constitutional courts and regular courts is complex and fundamentally important for the functioning of the legal system in a democratic state. The relationship between the decisions of constitutional courts and the rulings of regular courts is crucial for maintaining the legal order and protecting the constitutional rights of citizens.

Constitutional courts have a specific role in protecting constitutionality and safeguarding human rights and freedoms, while regular courts are responsible for the application of laws and making decisions in specific legal disputes.

Constitutional courts and regular courts represent two key components of the legal system in modern democratic societies. Although both institutions aim to protect law and justice, their functions, powers, and procedures significantly differ. The main differences between constitutional and regular courts lie in their competencies, procedures, legal effects, and the enforcement of their decisions. Regarding jurisdiction, constitutional courts have specific competencies related to the assessment of constitutionality, while regular courts focus on applying laws in specific cases. Constitutional courts, as guardians of constitutionality, are specialized bodies tasked with protecting citizens' fundamental rights and freedoms by evaluating the constitutionality of laws and other legal acts. They are not part of the judiciary branch (the system of regular courts), but have their own specific jurisdiction established in the constitution and laws. On the other hand, regular courts are primarily responsible for resolving disputes between citizens, applying the laws, and ensuring justice in everyday cases. They operate according to laws passed by legislative bodies and in accordance with legal principles. However, regular courts do not have jurisdiction to assess the constitutionality of laws or the decisions of other courts; their task is limited to applying existing laws. Procedures before constitutional courts differ from those before regular courts. Constitutional courts often operate with principles and norms of constitutionality, while regular courts focus on facts and the application of law. Decisions of constitutional courts are binding on all government bodies and

citizens, while regular courts decide on specific cases, and dissatisfied parties may appeal their judgments. Since decisions of constitutional courts are final and binding, it means that regular courts, as well as other state bodies, are obliged to respect them. Although constitutional and regular courts function separately, they are not entirely isolated from each other. Decisions of constitutional courts can influence the application of laws by regular courts. For example, if a constitutional court declares a law unconstitutional, all judicial decision based on that law automatically become problematic and may be revised.

Because of this, the question of how decisions of constitutional courts relate to the rulings of regular courts raises significant legal dilemmas. One of the legal dilemmas is whether the introduction of mechanisms like the constitutional complaint, which would allow for the annulment of unconstitutional judicial decisions, represents a significant step toward ensuring justice and the rule of law. It is indisputable that the constitutional complaint is a mechanism for the protection of rights. Furthermore, the constitutional complaint is one of the mechanisms that brings constitutional courts closer to resolving specific judicial decisions. This institute is present in many European countries and serves as a means through which citizens can address the constitutional court when their rights are violated by a judicial or administrative decision. In this context, the constitutional court can annul the decision of the regular court if it finds that it constitutes a violation of the constitutional rights of the citizen.

As already mentioned, in certain legal systems, such as those in Germany and Croatia, constitutional courts have the power to annul rulings of regular courts if they find that they are in conflict with the constitution and fundamental human rights. This is particularly important for ensuring the rule of law and the protection of human rights. In such cases, constitutional courts act as a "corrective" for judicial errors that may lead to the violation of constitutionally protected rights.

IV. CHALLENGES AND ADVANTAGES OF OVERTURNING UNCONSTITUTIONAL COURT DECISIONS BY CONSTITUTIONAL COURTS

The annulment of unconstitutional judicial decisions by constitutional courts is a significant aspect of the legal system, especially in the context of protecting fundamental human rights and maintaining constitutionality. This function brings with it certain challenges and advantages.

Challenges include conflicts with regular courts, overloading of the constitutional court, the danger of politicization, the risk of legal uncertainty, and limited resources.

The annulment of judicial decisions can create conflicts between the constitutional court and regular courts, especially regarding judicial independence. This can lead to tensions and legal disagreements. Regular judges may feel that their decisions are being questioned, which can affect their work. The constitutional court, with its power to annul, may create the impression that it wants to interfere in the judicial autonomy of regular courts. This could lead to tension between the institutions, particularly in cases where different courts have different interpretations of the law.

We can conclude that the annulment of unconstitutional judicial decisions by constitutional courts is an important mechanism for protecting constitutionality and fundamental human rights. Although it brings significant advantages, such as the protection of citizens' rights, it also poses challenges related to judicial independence, legal certainty, and resources. It is important to find a balance between these aspects to ensure the effective functioning of the legal system and the

protection of individuals' rights. The balance between protecting individual rights and ensuring the independence of regular courts is key to the successful operation of the legal system.

This will be illustrated through an analysis of the conflict between regular courts and constitutional courts in Germany and Spain.⁵ The conflict between regular and constitutional courts in Germany and Spain stems from the complex interaction between constitutional and judicial functions. While the mechanism of constitutional complaints serves as an important tool for protecting fundamental rights and ensuring constitutional stability, it simultaneously becomes a source of conflict due to the constitutional court's authority to review and annul decisions of regular courts. The tensions arising from these processes may be perceived as a "power struggle," but on the other hand, they also represent a necessary element of safeguarding judicial independence.

More specifically, the overlap of functions between regular and constitutional courts generates tensions between these two institutions.⁶ Regular courts not only have the right but also the obligation to apply ordinary legislation in the "light" of the constitution. They are inevitably involved in interpreting the constitution within specific judicial proceedings, which can result in differing interpretations of constitutional provisions. These differences often lead to disagreements between regular and constitutional courts. The constitutional complaint serves as a significant tool for constitutional courts in Germany and Spain to exercise control over the decisions of regular courts. This complaint enables constitutional courts to oversee and annul decisions of regular courts when deemed unconstitutional. Considering that constitutional complaints constitute the majority of cases before constitutional courts in these two countries, and that approximately 95% of the complaints are directed against judicial decisions made by regular courts, this situation creates potential for conflicts between regular and constitutional courts.⁷ A potential source of conflict lies in the fact that the constitutional court can review and annul a judicial decision that has undergone the entire process before regular courts and has become final and binding, thereby creating tensions. Regular judges sometimes struggle to accept that their final decisions can be overturned by the constitutional court. This process often leads to a dilemma: is it a matter of judicial self-defense or a power struggle between the courts? A Power Struggle or Judicial Self-Defense? Regardless of whether this conflict is referred to as judicial self-defense or a power struggle, tensions are inevitable when two distinct judicial bodies perform similar functions, with one having the authority to review and annul the decisions of the other.⁸ Constitutional courts have a unique role in safeguarding the constitution, but this role also brings with it the possibility of clashes with regular courts. To avoid conflicts, it is necessary to establish a balance between the judicial independence of regular courts and the supervisory function of constitutional courts. Finding ways to foster coexistence and collaboration is essential to achieve the ultimate goal—protecting constitutional rights.

⁵ Nino Tsereteli, „Mechanism of Individual Complaints - German, Spanish, and Hungarian Constitutional Courts - Comparative Analysis“, available at:

https://scholar.google.com/citations?view_op=view_citation&hl=en&user=bP5370YAAAAJ&citation_for_view=bP5370YAAA AJ:u5HHmVD_uO8C

⁶ Lech Garlicki, *Constitutional Courts versus Supreme Courts*, 5 Int'l J. Const. L. 44 (2007), at page 65. available at: <https://academic.oup.com/icon/article/5/1/44/722508>

⁷ Nino Tsereteli supra note, at page 34

⁸ Nino Tsereteli supra note, at page 34

V. LIMITATIONS OF CONSTITUTIONAL REVIEW AS A BALANCING MECHANISM

From the perspective of maintaining a balance of power between ordinary and constitutional courts and avoiding undue interference by the constitutional court in the activities of the ordinary judiciary, it is important to note that the jurisdiction of the Federal Constitutional Court of Germany to review decisions of ordinary courts is not unlimited.⁹ There are three key limitations that serve as important safeguards to protect ordinary courts from excessive intervention by the constitutional court in their activities:

1. **Constitutional Justification Review:** The constitutional court is authorized to examine only whether ordinary courts acted within the boundaries of the constitution regarding their decision and the applied procedure. This control focuses on constitutional justification.¹⁰
2. **Exhaustion of Remedies:** The constitutional court is empowered to intervene only after the entire procedure before the ordinary courts has been completed (i.e., all legal remedies have been exhausted).
3. **Non-Substitution of Decisions:** Even if a constitutional complaint is upheld as justified, the constitutional court does not replace the decision of the ordinary court with its own. Instead, it highlights the constitutional violation and remands the case back to the ordinary court, allowing it to reexamine the case and issue a new decision that complies with the standards set by the constitutional court.¹¹

Despite these safeguards, conflicts may still arise if, for example, the Federal Constitutional Court interprets the application of fundamental rights in other areas of law differently than the ordinary court, and thus makes a decision on a case that, in the view of the ordinary courts, does not fall within its jurisdiction. However, in such cases, the jurisdiction of the Federal Constitutional Court prevails (Article 31(1) of the Federal Constitutional Court Act).

In Spain, the Constitutional Court's ability to intervene in the activities of the ordinary judiciary is just as limited as in Germany, which significantly contributes to reducing tensions caused by the constitutional guardian's oversight of ordinary courts.¹² The requirement to exhaust all legal remedies is a crucial limiting factor (Article 53(2) of the Constitution, Articles 41(1), 43, and 44(1)(a) of the Spanish Constitutional Court Law - SLCC). Furthermore, Article 54 of the Spanish Constitutional Court Law explicitly stipulates that in reviewing a constitutional complaint concerning the decision of an ordinary court, the Constitutional Court's role is limited

⁹ Nino Tsereteli supra note, at page 35

¹⁰ There are two aspects of the activities of ordinary courts that are subject to review by constitutional courts: review of the content of judicial decisions **and** review of judicial procedures. The latter focuses on violations of fundamental rights related to the conduct of civil or criminal proceedings and is subject to particularly intensive scrutiny by the constitutional court. For details, see: Cristina Ruth, Kai Lohse, *Constitutional Review of Decisions of Non-constitutional Courts by the Federal Constitutional Court*, Report for the Seminar “*The limits of constitutional review of ordinary courts’ decisions in Constitutional Complaints Proceedings*”, pp. 4-6, 9-16, available at:

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-JU\(2005\)061-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-JU(2005)061-e).

¹¹ Oliver Klein, „The Federal Constitutional Court’s Relation with German Ordinary Courts“, Report for the Seminar “Interrelations between Constitutional and Ordinary Courts”, at pp. 3-5, available at [www.venice.coe.int/docs/2006/CDL-JU\(2006\)045-e.pdf](http://www.venice.coe.int/docs/2006/CDL-JU(2006)045-e.pdf)

¹² Nino Tsereteli supra note, at page 36

to determining whether the applicant's rights or freedoms have been violated and ensuring the protection or "restoration" of those rights or freedoms, excluding any further commentary on the actions of the judicial bodies. Importantly, the Constitutional Court cannot intervene in the process of interpreting and applying legislation by the ordinary courts unless a constitutional violation occurs.¹³

Whenever a fundamental human right is relevant to the interpretation of laws, the interpretation adopted by the Constitutional Court's rulings takes precedence. In all other areas, however, the jurisprudence of the Supreme Court provides the most authoritative interpretation, not only of "ordinary laws" but also of the Constitution itself. Tensions between the Spanish Constitutional Court and the Supreme Court remain common and occasionally reach absurd levels. For instance, in a decision dated January 23, 2004, the Supreme Court of Spain (First Chamber) ordered judges of the Constitutional Court to pay compensation to a citizen whose complaint had been declared inadmissible by the Constitutional Court. The Supreme Court considered that the reasons for the Constitutional Court's decision of inadmissibility were insufficient and that the claimant's faith in the rule of law had been undermined. According to the Supreme Court, the damage caused by each judge to the claimant amounted to €500.

Regarding the relationship between ordinary courts and constitutional courts in Germany and Spain, as well as the role of the constitutional complaint within this relationship, it can be concluded that, first, ordinary courts are primarily responsible for the protection of human rights, while the constitutional court intervenes only in exceptional circumstances, with its powers limited to verifying whether constitutional rights have been violated.¹⁴ However, the supervisory function of the constitutional court plays a significant role in the effective functioning of the entire rights protection system. Its jurisprudence serves as a guide for ordinary courts on how to safeguard constitutional rights. The differences in the courts' perspectives and the constitutional court's power to overturn decisions of ordinary courts create tension and become a source of conflict.

This type of conflict does not contribute to achieving the shared goal of these institutions—ensuring the protection of constitutional rights. Judicial coexistence and cooperation, where ordinary courts do not perceive the constitutional court as a rival or an intruder into their jurisdiction but instead follow the principles developed by the constitutional court when revisiting cases, while the constitutional court refrains from exceeding the limits of its authority, are essential prerequisites for achieving this goal.¹⁵

Although it is difficult to acknowledge errors made due to insufficient attention to constitutional rights and to see relevant decisions overturned as a result of constitutional complaints, this type of oversight is necessary as a corrective mechanism and a guide for future actions. On the other hand, excessive interference by the constitutional court in the activities of ordinary courts should be avoided through the imposition of limits. Such limitations are mutually beneficial as they protect the court from an excessive influx of cases, which can be challenging to handle given the limited resources of the constitutional court.¹⁶

¹³ Ignacio Borrero Iniesta, Limits of Facts, Law and Remedies, Myths and Realities, in Constitutional Review of Judicial Decisions, Spanish Experience, Report for the Seminar "The limits of constitutional review of ordinary courts' decisions in Constitutional Complaints Proceedings", at p. 9. available at [www.venice.coe.int/docs/2005/CDL-JU\(2005\)068-e.pdf](http://www.venice.coe.int/docs/2005/CDL-JU(2005)068-e.pdf)

¹⁴ Nino Tsereteli supra note, at page 37

¹⁵ Nino Tsereteli supra note, at page 37

¹⁶ Nino Tsereteli supra note, at page 37

One of the key factors in assessing the effectiveness of the constitutional complaint mechanism, and which serves as a prerequisite for public acceptance and support of the constitutional court, is the corrective measures that the constitutional court can grant to the complainant if it is determined that a constitutional right has been violated.¹⁷

In Spain, the Constitutional Court may either grant or deny protection (Article 53, Law on the Constitutional Court of Spain).

As further outlined in Article 55 of the same law, in cases where protection is granted, the Constitutional Court may take one of the following measures:

1. **Declare the decision that violates the constitutional right null and void.** Similar to the German model, when the Spanish Constitutional Court reviews a constitutional complaint regarding decisions of ordinary courts, its role is limited to determining whether the applicant's rights or freedoms have been violated. If a judicial decision infringes constitutional rights, it will be annulled. The case may be referred back to the ordinary courts, which will decide the matter again, this time respecting constitutional rights.¹⁸ If no specific referral is made, the parties involved and the courts are left to determine whether appropriate judicial action is necessary. The annulment of a criminal conviction by the Constitutional Court will not lead to a reopening of the case (new trial or new decision by the criminal court) unless explicitly ordered in the constitutional ruling.¹⁹ Referral may be mandated when the violation affects fundamental procedural guarantees, especially the right to a fair trial.²⁰
2. **Acknowledge publicly that a specific right or freedom has been violated without declaring any legal norm invalid.**²¹
3. **"Restore" the complainant's rights or freedoms by adopting appropriate measures.** This is a distinguishing feature of the Spanish Constitutional Court, which can not only annul a decision but also restore the complainant to their prior position by taking necessary steps.

Compensation for violations of constitutional rights may involve monetary damages; however, the Spanish Constitutional Court confines itself to establishing the violation of constitutional

¹⁷ Nino Tsereteli supra note, at page 45

¹⁸ Ignacio Borraro Iniesta, Limits of Facts, Law and Remedies, Myths and Realities, in Constitutional Review of Judicial Decisions, Spanish Experience, Report for the Seminar "The limits of constitutional review of ordinary courts' decisions in Constitutional Complaints Proceedings", at p. 13-14, available at [www.venice.coe.int/docs/2005/CDL-JU\(2005\)068-e.pdf](http://www.venice.coe.int/docs/2005/CDL-JU(2005)068-e.pdf) (Cited Judgments Chocolates Elgorriaga, 29/1989 of 6 February; Juan Sánchez Domínguez, 34/1997 of 25 February; or Ángel Cuellar Llanos, 203/2004 of 16 November).

¹⁹ Judgment Alcalde de Soria II, 159/1987 of 26 October, cited in Ignacio Borraro Iniesta, Limits of Facts, Law and Remedies, Myths and Realities, in Constitutional Review of Judicial Decisions, Spanish Experience, Report for the Seminar "The limits of constitutional review of ordinary courts' decisions in Constitutional Complaints Proceedings", at p. 14.

²⁰ Judgments 215/1999 of 29 November, and 168/2001 of 16 July cited in Ignacio Borraro Iniesta, Limits of Facts, Law and Remedies, Myths and Realities, in Constitutional Review of Judicial Decisions, Spanish Experience, Report for the Seminar "The limits of constitutional review of ordinary courts' decisions in Constitutional Complaints Proceedings", at p. 14.

²¹ A second example is offered by the finding that surveillance of telephone conversations was in breach of the right to secret communications; but the conviction of the defendant is supported by independent evidence, not tainted by the illegal wiretapping, so the ruling of the criminal courts is in conformity to the right to be presumed innocent (Judgment 205/2005 of 18 July).

rights and does not award damages, leaving this function to the ordinary courts.²² Nonetheless, in exceptional cases, the Constitutional Court may itself grant compensation.²³

In the Republic of North Macedonia, there exists a "quasi-constitutional complaint."²⁴ This conclusion arises from determining whether a constitutional complaint exists in the country by employing the definition of the German author Rudiger Zuck. According to Zuck, a constitutional complaint is a special legal remedy aimed at the protection of fundamental rights, directed against public authority—that is, against acts of all three branches of government (legislative, executive, and judicial)—with the purpose of safeguarding all fundamental rights of the individual. This includes not only rights of a negative status but also those of an active status, ensuring the protection of one's own rights rather than the rights of others. This remedy can be utilized through the claimant's declaration that a certain right has been violated, which suffices for employing this instrument, though it is not, in itself, a fundamental constitutional right.²⁵

According to Article 110, paragraph 3 of the Constitution, the Constitutional Court "protects the freedoms and rights of individuals and citizens relating to freedom of belief, conscience, thought, and public expression of thought, political association and activity, and prohibition of discrimination based on gender, race, religious, national, social, or political affiliation." Article 50, paragraph 1 of the Constitution stipulates that "every citizen may request the protection of freedoms and rights established by the Constitution before the courts and the Constitutional Court of the Republic of Macedonia through procedures based on principles of priority and urgency."

Article 113 of the Constitution provides that the manner of operation and procedure before the Constitutional Court is regulated by an act of the Constitutional Court.

According to Article 51 of the Rules of Procedure of the Constitutional Court²⁶, which ceased to be valid upon the adoption of the Act of the Constitutional Court of the Republic of North Macedonia²⁷: "Any citizen who considers that their right or freedom, as established by Article 110, paragraph 3 of the Constitution of the Republic of Macedonia, has been violated by an individual act or action may request protection from the Constitutional Court within two months from the delivery of the final or legally binding individual act or from the moment they became

²² Ignacio Borrajo Inieta, Limits of Facts, Law and Remedies, Myths and Realities, in Constitutional Review of Judicial Decisions, Spanish Experience, Report for the Seminar "The limits of constitutional review of ordinary courts' decisions in Constitutional Complaints Proceedings", at p. 14.

²³ After finding the violation of the right to privacy of Mrs. Preysler through the constitutional complaint and remanding the case to ordinary courts (first Preysler Judgement, 115/2000 of 5 May), the Supreme Court, though complying with the constitutional declaration, drastically reduced the compensation awarded by lower courts. In consequence of filing the second constitutional complaint, the Constitutional court ruled that the amount awarded by the Supreme Court was clearly inadequate to compensate the breach of the fundamental right and without remanding the decision for the second time, granted the compensation. (sited in Ignacio Borrajo Inieta, Limits of Facts, Law and Remedies, Myths and Realities, in Constitutional Review of Judicial Decisions, Spanish Experience, Report for the Seminar "The limits of constitutional review of ordinary courts' decisions in Constitutional Complaints Proceedings", at p. 14.

²⁴ Renata Treneska-Deskoska, Constitutionalism and Human Rights, "St. Cyril and Methodius" University, Faculty of Law "Justinian I" Skopje, Skopje 2006, page no. 270.

²⁵ Renata Treneska-Deskoska, Constitutionalism and Human Rights, "St. Cyril and Methodius" University, Faculty of Law "Justinian I" Skopje, Skopje 2006, page no. 271.

²⁶ Rules of Procedure of the Constitutional Court of the Republic of Macedonia ("Official Gazette of the Republic of Macedonia" no. 70/1992 and "Official Gazette of the Republic of North Macedonia" no. 202/2019, 256/2020, and 65/2021).

²⁷ Act of the Constitutional Court of the Republic of North Macedonia ("Official Gazette of the Republic of North Macedonia" no. 115/2024).

aware of the action causing the violation, but no later than five years from the occurrence of the violation.”

Under the Rules of Procedure of the Constitutional Court of the Republic of North Macedonia, it was possible to submit a request for the protection of freedoms and rights at any stage of the proceedings for exercising those rights and freedoms, as the request was not defined as subsidiary. This meant there was no requirement to exhaust all legal remedies against the act causing the violation of constitutional freedoms and rights. Additionally, Article 56 of the Rules of Procedure stipulated that in its decision on the protection of freedoms and rights, the Constitutional Court would determine whether a violation existed and, depending on the finding, annul the individual act, prohibit the action causing the violation, or reject the request. Article 82 further provided that in such decisions, the Constitutional Court would determine how to remove the consequences of the application of the individual act or action that violated those rights and freedoms.

With the adoption of the new Act of the Constitutional Court of the Republic of North Macedonia, these two significant aspects were abandoned. Article 53, paragraph 3 of the Act now stipulates that a request for the protection of freedoms and rights established by Article 110, paragraph 3 of the Constitution can only be submitted after all regular and extraordinary legal remedies against the individual act have been exhausted. Furthermore, the mandatory annulment of the individual act causing the violation was entirely abandoned. According to Article 57 of the Act, the Constitutional Court will determine whether there was a violation of freedoms and rights or reject the request. If a violation is established, the Court will determine how to remove the consequences of applying the individual act or action. However, no provision in the Act mandates the annulment of the individual act causing the violation.

VI. CONCLUSION REMARKS

The protection of constitutional rights in North Macedonia faces significant limitations due to the lack of mechanisms that allow the Constitutional Court to annul unconstitutional judicial decisions. The following points summarize the critical conclusions and necessary reforms:

- *Lack of Direct Authority*: The current legal framework in North Macedonia does not empower the Constitutional Court to annul unconstitutional judicial decisions, limiting direct and effective protection of constitutional rights.
- *Restricted Competence*: While the Constitutional Court can annul or repeal laws forming the basis of judicial decisions, it cannot annul the decisions themselves, resulting in limited protection of citizens' fundamental rights.
- *Legal Uncertainty*: The absence of authority to annul unconstitutional judicial decisions creates legal uncertainty and diminishes the effectiveness of constitutional rights protection.
- *Need for Reform*: There is a pressing need to introduce mechanisms for annulling unconstitutional judicial decisions to enhance the Constitutional Court's role as a guarantor of constitutionality and to ensure comprehensive rights protection.
- *International Practice*: Comparative analysis of international legal systems demonstrates that constitutional courts with authority to annul judicial decisions provide more effective mechanisms for protecting fundamental rights, ensuring legal certainty and adherence to constitutional supremacy.

- *Balanced Approach*: While this issue raises potential conflicts regarding judicial independence, balancing the protection of constitutional rights with preserving judiciary autonomy is achievable and necessary.
- *Proposal for Amendments*: Until a constitutional complaint mechanism is introduced through amendments to the Constitution, the Act of the Constitutional Court should be amended to grant the Court authority to annul judicial decisions that conflict with the Constitution.
- *Broader Impact*: Granting the Constitutional Court such authority would enhance public trust in the legal system, strengthen the Court's oversight of the judiciary, and provide citizens with effective remedies for protecting their rights.
- *Legal Certainty and Human Rights*: Introducing this authority would ensure that judicial decisions align with fundamental constitutional rights, enhancing legal certainty, safeguarding human rights, and reinforcing the constitutional order.
- *Comparative Insights as a Model*: Legal systems with such mechanisms can serve as models for advancing constitutional mechanisms in North Macedonia, enabling the development of effective legal remedies for citizens.

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