THE RELATION BETWEEN THE CONSTITUTIONAL COURT AND THE PARLIAMENT - SHADOW PLAY OR WILD MOOD SWINGS (CASE STUDY OF THE REPUBLIC OF MACEDONIA)

Jelena Trajkovska – Hristovska *

I. Determinants on which the relation between the Constitutional Court and the Parliament depends

The constitutional court doctrine testifies that the European constitutional courts are not courts that reach so-called "extravagant" decisions as the "guardian of the constitutionality" in the USA – the Supreme Court. They are not courts which often cause "tectonic" movements in the social values system. However, regulating the constitutional courts issues in the constitution represents a symbol of materialising the idea for constitutional and judicial control of the constitutionality (control of the constitutionality and legality performed by constitutional courts) as an invaluable guarantee of human rights and freedoms. Now, in the legal and political theory, the Constitutional Court is considered as supreme interpreter of the constitution, conditio sine qua non for proper functioning of the constitutional order, adroit collaborator with the other state authorities and successful guardian of the constitutionality. It is a construction without which "the brave new world" cannot be imagined. Compared to the actions of the USA Supreme Court, which is often evaluated as the action of the "raging bull" by the constitutional theory, the constitutional courts represent discrete, often modest and inexpressible institutions, which feature with careful and strategic avoidance of the confrontation with the other authorities in the system, closed action and adoption of well-argued and brave decisions which have the quality to start a completely new phase in the constitutional development with inexplicable subtleness.

The constitutional court literature emphasises that the European systems of control of the constitutionality respect the spirit of cooperation among the institutions in the system. This cooperation is realised as a result of a "mutual respect for the competencies of the other institutions". The relation of the Constitutional Court and the Parliament is determined at two levels:

II. Legal framework which determines the relation

* Jelena Trajkovska – Hristovska, PhD, Assistant Professor, Ss. Cyril and Methodius University, Faculty of Law "Iustinianus Primus", Skopje, R. Macedonia

The established legal framework or the totality of norms and legal rules provided for in the constitution, the laws and rules of procedure of the Constitutional Court and the Parliament directly determine their mutual relations. These rules regulate the issues on:

- *Adoption and revision of the Act on Constitutional Court* – Besides the constitution, this Act is the second source and a basis which regulates in details the issues related to the status, organisation and the competencies of the constitutional court. The fact that this materia is regulated by act, as an act adopted by the legislative authority, is not perceived in the modern constitutional court literatures as a manner by which its independent position is endangered in the political system based on the principle of separation of powers. The cooperation between the constitutional court and the legislative authority may be successfully realised in conditions of amending and supplementing the act on constitutional court. Namely, although the parliament has exclusive competence for adopting and amending the act on constitutional court, and it is not obliged to the opinion of the court, the experience is always positively assessed and a practice has been established for the courts to be consulted before the revision of the act. In such conditions, often the president of the court expresses the view of the court on the concrete amendments and the so far experience from the application of the existing solutions, not only in the parliamentary but also in the pre-parliamentary phase of the legislation process after consulting the remaining judges. The Constitutional Court in the Republic of Macedonia is *materia constitutionis*, but not *materia legis.* The provisions referring to the Constitutional Court are regulated in the part IV of the Constitution of the Republic of Macedonia. From these constitutional provisions it can be established that the Constitutional Court of the Republic of Macedonia is an authority separated from the judicial system with a task to "guard the constitutionality and legality"[1]. The provisions from the Constitution which refer to the Constitutional Court (Articles 108-113) are very modest and general. Namely, the constitutional solutions referring to the position, constitution, competencies and types and effect of the decisions of the Constitutional Court are few and very general. On the other hand, the provision from Article 113 of the Constitution which establishes that the

[1] Article 108 of the Constitution of the Republic of Macedonia from 1991

"manner of work and the procedure before the Court are regulated with an act by the Court"[2], leaves an impression that the constitutor excluded the possibility the matter for the Constitutional Court to be thoroughly regulated by act. It can be assumed that the leading idea for the mentioned unfortunate constitutional solution was to provide greater independence of this institution. However, it must be emphasised that not only the realisation of this leading idea of the constitutor has not been conducted by excluding the possibility for adoption of a act on constitutional court, it also opens much greater danger the modern constitutionalism fears of – the so-called *counter-majoritarian difficulty*. The statement of Deskoska that "the possibility for the constitutional judges to decide on very important issues regarding their own position is unacceptable and may lead to violation of the "check and balance" principle"[3] represents implementation of the Bickel theory on counter-majoritarian difficulty of the so-called case study of Republic of Macedonia. Namely the statutory issues related to the Constitutional Court should be regulated by the specific Act (lex specialis) since it is expected for the legal regulation of the matter for the Constitutional Court to raise the quality of elaboration of these issues now regulated by the Rules of Procedure of the Court. The absence of a law which would regulate the issues referring to the Constitutional Court is an issue which is related to the legal basis of the constitutional and judicial control of the constitutionality on one hand, and more importantly the issue of where the Constitutional Court obtains its legality. By excluding the possibility the issues of the Constitutional Court to be regulated by law, it seems that the Macedonian „founding fathers" preformed radical extension of the request for separation of the Court from the influence of the legislative authority. In the context of the aforementioned, appears the issue where the Constitutional Court of the Republic of Macedonia obtains its legality from. Namely, the constitutional solution provides for that the Constitutional Court shall obtain its legality from the Constitution (*materia constitutionis*), and simultaneously from the Rules of Procedure of the Constitutional Court of 1992. So, although the constitutional provision provides that the manner of work and the procedure before the Court are regulated with an act of the Court, the Rules of

[2] Article 113 of the Constitution of the Republic of Macedonia
[3] *Рената ТРЕНЕСКА-ДЕСКОСКА, Конституционализмот и човековите права*, Скопје, 2006, p.273

Procedure of the Constitutional Court also regulate a materia which transforms this act from procedural to constitutional one. *Siljanovska* says, that the case of the Republic of Macedonia is the only one where "a procedural act became legal and constitutive, although it is not adopted by the Assembly of the Republic of Macedonia".[4] The last one, especially because the Rules of Procedure of the Constitutional Court regulate the issues referring to *the immunity of the judges, legal effect of the decisions, enforcement of decisions, conditions under which the citizens can request protection of certain violated rights,* etc. which in the comparative constitutional law are framework set up in the constitution, but regulated with Act on the Constitutional Court, in details. Thus, it seems that the constitutor created constitutional gap which was left to be regulated by an act which in the hierarchy of legal acts is set up under the acts, and *in this manner it directly puts the Constitutional Court in the role of creator of norms.* Led by the Jefferson's thesis according to which "appointing the judges for last and ultimate arbiter of the constitutional issues is extremely dangerous doctrine which may lead to despotism and oligarchy"[5], the modern systems try to minimise this appearance and to provide instruments through which this would be limited. Compared to them, avoiding the domination of the legislative authority on the Constitutional Court and using this and many other solutions, the Macedonian constitutor left great room for manoeuvring which allows the Constitutional Court to transform into extremely powerful institution in the system. Therefore, it can rightly be concluded that the aforementioned constitutional solution leaves a room to the fear of modern constitutionalism to appear and maintain in the Republic of Macedonia - transformation of the Constitutional Court in the creator of norms, and in this case also a creator of constitutional provisions. Finally, there is a bitter aftertaste from the impression that the issue of the counter majoritarian difficulty, and according to some authors this is "constitutional deviation", which was not even foreseen in the period when the constitutional norms for the Constitutional Court were created. Additional dilemma is whether the few constitutional provisions for the Constitutional Court will provide the so-called Bickel's passive

[4]*Гордана СИЉАНОВСКА-ДАВКОВА,Уставниот суд на Република Македонија -од мој агол*, FORUM EUROPAEUM -Уставниот суд на Република Македонија-статус дилеми и перспективи, Скопје, 2010, p. 14
[5] John AGRESTO, *The Supreme Court and Constitutional Democracy*, Cornell University Press, 1984, p .95

virtue. The issue of the so-called *counter majoritarian difficulty* will be additionally emphasised if its effect on the constitutional gap is being analysed. Namely, if we take into consideration that the Rules of Procedure regulate not only procedural, but constitutional matter as well, the conclusion that the Rules of Procedure softens the legal regime of the Constitutional Court is understandable. If we add to this the fact that the Rules of Procedure of the Constitutional Court is adopted only by 5 out of 9 votes of the judges, then it is inevitable to face the issue whether the Constitutional Court should "cure the pathology of the system" and to remove "the constitutional deviation" or in the concrete case produce it.

- *The procedure for selection and appointment of judges* – This is one more point of connection of the parliament with the constitutional court. The Constitutional Court of the Republic of Macedonia is composed of nine judges. The judges of the Constitutional Court are selected by the Assembly of the Republic of Macedonia. The Assembly of the Republic of Macedonia selects 6 judges by majority votes from the total number of MPs. The Assembly selects 3 judges by majority votes of the total number of MPs, whereupon there must be majority votes of the total number of MPs belonging to the communities which are not majority in the Republic of Macedonia. The mandate of the judges is 9 years without a right to re-election[6]. So, the composition of the Constitutional Court is determined by 3 authorities. The Assembly of the Republic of Macedonia, the President of the Republic of Macedonia and the Judicial Council are authorities included in the procedure for proposing constitutional judges. The President of the Republic of Macedonia proposes two judges, the Judicial Council proposes two judges and the Committee for Selection and Nomination of the Assembly proposes the remaining five judges. Comparative analysis of the election (appointment) of the judges of the constitutional courts classifies two basic models of election and one hybrid model which synthesise the elements of the previous two models[7].. The model of election of judges of the Constitutional

[6] Article 109 paragraph 1 and 2 of the Constitution of the Republic of Macedonia

[7]

- Model of direct appointment of the judges-members (e.g. France – the President of the Republic, President of the National Assembly and the Senate chose 3 members of the Constitutional Court, respectively,) It can be assumed that the basic intention of the French constitutor with the accepted solution was to exclude both

Court of the Republic of Macedonia classifies in the second model – model which provides for the legislative authority to perform the election of judges on proposal of the authorised subjects. The insistence all three branches of government to be included in the selection of the constitutional judges is a common thing for all three models. On the other hand, it is considered that the political influence on the work of the constitutional court would significantly decrease if the authorities included in the procedure for their proposal (selection) are equally included. This leaves a room to think about two alternative solutions for the case of the Republic of Macedonia:

1) Each authority to appoint equal number of judges (three judges each) – that is, replacement of the selection of the constitutional judges by the legislative authority by their appointment by the Assembly of the Republic of Macedonia, the President of the Republic of Macedonia and the Judicial Council of the Republic of Macedonia, or

2) Keeping the existing model of selection of judges of the Constitutional Court (i.e. election by the Assembly) with a possibility all the three authorities to determine the composition of the Court, to be parity included.

---

legislative houses from the selection of the members of the Constitutional Council in order to strengthen their constitutional position, or Finland, for example, where the election is performed by the President of the Republic who appoints the judges after previous consultations with the Council of Ministers and the Minister of Justice.

- The model of election of judges according to previous proposal (Slovenia – the Constitutional provision from Article 163 provides for the judges of the Constitutional Court to be elected by the National Assembly on the proposal of the President of the Republic in a procedure determined by law, and Germany – the provisions from Article 5 of the Federal law provide for the both legislative houses (Bundestag and Bundesrat) to elect 4 judges, respectively – half of the members of the both hoses of the Constitutional Court. Republic of Macedonia is also included in this model.
- The third model of election of judges in the constitutional courts Is marked as hybrid and represents a mix of the solution offered by the aforementioned models. (Italy – the constitutionally defined number of 15 judges in the Constitutional Court is achieved by election of 5 judges who are elected by the judicial system as "representatives of justice". Five judges are elected by the parliament on common session of the both houses with 3/5 majority of votes out of the total number of MPs in the legislative body. The remaining five judges are elected by the President of the Republic according to his own initiative. Spain – the Constitutional Court of Spain is composed of 12 judges appointed by the King after previous election from different state authorities. The constitutional provision from Article 159 provides for 4 judges to be nominated – elected by the Congress with 3/5 majority of votes out of the total number of members, 4 judges to be appointed on the proposal of the Senate with the same majority of votes, two to be nominated by the Government and two by the General Council of the judicial authorities. The legislative authority has dominant influence)

- *Termination of the office of a judge of the constitutional court* – The position of the Constitutional Court in the system of organisation of authorities is also determined by the basis for termination of the judicial function. The Constitution of the Republic of Macedonia provides for the mandate of the judge of the Constitutional Court to be 9 years without a right to re-election. In addition, the constitutional provision from Article 111 paragraph 4 provides for that the office of a judge of the Constitutional Court ceases of the judge terminates before the expiry of the mandate only if: 1) he/she resigns, 2) if sentenced for a criminal offence to unconditional imprisonment of a minimum of six months and if 3) he/she permanently loses his/her ability to perform the office which is determined by the Constitutional Court. Namely, the independent character of the function of a judge of the Constitutional Court is expressed only through the possibility he/she to be dismissed before the expiry of the mandate only under conditions provided for in the Constitution[8]. The aforementioned constitutional solution is a leftover of the constitutional solutions from 1963 and 1974 and it regulates the conditions when the judge of the Constitutional Court can be dismissed form his/her office in extremely restrictive manner – only if the judge puts himself/herself in a situation which makes him/her unworthy for performing this function, or when there are circumstances due to which he/she is no longer able to perform the service of a judge of the Constitutional Court. ,"Besides these reasons, there is no possibility for the constitutional judge to be dismissed from the judicial function before the expiry of the mandate"[9]. The conditions for early termination of the judicial office are determined by the Constitutional Court, and not another state authority[10]. Quite another issue is the experience of the Republic of Macedonia related to the constitutional basis for termination of the service of a judge of the Constitutional Court of the Republic of Macedonia and the view of

[8] *Саво* КЛИМОВСКИ, Рената ДЕСКОСКА, Тања КАРАКАМИШЕВА-ЈОВАНОВСКА. Уставно право, Просветно дело, Скопје,2012, p. 506

[9]*Светомир ШКАРИЌ, Гордана СИЉАНОВСКА-ДАВКОВА, Уставно право,* Скопје, 2007,p 746

[10] The solution from the Rules of Procedure from Article 67 provides for the Constitutional Court to decide at a session on the permanent lose of ability of a judge of the Constitutional Court to perform his/her function, as well as the waiver of immunity. The permanent loss of the ability is established on the basis of acts, findings, expert and professional opinions of medical and other authorities and institutions which establish health or another disability in accordance with the law. The Constitutional Court determines a commission of 3 judges of the Constitutional Court which examines the circumstances, facts and proves of significance for the Court decision. Article 67 of the Rules of Procedures of the Constitutional Court of the Republic of Macedonia.

the Assembly of the Republic of Macedonia on the aforementioned constitutional norms. Probably, the most adequate example for this is the dismissal of the judge Trendafil Ivanovski in April 2011 by the Assembly of the Republic of Macedonia by adopting a Decision for Failure to Fulfil Additional Requirement for Performing Public Function and Termination of the Public Function of a Judge of the Constitutional Court of the Republic of Macedonia. Namely, with this Decision, the Assembly of the Republic of Macedonia has established that the additional requirement from Article 2 paragraph 1 of the Act on Determination of Additional Requirement for Performing Public Function has not been met. Thus, the additional requirement for performing public function from the Decision of the Assembly of the Republic of Macedonia has greater legal power than the constitutionally established basis for dismissal of a judge of the Constitutional Court of the Republic of Macedonia. Finally, it is contrary to the perception of the constitution as highest general legal act, contrary to the principle of supremacy of the constitution, principle of constitutionality and legality, principle of rule of law and principle of legal certainty.

- *Issues related to the budget of the Constitutional Court* - the budget is extremely powerful instrument used for determining the relations of the Constitutional Court with the Assembly of the Republic of Macedonia or the Government of the Republic of Macedonia which is the only one authorised to submit proposal for its adoption. In this context, there is always a positive assessment for the practice before the adoption of the budget the legislative authority to take into consideration the needs and the means which are necessary for the Court which are delivered as a proposal by the president of the court to the legislative authority or the government. The national reports of the Constitutional Court of Macedonia, concluded that although the Constitutional Court prepares Draft Budget at the end of each year which is submitted to the Ministry of Finance, the practice of approving 20% less financial means for its work is common[11]. The "money power" is an exceptional tool for influencing on the work of the Court, which also

[11] *Уставна правда: функции иодноси со други јавни* органи. Национален извештај на Уставниот суд на РМ. 2011. *Проблематиката на законодавниот пропуст во уставно-судската практика*. Национален извештај на уставниот суд на РМ. 2007. www.ustavensud.mk

determines the relations of this authority with the other authorities in the system of organisation of the government.

- *The procedural action which may be undertaken by the legislative authority and the constitutional court after the nullification of a certain act contrary to the Constitution* – the constitutional experience shows that the issue of acting of the institutions after the annulment of the unconstitutional act by the constitutional court is very bitter (problematic). *Cvetkovski* emphasises that "the constitutional projection is creation of a basis and a framework of the power of the constitutional courts with its act to maintain the dynamic equivalence between the freedom of the political opportunity, expressed in the acts of the political power and other holders of the normative action and the obligation for it to be within the frames of the Constitution"[12]. The issue appears when the legislator adopts again the legal solution which has already been assessed as unconstitutional. The experience shows that it does not prevent the court to decide again on the constitutionality of the new law. Namely, in this case the court does not restrict itself on deciding on the basis of res judicata although it already decided on this legal issue, and begins with meritorious decision making again. From formal and legal aspect, the court derives this authorisation from the legal provisions and the inability not to act on proposal submitted by the authorised proposer. The action of the legislative authority is assessed as unallowed political manoeuvring conducted in order to adopt the legal solution which was already established as unconstitutional. In this case, the interpretative decisions are instruments for balancing of the polarised relations between the constitutional court and the legislative authority. These decisions have the principle of interpreting the act in accordance with the constitution in their essence, whenever possible. This principle is a basis for the self-restraint doctrine and a mechanism whose primary goal is to disable the appearance of judicial activism. This is the leading principle for avoiding the deviation of the classical principle of separation of powers. However, the adoption of the interpretive decision can be used for skillful transformation of the self-restraint mechanisms into activism mechanisms. The

[12] Цветан ЦВЕТКОВСКИ, *Карактерот и правното дејство на одлуките на уставните судови во уставниот систем на СФРЈ (докторска дисертација)*, Скопје,1991, p. 54

interpretive decision through which the court fills the created legal gaps, declares on the purposefulness of the disputed act or expresses a point of view on the manner according to which certain social relations may be regulated may easily transform the constitutional court from "negative" into "positive" or "parallel" legislator. Therefore, special attention should be paid to their adoption, especially if there is an intention the constitutional court to avoid the idea of an authority which acts outside its determined functions and competencies.

III. Established practice of respecting the institutions, their work, competencies and decision adopted by them as a presumption to preserve the spirit of cooperation

The establishment of the practice, the institutions to preserve the spirit of cooperation, is the second element influencing their mutual relations.

The will of all actors in the political system to provide respect and enforcement of the decisions of the Constitutional Court is a necessity for the protection of the Constitution, protection of the principle of constitutionality and legality and the principle of legal certainty.

The caravaggism and the shadow play or the so-called wild mood swing in the case study of the Republic of Macedonia is most adequately represented through the practice of deciding established by the Constitutional Court and the manner by which the Assembly of the Republic of Macedonia responds to its decisions. Namely, the Constitutional Court of the Republic of Macedonia has inconsistent attitude towards the possibility all acts of the Assembly of the Republic of Macedonia not having feature of a act, and having action *erga omnes tanguit*, to appear as a subject of control of the constitutionality. From the so far practice, it is evident that the Rules of Procedure of the Assembly of the Republic of Macedonia is susceptible to control of constitutionality, which cannot be said for the Conclusions adopted by the Assembly for which the Constitutional Court stands firmly on the belief that they regulate the relations among certain number of persons and are concrete acts (regulate internal relations) of this authority. On the other hand, the persistence and determination of the legislative authority to implement certain policy translated into the acts adopted by it is evident, even when the Constitutional court declared its opinion and abolished or annulled them, emphasising their unconstitutionality. In the context of the aforementioned, the Assembly of the Republic of Macedonia applies two techniques:

- By amending and supplementing the laws for which a cassation decision has been adopted, the Assembly reintroduces provisions for which the Court already ruled them as unconstitutional. The example with the Act on Additional Requirements for Performing Public Function followed by a decision of the constitutional court, the Acts Amending the act on Additional Requirements for Performing Public Function, followed again by a decision for unconstitutionality of the disputed decisions, then adoption of a new act which regulates this matter and procedure pending before the Court. The manipulative behaviour of the legislative authority in these conditions raises the issue on counter-majoritarian difficulty causing ping-pong effect, which finally influence the principle of constitutionality and legality, protection of the principle of legal certainty and principle of equality.
- The second technique is importing already abolished provisions from one act into the legal text of another act. Such is the case with the decision of the Constitutional Court[13] by which the Court abolishes provisions from the Act on the Legal Status of the Church, Religious Community and Religious Groups in which provisions from another decision of the Court have been included[14] which have already been abolished and refer to the Act on Primary Education[15].

Finally, the enforcement of the decision is also determined by the determination of the Constitutional Court to "watch over" the constitution in the real sense of the word and to protect the established order against unconstitutional and unlawful legal acts. Initially, this means that the Court must establish consistent and continuous attitude towards certain constitutional issues. The frequent change of practice leaves an impression of insecurity and transforms the Constitutional Court in an authority which manoeuvres in the concrete constitutional momentum

[13] U. No. 140/2009
[14] U. No. 202/2008
[15] Namely, the landscape of the chronologically set acts would look as follows: 1) Law on Primary Education which stipulates that religious education can be realised in primary school as an optional subject (Article 26). Decision of the Constitutional Court U. No. 202/2008 of April 2009 which abolishes the disputed Article 26 under the explanation that the legal solution violates the academic and neutral character of the state. Law on the Legal Status of the Church, Religious Community and Religious Group which, regulating the matter of establishment, legal status of religious communities, organisation of the religious service, prayer, religious rite, religious teaching, stipulates that the religious education can be organised in all educational institutions as an optional subject, conducted by persons meeting special requirements for this goal, as well as an obligation for parent or custodian permission for listening religious education of persons under 15 years of age. (The already abolished provisions are included in a new law). 4) Decision of the Constitutional Court U. No. 104/2009 of September 2010 which abolishes the disputed articles 27, 28 and 29.

instead in the authority which is real protector of the "spirit of the constitution". The decisions adopted by the Court should be justifiably set up, well explained and well-argued. They should be inspirational and awake the feeling that their execution not only protects the Constitution, but also the values on the basis of which the system is based and developed.

IV. Conclusion

The modest constitutional provisions of the Constitution of the Republic of Macedonia and the several specific constitutional solutions have faced the Constitutional Court with accusations of judicial activism on one hand and with scepticism in its capacity to pass decisions that would annul the unconstitutional legal provisions, on the other. Thus, it seems that the position and authority of the Court in the system is a logical consequence of two cumulative facts: the lack of specific engagement of the „founding fathers" and the inconsistent practice and the frequent lack of well-argued and elaborated decisions of the court.

However, it cannot be left out that the Constitutional court was confronted with the challenge to participate in the fundamental change of the legal system in the Republic of Macedonia and the process of transformation of a state that is "dying out" to a legal state. Namely, it appears that the Constitutional Court was equally involved in the modelling of the constitutional system of the Republic of Macedonia just as the other state authorities, and it must be noted that it carried the burden of building a new legal system by interpretation of the constitutional provisions.

Today, the Constitutional Court of the Republic of Macedonia mainly confronts two completely opposite remarks. It leaves the impression that the constitutional court has not yet found the magical formula for deciding that manages to sustain the balance between the modest, non-intrusive and non-confrontational action of the constitutional courts and the extravagancy of the decisions which directly participate in the modelling of the constitutional order.

Thus, on one side, it is admonished to the Macedonian Constitutional Court that it applies the so called *passive virtue that* Bickel recommends for the methodology of deciding of the Supreme Court of the USA, in a completely different extremity. Namely, instead of a virtue, the deciding by the court is often qualified as fear, modesty or introversion. The argument that the Constitutional court restrains from initiation of procedures for control of constitutionality, probably due to the fear of self-promotion and its qualifications as a co-legislator.

From a completely different perspective, the "guardian of the Macedonian Constitution" was qualified as an institution of the so called "ancient regime" and it was subject of undervaluation, especially in the past several years. The Macedonian scholars have recognised such qualifications as elements of the so-called "political mobbing" realised through undervaluation and political labelling.

The relations of the Constitutional Court of the Republic of Macedonia are determined by many factors. Part of these factors are regulated by the legal framework, part of them depend on the will of the institutions (Assembly of the Republic of Macedonia) to respect the decisions of the Constitutional Court, thus the principle of constitutionality and legal certainty, and part of them are conditioned by the action and the decision making of the constitutional court.

Today, we can conclude that the scepticism in the capacity of the Constitutional Court to adopt decisions with which it will establish unconstitutionality of the legal acts has not disappeared. The question is raised whether, after more than 50 years experience from the existence of the Constitutional Court, its provided position and authority is a result only of the "specific" (not) engagement of the constitutor, or its action which in the last decade can rarely be assessed as careful, strategic, and the practice in the decision making as brilliant. It seems that the so-called passive virtue which Bickel recommends for the methodology of deciding of the Constitutional Court of USA in the 50s of the last century, the still represents distant future for Macedonian Constitutional Court. We would not make a mistake if we establish that this is one of the reasons why its decisions often encounter disapproval and criticism. Namely, the decisions of the Constitutional Court do not have the quality to be imposed in the system with unexplained subtlety. Its decision making does not leave an impression that the decisions have the capacity to impose completely new dynamic in the development of the constitutional life in the country. It seems that the search for the most adequate formula for protection of the constitutionality in Macedonia has not finished yet.

The modern constitutional literature in Macedonia, when analysing the work of the Constitutional Court, today may only want to quote Jean Rivero and for the constitutional court to establish that it represents spiritus movens of an extremely layered revolution – the constitutional revolution. This revolution should establish new form of democracy which will decompose the institutional landscape of the sustem with the principle of primacy of the constitution.

The only way out of this situation can be found in decisions that will be well-argued and elaborated. Only in this manner, by decisions that will hold the balance between the bold and the modest actions of the court, which shall have the well-grounded legal argumentation in their background, the court may defend itself from the variations of pressures. Finally, only the consistent deciding by the Constitutional Court, whose decisions would guide the constitutional provisions in the direction of protecting the civil rights and removal of the "pathology" of the system, may give the Court qualification of "Lord of the resources of constitutional law" or "Generator of contemporary ideas".

Bibliography:

1. *Ginsburg Tom. The Global spread of Constitutional review*. Oxford Handbook of law and politics, 2008.
2. Lipkin,Robert. What`s Wrong With Judicial Supreamacy? What`s Right About Judicial review?. Weudener Law School Legal Studies Research Paper Series no.08-85.
3. Pavcnik Marijan, Mavcic Arne. *Ustavno sodstvo.* Cankarjeva Zalozba. Ljubljana, 2000.
4. Roermund van Bert. Constitutional Review-Theoretical and Comparative Perspectives. KluwerLaw and axation Publishers. Devenetr/Boston,1993.
5. Snatolaya Pablo. *The Role of Constitutional Court in Stenghtening Constitutional Values: The Spanish Experience*. European Commision of Democracy through Law. Strasbourg, 2011.
6. *Tate,C. Neal. Comparative Judicial Review and Public Policy: Concepts and Overview*. Greenwood press. London, 1992.
7. Wöhrmann Gotthard. The Federal Constitutional Court: an introduction.. http://www.iuscomp.org/gla/literature/Inbverfg.htm
8. Дескоска Рената. *Уставниот суд во Република Македонија: предлози за реформа.* Зборник на трудови од меѓународен симпозиум „ Современо право, правната наука и Јустинијановата кодификација'' том 2. Скопје, 2004.
9. Дескоска Рената. *Уставниот суд на Република Македонија-дилеми и перспективи.* FORUM EUROPAEUM -Уставниот суд на Република Македонија-статус дилеми и перспективи. Скопје 2010.
10. John AGRESTO. *The Supreme Court and Constitutional Democracy*, Cornell University Press,1984.
11. *Проблематиката на законодавниот пропуст во уставно-судската практика*. Национален извештај на Уставниот суд на РМ. 2007. www.ustavensud.mk
12. *Саво* КЛИМОВСКИ, Рената ДЕСКОСКА, Тања КАРАКАМИШЕВА-ЈОВАНОВСКА. *Уставно право.* Просветно дел. Скопје,2012.
13. *Светомир ШКАРИЌ, Гордана СИЛЈАНОВСКА-ДАВКОВА. Уставно право.* Скопје. 2007.
14. Силјановска-Давкова Гордана.*Уставниот суд на Република Македонија -од мој агол*. FORUM EUROPAEUM -Уставниот суд на Република Македонија-статус дилеми и перспективи. Скопје, 2010.
15. Спировски Игор. *Улогата на Уставниот суд во градењето на уставната демократија.* Светски Конгрес на Меѓународното Здружение за Уставно Право, Ротердам, 1999.
16. Срдић Милутин. *Правна заштита пред Уставним судом*. Службени гласник. Београд,1993.
17. Тренеска–Дескоска Рената. *Конституционализам.* Скопје, 2015.
18. *Уставна правда: функции и односи со други јавни* органи. Национален извештај на Уставниот суд на РМ. 2011.
19. Цветковски Цветан. *Карактерот и правното дејство на одлуките на уставните судови во уставниот систем на СФРЈ (докторска дисертација)*. Скопје,1991.