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CONSTITUTIONAL JUSTICE: FUNCTIONS AND RELATIONSHIP WITH THE OTHER PUBLIC AUTHORITIES

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The Constitutional Court of the Republic of Macedonia

I. THE CONSTITUTIONAL COURT'S RELATIONSHIP TO PARLIAMENT AND GOVERNMENT

1. **The role of Parliament (as the case may be, of the Government) in the procedure for appointing judges to the Constitutional Court. Once appointed, can judges of the Constitutional Court be revoked by that same authority? What could be the grounds/ reasons for such revocation?**

The question about the election of the judges to the Constitutional Court of the Republic of Macedonia and the powers of the Assembly of the Republic of Macedonia in this respect are regulated by the Constitution of the Republic of Macedonia, in two provisions of the Constitution. Article 68 of the Constitution defines the competences of the Assembly of the Republic of Macedonia, and this provision defines, among other specified competences of the Assembly, that the Assembly elects the judges to the Constitutional Court of the Republic of Macedonia. In addition, in the special Chapter IV dedicated to the Constitutional Court of the Republic of Macedonia, Article 109 sets down that the Constitutional Court is composed of nine judges. The Assembly elects the judges to the Constitutional Court. The Assembly elects six judges to the Constitutional Court with a majority vote of the total number of representatives. The Assembly elects three judges with a majority vote of the total number of representatives, whereby there must be a majority vote of the total number of representatives belonging to the communities that are not majority in the Republic of Macedonia. The term of office of the judges is nine years, without a right to be re-elected. The Constitutional Court elects a President from among its ranks for a period of three years and without a right to be re-elected. The judges to the Constitutional Court are elected from the ranks of outstanding members of the legal profession.

The Constitution envisages two grounds for discharge of a judge to the Constitutional Court – under Article 111 paragraph 4, a judge to the Constitutional Court shall be discharged from office if sentenced for a criminal offence to an unconditional prison term of minimum of six months or when he/she permanently loses his/her capability of performing his/her office, which is established by the Constitutional Court. Article 111, paragraph 2 of the Constitution also envisages that the Constitutional Court itself decides on the immunity of the judges to the Constitutional Court, which means that it is the Constitutional Court that is competent to revoke the immunity of a judge to the Constitutional Court, and not the Assembly of the Republic of Macedonia.

From what has been noted, it may be concluded that the relationship between the Constitutional Court and the Assembly as a legislative body is expressed through the election of the judges to the Constitutional Court and the evaluation of the constitutionality of the laws that are adopted by the Assembly, as well as through the discharge of the judges to the Constitutional Court, if the conditions in Article 11 paragraph 4 are met.

2. **To what extent is the Constitutional Court financially autonomous – in the setting up and administration of its own expenditure budget?**

The budget of the Constitutional Court is part of the Budget of the Republic of Macedonia. At the close of every current year the Constitutional Court drafts a Proposed-Budget for the next year in which it projects its needs for funds for an unobstructed functioning and execution of its competences. This proposal is submitted to the Ministry of Finance, which prepares the Draft-Budget of the Republic of Macedonia and submits it to the Government of the Republic of Macedonia, which defines the text and submits it to the Assembly of the Republic of Macedonia for adoption. In this long way the needs are not taken into consideration, and the Court never receives the funds it requests, that is, besides its modesty, in an average it receives 20% less than the funds needed. As the Government is not obliged to take over the projected Budget of the Constitutional Court and include it in the Budget of the state, the Court is led to a situation to react almost always, even to plead to have an intervention, with an amendment, into the text of the Budget of the state, in order to have the funds for the Court provided with a view to its normal functioning. This is certainly due, *inter alia*, to the constitutional position of the Government as the only proposer of the Budget before the Assembly and to the fact that the Constitutional Court does not have any instrument whatsoever to fight such setup. Even when using the funds approved in the Budget, the Court has a problem in the enforcement of the payment orders for certain needs.

3. **Is it customary or possible that Parliament amends the Law on the Organization and Functioning of the Constitutional Court, yet without any consultation with the Court itself?**

There is no such possibility given that in the Republic of Macedonia the organization and functioning of the Constitutional Court is not the subject of legal regulation, but they are regulated by the Constitutional Court itself with a Book of Procedures. A ground for this is the provision in Article 113 of the Constitution of the Republic of Macedonia, under which the manner of work and the procedure before the Constitutional Court are regulated by an enactment of the Court.

The possibility for the Constitutional Court to regulate, autonomously, by its own enactment, its work, that is manner of handling and internal organization, has demonstrated its positive side in the so far practice.

4. **Is the Constitutional Court vested with review powers as to the constitutionality of Regulations/ Standing Orders of Parliament and, respectively, Government?**

Yes. Given that the Book of Procedures of the Assembly of the Republic of Macedonia and the Book of Procedures of the Government of the Republic of Macedonia are general, that is, normative acts, the competence of the Constitutional

Court is to appraise their constitutionality derives from the general competence of the Constitutional Court for constitutional-judicial control of the constitutionality of the general acts, which is defined in Article 110 of the Constitution of the Republic of Macedonia, under which the Constitutional Court decides on the conformity of the laws with the Constitution and decides on the conformity of the other regulations and collective agreements with the Constitution and laws.

We note the following cases as examples of the constitutional-court case-law with regard to this issue: with its **Decision U.no.259/2008 of 27 January 2010,** the Constitutional Court repealed Article 157 of the Book of Procedures of the Assembly of the Republic of Macedonia ("Official Gazette of the Republic of Macedonia", no.91/2008). The repealed Article 157 in its paragraph 1 envisaged that: "if a general debate on the proposed laws is not held, the representatives of the groups of representatives may state the view of the group of representatives upon the proposed law at a session of the Assembly in the beginning of the debate", and under paragraph 2 the speech may not be longer than ten minutes.

With this decision the Constitutional Court stood up in defence of the equal right of the representative who is not a member of a group of representatives to take part in the debate on the proposed law in the Assembly.

From the reasoning of the Decision:
"According to the Court, the different position of the group of representatives and an individual representative should not be a problem, for example from the aspect of the length of his/her speech, since the group of representatives speaks in the name of more representatives, and the representative individually. However, in the same sense the question is whether the difference between the representatives may be to a degree as to exclude the representative from the possibility to take part in the debate for the proposed law only because he/she is not a member of a group of representatives and whether such restriction is appropriate to the function and status of a representative pursuant to the Constitution.

Accordingly, when the Book of Procedures defined that a debate be opened at a session of the Assembly, then each representative must have a right to participate in the debate and a representative who is not a member of a group of representatives may not be excluded from that right. The question about the length of the discussion, from the aspect whether the representative speaks in the name of the group of representatives or in his/her name, is a different matter.

From what has been noted and taking the concept of the Book of Procedures of the Assembly for introduction of groups of representatives and for determination of their position, the Court finds that the representative who has been elected in direct elections and to whom the citizens have transferred their sovereignty, may not be excluded from the possibility to state his/her view on the proposed law for which no general debate has been held, only because of the fact that he/she is not a member of a group of representatives.

Furthermore, with its **Decision U.no.28/2006 of 12 July 2006,** the Constitutional Court repealed Article 231 paragraph 2 in the part: "with a majority vote of the total number of representatives" of the Book of Procedures of the Assembly of the Republic of Macedonia ("Official Gazette of the Republic of Macedonia", no.60/2002).

Article 231 paragraph 1 of the Book of Procedures of the Assembly of the Republic of Macedonia envisages that the Assembly may work in camera if that is proposed by the Parliament Speaker, the Government or at least 20 representatives. Paragraph 2 of Article 231 in the part that was contested with the initiative envisaged that the Assembly decide on the proposal without a debate with a majority vote of the total number of representatives.

Taking a starting point Article 70 paragraph 1 of the Constitution of the Republic of Macedonia, under which the sessions of the Assembly are public and paragraph 2 of the same Article which envisages that the Assembly may decide to work in camera with a two-third majority vote of the total number of representatives, the Constitutional Court found that the contested Article of the Book of Procedures of the Assembly of the Republic of Macedonia is not in accordance with the Constitution since in order to exclude the public in the work the Assembly envisaged a majority of the representatives that is less than the two-third majority defined in the Constitution.

5. **Constitutionality review: specify types / categories of legal acts in regard of which such review is conducted.**

Within the frameworks of the basic competence of the Constitutional Court for an abstract appraisal of the constitutionality and legality, in addition to the laws (which are most often contested before the Constitutional Court) the subject-matter of constitutional-court control may also be the sub-legal acts, that is, other general acts having the character of a regulation (different bylaws, rulebooks, decisions adopted by the Government or ministries and other bodies carrying out public mandates, as well as the general acts of the local self-government) and the collective agreements. The subject-matter of constitutional-court control may also be the programmes and statutes of the political parties and associations of citizens, but with regard to them the Constitutional Court is competent to appraise their constitutionality only, and not their legality. Within the frameworks of the constitutional-court control the Constitutional Court is not competent to appraise the individual acts of the Assembly and the Government.

With regard to the abstract control, it is worth noting that everyone may submit an initiative to institute proceedings for appraising the constitutionality of a law and the constitutionality and legality of a regulation or other general act (*actio popularis*).

Within the frameworks of the competence for the protection of the freedoms and rights of the individual and citizen, the Constitutional Court may appraise individual

acts or actions which have violated certain right or freedom of the citizens, that are safeguarded by the Constitutional Court and it may annul the same if it finds that certain right of the rights under Article 110 line 3 of the Constitution (freedom or belief, conscience, thought and public expression of thought, political association and activity and prohibition of discrimination against citizens on grounds of sex, race, religious, national, social or political belonging) has been violated. Within the frameworks of this competence the Constitutional Court may appraise also the acts of the courts, that is, court judgments and the individual acts of the bodies of administration and other organizations carrying out public mandates.

6. **a) Parliament and Government, as the case may be, will proceed without delay to amending the law (or another act declared unconstitutional) in order to bring such into accord with the Constitution, following the constitutional court's decision. If so, what is the term established in that sense? Is there also any special procedure? If not, specify alternatives. Give examples.**

Pursuant to Article 112 of the Constitution, the Constitutional Court shall repeal or annul a law if it finds that the law does not conform to the Constitution. The Constitutional Court shall repeal or annul other regulation or general act, collective agreement, statute or programme of a political party or association, if it finds that they are not in conformity with the Constitution or law. The decisions of the Constitutional Court are final and enforceable.

From what has been noted it arises that in the appraisal of the constitutionality of the laws the Constitutional Court may take a decision to annul or repeal certain provisions of the law or annul or repeal the entire law, if it finds that it is not in accordance with the Constitution. Being final and enforceable, the decisions of the Constitutional Court are binding and everyone to whom the decisions refer is obliged to enforce the same. The decision of the Constitutional Court puts out of effect the unconstitutional law or certain provisions in that law, that is, the repealed provisions are no longer part of the legal order. The Constitutional Court cannot commission the Assembly of the Republic of Macedonia as the holder of the legislative power with the adoption of a law or determine deadlines to it to that effect. The Assembly, being a legislative body under the Constitution, is obliged to observe the Constitution, the laws it adopted and the decisions of the Constitutional Court which repealed or invalidated certain law. Even in case when a gap occurred owing to a repealing or annulling decision of the Constitutional Court, the Constitutional Court may not impose directly an obligation to the legislative body to adopt a new law instead of the one that ceased to be valid as a result of the decision of the Constitutional Court, or to point to it what the content of the new law should be. Hence, the filling of the legal gap that occurred as a consequence of the termination of validity of the unconstitutional law is a task of the legislator.

In the stage from the adoption of a resolution for initiation of a procedure for appraisal of the constitutionality of the law that is submitted to the Assembly of the Republic of Macedonia for an opinion (with a 30-day deadline for a reply) until the final decision for its repeal, the Assembly may change the law or adopt a new law, following which the Court suspends the procedure.

6. **b) Parliament can invalidate the constitutional court's decision: specify conditions.**

No, since the Constitution (Article 112 paragraph 2) expressly states that the decisions of the Constitutional Court are final and enforceable.

7. **Are there any institutionalized cooperation mechanisms between the Constitutional Court and other bodies? If so, what is the nature of these contacts / what functions and powers shall be exerted on both sides?**

In the procedure before the Constitutional Court, in addition to the submitter of the initiative a party is also the adopter of the contested act, that is the drafter of the act. As early as in the preliminary procedure the Court addressed these authorities (the Assembly, the Government, ministries and other bodies) in writing and asks for their opinion regarding the statements in the initiative, asks for submittal of the contested acts, reasoning with regard to the Proposed Laws, that is acts and other clarifications). Pursuant to Article 20 of the Book of Procedures of the Constitutional Court, everyone is obliged to provide data and information to the Constitutional Court on issues of concern for the conduct of the procedure.

In the procedure upon a request for the protection of the freedoms and rights, the Constitutional Court compulsory summons the Ombudsman at the public debate, and upon need it may also summon other persons, bodies or organizations.

II. RESOLUTION OF ORGANIC LITIGATIONS BY THE CONSTITUTIONAL COURT

1. **What are the characteristic traits of the contents of organic litigations (legal disputes of a constitutional nature between public authorities)?**

2. **Specify whether the Constitutional Court is competent to resolve such litigation.**

Pursuant to Article 110 lines 4 and 5 of the Constitution of the Republic of Macedonia, the Constitutional Court of the Republic of Macedonia is competent, *inter alia*, to:

- decide on the conflict of competences among the holders of legislative, executive and judicial powers; (line 4);
- decide on the conflict of competences among the bodies of the Republic and the units of local self-government. (line (5).

3. **Which public authorities may be involved in such disputes?**

From the answer to the previous question, it arises that bodies that may be included in such disputes are the following:

- the Assembly of the Republic of Macedonia, the Government of the Republic of Macedonia, ministries, that is, bodies of state administration, and other organizations carrying out public mandates, as well as the regular court of all instances;
- the bodies of the republic and the bodies of the local self-government units.

4. **Legal acts, facts or actions which may give rise to such litigations: do they relate only to disputes on competence, or do they also involve cases when a public authority challenges the constitutionality of an act issued by another public authority? Whether your constitutional court has adjudicated upon such disputes; please give examples.**

Within the frameworks of these disputes, the Constitutional Court is competent to decide on the conflict of competence among the holders of the legislative, executive and judicial branches, as well as on the conflict of competence among the bodies of the central and local powers. Given that in the Republic of Macedonia, pursuant to Article 12 of the Book of procedures, everyone may submit an initiative to instigate a procedure for the appraisal of the constitutionality of a law and the constitutionality and legality of a regulation or another general act, a public authority may contest the constitutionality of an act adopted by another public authority, and in such case the procedure before the Court is the same as in the cases of the abstract control when the initiative is submitted by a citizen or any other legal entity, which means that there is no special specific procedure when an act of a public authority is contested by another public authority.

The Constitutional Court has a separate procedure for the resolution of conflict of competence when two authorities accept or reject the competence, and as a result of that somebody is not able to exercise his/her right.

We shall note the following cases as examples:

1. The first case (**Decision U.no.159/2007 of 14 November 2007)** concerned a negative conflict of competence between the Central Registry of the Republic of Macedonia and the Basic Court in Shtip, in which both authorities declared themselves incompetent to act upon a registration for an entry of an administrator in the trade registry. With its Decision, the Constitutional Court found that it was the Central Registry of the Republic of Macedonia that was competent for making an entry.

The proposal for resolution of the conflict of competence was not submitted by the authorities between which the conflict appeared but by the person who could not be registered as an administrator of the trade company owing to the conflict.

2. With the **Decision U.no.143/2008 of 15 October 2008,** the positive conflict of interest between the Basic Court from Skopje and the Commission for Securities was resolved. In this case both authorities considered themselves competent to pronounce an interim measure of prohibition to dispose with securities of a trade company, which submitted the proposal for resolution of the conflict of competence. The Constitutional Court decided in favour of the Basic Court, that is, found that it was the Court, not the Commission for Securities that was competent to pronounce the said measure.

In the debate before the Court on this case, what was raised as disputable was the question about the status of the autonomous regulatory bodies, that is, the question whether they are bodies of state administration and part of the executive branch, that is, whether there is conflict of competence the resolution of which is within the competence of the Constitutional Court. The majority of the judges considered that these bodies are also state bodies and that in this concrete case there was a conflict of competence between a court and a body of state administration, the resolution of which is within the competence of the Constitutional Court.

3. In the case **U.no.125/2009 of 16 December 2009,** the Court again decided on a conflict of competence between a basic court and the Central registry of the republic of Macedonia for the appointment of a temporary administrator for a trade company. The Court adjudicated that the Basic Court was competent to act upon the proposal for the appointment of a temporary administrator of the company, and that the Central Registry was competent only to make an entry of the administrator in the registry.

In this case also, as in the two previously elaborated cases, the proposal for the resolution of the conflict of competence was not submitted by the authorities between which the conflict occurred, but by the person concerned (natural or legal) which was not able to exercise its right owing to the conflict.

5. **Who is entitled to submit proceedings before the Constitutional Court for the adjudication of such disputes?**

Pursuant to Article 62 of the Book of Procedures of the Constitutional Court, a proposal for resolution of a conflict of competence among the holders of the legislative, executive and judicial branches and among the bodies of the Republic and the local self-government units may be submitted by each of the bodies between which the conflict occurred. A proposal may also be submitted by anybody who is not able to exercise his/her right owing to the acceptance or rejection of competence of certain authorities.

Under Article 63 paragraph 1 of the Book of Procedures, the authorities referred to in Article 62 may submit the proposal for resolution of a conflict of competence after one of the authorities sustains or rejects the competence for the resolution of the same case by a final or effective act.

Under Article 63 paragraph 2 of the Book of Procedures, the subjects referred to in Article 62 of this Book of Procedures, which are not able to exercise a right owing to the acceptance or rejection of competence, may submit the proposal for resolution of the conflict of competence after both bodies sustain or reject the competence by a final or effective act.

The implementation of these provisions in the case-law of the Constitutional Court may be illustrated through two examples. With its **Resolution U.no.252/192 of 16 December 1992,** the Constitutional Court rejected the proposal of one independent representative in the Assembly of the Republic of Macedonia with which he requested that the Court decide on a conflict of competence between the holders of the legislative and executive powers and provide an answer in which power the President of the Republic belongs. Namely, the proposal requested that the Constitutional Court answer in which power belonged the President of the Republic and whether it was within the competence of the President of the Republic to submit a request to the UNO for sending peace troops on the territory of the Republic, that is, whether with the submittal of the request for sending peace troops to the UNO Secretary general he had exceeded his constitutional powers and had taken over the competences of the Assembly of the Republic of Macedonia.

In its Resolution, the Court found that:
"A proposal for resolution of a conflict of competence among the holders of the legislative and executive powers may be submitted by one of the bodies between which the conflict occurred or anybody who is not able to exercise his/her right owing to the acceptance or rejection of competence by these authorities. Accordingly, the ground for the acting of the Court in this concrete case would be a proposal submitted by the Assembly or the President of the Republic. In the opinion of the Court, the representative as a member or the Assembly may not appear as the submitter of this proposal, since he is not disabled to exercise some personal right as a citizen, and as a

representative he exercises his right to represent the citizens and to decide on the issues within the competence of the Assembly, in the sense of Articles 61, 62, 66, 68 and 69 of the Constitution, in the Assembly.

In connection with the request for the Court to answer in which power belonged the President of the Republic and whether the President of the Republic had exceeded his constitutional powers in his activities, the Court found that, pursuant to Article 110 of the Constitution, the Constitutional Court is not competent to give an opinion about the sense of the constitutional provisions, except when deciding on individual issues within its competence. In that sense, if the proposal for the resolution of a conflict of competence is submitted by an authorized proposer or if a procedure for answerability is initiated against the President of the Republic, in the sense of Article 87 of the Constitution, the Court will express its opinion also about the issues contained in the proposal of the independent representative".

Furthermore, with its **Resolution U.no.98/1999 of 15 March 2000,** the Constitutional Court dismissed a proposal submitted by a citizen for the resolution of a conflict of competence between the holders of the executive and the judicial powers. Invoking Articles 62 and 63 of the Book of Procedures, the Constitutional Court's stance was that: "the subjects which owing to failure to sustain or owing to rejection of competence are not able to exercise some right may submit a proposal for the resolution of a conflict of competences between the holders of the executive and judicial powers after both authorities have sustained or rejected the competence by a final or effective act. Accordingly, a ground for the acting of the Court in this concrete case, except for the proposal of the party, would be the existence of a final or effective act of the body of the administration and of the court with which both bodies sustained or rejected the competence to decide on the request of the party to make a correction, that is, change in the cadastre records.

Given the facts of the case established from which it arises that in this concrete case there is only an effective act of the court with which it rejected the request to decide on the legal matter of the party, owing to incompetence, and there is no final or effective act of the body of the administration with which the request of the party was dismissed for the same reason, in the opinion of the Court in this case there was no dispute for negative competence between the body of the administration and the court, as it was stated by the submitter of the proposal."

6. What procedure is applicable for the adjudication of such dispute?

The procedure for the resolution of a conflict of competence is regulated in a separate Chapter VI of the Book of Procedures of the Constitutional Court (Articles 62-66) in which it is defined who may submit a proposal for the resolution of a conflict of competence, when the individual proposers may submit the proposal, the content of the proposal, and the decisions that may be taken by the Court.

Under Article 63 paragraph 1 of the Book of Procedures, the authorities referred to in Article 62 may submit the proposal for resolution of a conflict of competence after one of the authorities sustains or rejects the competence to decide on the same case by a final or effective act.

Under Article 63 paragraph 2 of the Book of Procedures, the subjects referred to in Article 62 of this Book of Procedures, which owing to the acceptance or rejection of competence are not able to exercise a right, may submit the proposal for resolution of the conflict of competence after both authorities sustain or reject the competence by a final or effective act.

Article 64 of the Book of Procedures envisages that the proposal for the resolution of a conflict of competence contains the subject-matter of the dispute owing to which the conflict occurred, the bodies between which a conflict occurred, and the statement of the final that is effective acts with which the bodies sustain or reject the competence to decide on the same case.

In the preliminary proceedings upon the case, the Court submits the proposal for the resolution of the conflict of competence to both authorities and obtains from them *ex officio* the final that is effective acts with which the authorities sustained or rejected the competence and establishes the facts of the case and its legal status.

7. **What choices are there open for the Constitutional Court in making its decision (judgment). Examples.**

Under Article 65 of the Book of Procedures, with the decision with which it adjudicates on the conflict of competence, the Constitutional Court determines the body competent to decide on the case.

During the procedure, the Constitutional Court may pass a resolution to suspend the execution of the individual acts of the authorities on the occasion of which the conflict of competence was caused until a final decision is taken (Article 66 of the Book of Procedures).

8. **Ways and means for implementing the Constitutional Court's decision: actions taken by the public authorities concerned afterwards. Examples.**

The Constitutional Court submits the decision on the resolution of a conflict of competence to the submitter of the proposal and to the authorities between which the conflict occurred (positive or negative). The authorities are obliged to observe the decision of the Constitutional Court.

III. ENFORCEMENT OF CONSTITUTIONAL COURT'S DECISIONS

1. **The Constitutional Court's decisions are:**
   a) **final;**
   b) **subject to appeal; if so, please specify which legal entities/subjects are entitled to lodge appeal, the deadlines and procedure;**
   c) **binding** ***erga omnes;***
   d) **binding** ***inter partes litigantes.***

The decisions of the Constitutional Court are final and enforceable, and are not subject to appeal. The binding character of the decisions of the Court depends on which issues the decisions refer to and what their character is.

2. **As from publication of the decision in the Official Gazette/Journal, the legal text declared unconstitutional shall be:**
   a) **repealed;**
   b) **suspended until when the act/text declared unconstitutional has been accorded with the provisions of the Constitution;**
   c) **suspended until when the legislature has invalidated the decision rendered by the Constitutional Court;**
   d) **other instances.**

When the Constitutional Court finds that the law, that is, the sub-legal act is contrary to the Constitution, it may take two types of decisions – annulling and repealing. Pursuant to Article 73 of the Book of Procedures of the Constitutional Court, when the Constitutional Court decides whether it shall annul or repeal the law, regulation or general act it takes into consideration all the circumstances that are relevant for the protection of the constitutionality and legality, in particular the seriousness of the violation and its nature and importance for the exercise of the freedoms and rights of the citizens or for the relationships established on the basis of those acts, the legal security, and other circumstances relevant for the decision-making.

Pursuant to Article 79 of the Book of Procedures, the decision of the Constitutional Court repealing or annulling a law, regulation or other general act generates legal effect on the date it is published in the "Official Gazette of the Republic of Macedonia". With the repeal, that is, annulment, the act practically ceases to be valid and is no longer part of the legal order, that is may not be a legal ground for the adoption of individual acts in the future and for the enforcement of the individual acts adopted on the basis of it. Pursuant to Article 80 of the Book of Procedures, the enforcement of the effective individual act adopted on the basis of a law, regulation or other general act which was repealed or annulled by a decision of the Court, may not be allowed or enforced, and if the enforcement has been commenced, it shall be suspended.

3. **Once the Constitutional Court has passed a judgment of unconstitutionality, in what way is it binding for the referring court of law and for other courts?**

Namely, given the fact that the decisions of the Constitutional Court are final and enforceable (Article 112 paragraph 3 of the Constitution) they are binding for all authorities, organizations and institutions, including the other courts.

The legal effect, that is, the effects of the decisions of the Constitutional Court depend on the type of the decision. Thus, if it is a decision of the Court which annulled a law or other regulation, its effect is *ex tunc*. According to this rule, such decisions of the Court have an effect not only in the future but also retroactively, that is from the moment of the adoption of the annulled law or other regulation. The consequences from the implementation of the annulled law or other regulation are removed with restoration of the matters to previous condition, i.e. condition that existed prior to the adoption of the very law, that is, other regulation.

In line with this legal effect of the annulling decisions of the Constitutional Court, and for the purposes of removing the consequences from the implementation of the law or other regulation that was annulled, Article 81 paragraph 1 of the Book of Procedures of the Constitutional Court envisages that everyone who had his/her right violated with a final or effective act adopted on the basis of a law, regulation or other general act which was annulled by a decision of the Constitutional Court, is entitled to request from the competent authority to annul that individual act, within 6 months from the date of the publication of the decisions of the Court in the "Official Gazette of the Republic of Macedonia". If the consequences from the implementation of the law, regulation or general act which was annulled by a decision of the Constitutional Court may not be removed with a change of the individual act in the sense of the preceding paragraph, the Court may adjudicate that the consequences be removed by restoration to previous condition, with a damage compensation or in some other way.

However, in no process law of the Republic of Macedonia is there an express provision that the repetition of a court procedure may be requested also in case when a law on the basis of which an effective court decision was made was annulled by a decision of the Constitutional Court. But, the absence of such provision should not be an obstacle for the competent court to decide on a concrete request by the party for the annulment or change of an effective court decision on that ground as well, since the annulling decision of the Constitutional Court binds it to that, given that its legal effect applies to all (*erga omnes*), including other courts as well.

With regard to the enforcement of the effective court decisions and final or effective concrete acts of other authorities adopted on the basis of a law or other regulation which was annulled by a decision of the Constitutional Court, the effect of such decision of the Court reflects in a manner that the enforcement of these acts may not be allowed and implemented, and if the enforcement has been commenced, it shall be suspended (Article 80 of the Book of Procedures of the Constitutional Court).

As indicated in the answer to the preceding question, with the repeal that is annulment, the act practically ceases to be valid and is no longer part of the legal order, which is reflected in all procedures before the other courts deciding on requests for the exercise, that is, protection of the rights of citizens based on the annulled law. In such case, the competent court in the decision-making on the individual requests may not apply the law, that is, the regulation that was annulled, but shall apply the law, that is, regulation that was valid previously.

Unlike the annulling decisions, the legal effects of the decisions of the Constitutional Court which repeal a law, other regulation or general act refer to the future only, which means that the repealed law, other regulation or general act ceases to be implemented and to generate legal effect *ex nunc* (from the repeal onward) and the consequences from the application to the repeal remain. That practically means that all final or effective individual acts adopted on the basis of a law, other regulation or general act which was repealed by a decision of the Constitutional Court, and the enforcement of which was concluded remain, that is, there may be no request for their annulment or modification. With regard to the procedure pending before the courts and other authorities, and with regard to the final and effective individual acts the enforcement of which was not concluded, the legal effect, that is effects of the repealing decision are the same as with the annulling decision of the Court.

In case when the Constitutional Court decides, with a decision, on the protection of the freedoms and rights, the Constitutional Court determines the manner of removal of the consequences from the application of the individual act or action with which those rights and freedoms were violated.

Unlike the legal effects of the decisions of the Constitutional Court which annul or repeal a law, other regulation or general act which apply to all, the effects of the decisions of the Constitutional Court which annul an individual final or effective act with which a freedom or right of a citizen was violated, are restricted only to the parties in the dispute which is resolved with the annulled act. The effect of such decisions of the Constitutional Court is *inter partes*.

4. **Is it customary that the legislature fulfills, within specified deadlines, the constitutional obligation to eliminate any unconstitutional aspects as may have been found– as a result of *a posteriori* and/or *a priori* review?**

In the decision establishing that the law that is regulation or general act is not in conformity with the Constitution that is law, the Constitutional Court only presents the reasons for which the act is unconstitutional or illegal, without thereby providing suggestions to the legislator, that is, the adopter of the act as to the manner in which those lacks should be removed, and does not set a deadline within which the adopter of the act should act in order to eliminate the unconstitutionality of the act. In practice, the legislator usually abides by the decisions of the Constitutional Court, in a manner that makes changes in the laws pursuant to the legal position of the

Constitutional Court expressed in its decisions. In practice, there have been cases, albeit rarely, when in the adoption of a law the legislator has again envisaged a provision with the same content as the one of the law valid previously which was declared unconstitutional, which is the reason for the Constitutional Court to react again by repealing the same.

5. **What happens if the legislature has failed to eliminate unconstitutional flaws within the deadline set by the Constitution and/or legislation? Give examples.**

As it was previously indicated, neither may the Constitutional Court bind the Assembly of the Republic of Macedonia as the holder of the legislative power, to eliminate the flaws in the laws which the Constitutional Court has previously assessed as inconsistent with the Constitution, nor there is a possibility envisaged for the Court to determine a deadline to the Assembly in that sense. The Assembly, as the legislative body under the Constitution, is obliged to observe the Constitution, the laws it adopted and the decisions of the Constitutional Court which repeal or annul a law. Even in case when owing to an annulling or repealing decision of the Constitutional Court a legal gap occurred, the Constitutional Court may neither impose a direct obligation to the legislative body to adopt a new law instead of the one that ceased to be valid as a result of the decision of the Constitutional Court, nor point to it what should be the content of the new law. Hence, the filling in of the legal gap that occurred as a result of the termination of validity of the unconstitutional law is a task of the legislator.

On the other hand, under Article 8 paragraph 2 of the Law on the Courts, the court may not dismiss a request for the exercise of certain rights with an explanation that there is a legal gap and it is obliged to decide on the same, by calling upon the general principles of the law, except when that is expressly prohibited by law.

Sometimes, the legal gaps that occurred with a repealing decision of the Constitutional Court are filled in with general legal opinions of the Supreme Court, which pursuant to Article 101 of the Constitution is the highest court in the Republic which ensures the unity in the application of the laws by the courts.

An example may the **Decision of the Constitutional Court U.no.231/2008 of 16 September 2009,** with which the Constitutional Court repealed part of Article 39 paragraph 2 of the Law on Administrative Disputes, which defined the right to appeal against the decisions of the Administrative Court taken in a public oral hearing.

Taking as a starting point the constitutional guarantee of the right to an appeal against decisions of a court taken in the first instance, as well as the setup of the Administrative Court as a first instance court, in its Decision the Court expressed its view that the right to an appeal may not be exercised restrictively and selectively (only in certain cases)

and that the legislator is obliged to define the right to an appeal everywhere where it can serve as a corrective from improper and illegal decisions of the courts with which it is finally decided on the rights and obligations and interests of the citizens, that is that the right to an appeal should be guaranteed against decisions of a court taken in the first instance, irrespective of the type of the court, the territory on which it exercises its competence, or the type of disputes being conducted before it, which means that this right is guaranteed always when a decision of a court is made in a first instance procedure.

Following such decision of the Constitutional Court there was a situation in which the legal norm (after its partial repeal by the Constitutional Court) gained content which envisaged the right to an appeal against the judgments of the Administrative Court, but neither that law not the Law on the Courts defined the competent authority to decide on the appeal.

Given the meaning of the issue for the direct exercise and protection of the rights of the citizens and taking as a starting point the principle of the rule of law and legal certainty, on the basis of the legal provisions about the competence of the Supreme Court in administrative disputes, soon after the entry into force of the Decision of the Constitutional Court, the Supreme Court of the Republic of Macedonia at a general session defined a principled stance according to which the Supreme Court of the Republic of Macedonia is competent to act upon appeals lodged against the judgments of the Administrative Court.

It is understandable that the said manner of execution of the Decision of the Constitutional Court is only a temporary solution, and that the question about the right to appeal against the decisions of the Administrative Court should be solved systemically, by legally regulating this matter.

6. **Is legislature allowed to pass again, through another normative act, the same legislative solution which has been declared unconstitutional? Also state the arguments.**

Yes, such cases are possible, but in practice they do not appear often.

As an example may be noted the Decision of the Constitutional Court U.no.45/2006 of 11 July 2007, with which the Constitutional Court declared unconstitutional the solution in the Law on Health Insurance under which in case when insurees use basic health services in a health institution with which the Health Insurance Fund has not concluded a contract, the costs are to be covered by the insurees themselves. In its Decision the Constitutional Court stated its position that with such provision the citizens are obstructed in the exercise of one of the basic rights in health care, the right to choose a doctor to whom they trust the most and from whom they expect correct and, above all, professional and competent health care and that the exercise of the right to health care should not be linked with the circumstance whether the Fund has concluded a contract with some health organisation or not.

After the adoption of this Decision of the Constitutional Court, in certain period the insurees who used the services from the basic package of health services in health institutions irrespective of whether the Fund has concluded a contract with those health institutions paid the costs fully to these institutions, and then they asked from the Fund a return of the funds in the amount that is recognised by the Fund for such service, which was granted to them in practice.

However, later on, the legislator again, with a change in the same Law, but in another provision, envisaged the legal solution which the Constitutional Court had declared unconstitutional.

Given that the issue was raised again before the Constitutional Court, the Court repealed the provision again (**Decision 185/2009 of 27 January 2010),** with a conclusion that such change in the Law on Health Insurance: "in an indirect way, the legislator again conditions the exercise of the health services from the basic package with whether the Fund has concluded a contract with the health institutions providing the service or not".

7. **Does the Constitutional Court have a possibility to commission other state agencies with the enforcement of its decisions and/or to stipulate the manner in which they are enforced in a specific case?**

Pursuant to Article 86 of the Book of Procedures of the Constitutional Court, the decisions of the Constitutional Court are enforced by the adopter of the act, other regulation or general act which was annulled or repealed with a decision of the Court. The decisions with which the Court decides on the protection of the freedoms and rights defined by the Constitution are enforced by the body or organization that adopted the individual act with was annulled by the decision of the Court, that is the body or the organization which took the action which was prohibited by the Constitutional Court with a decision.

The Constitutional Court of the Republic of Macedonia does not have a mechanism of its own, that is, instruments for the enforcement of its decisions, and it may not commission other state body with the enforcement of its decision. The Constitutional Court, pursuant to Article 87 of the Book of Procedures, monitors the enforcement of its decisions and, if needed, requests from the Government of the Republic of Macedonia to ensure their enforcement. The direct monitoring of the enforcement of the decisions of the Constitutional Court is within the frameworks of the obligations and tasks of the Secretary General of the Constitutional Court. If he/she learns that certain decision of the Court is not enforced in practice, he/she informs the Court thereof, following which the Court addresses the Government of the Republic of Macedonia in writing requesting from them to ensure the enforcement of the decision of the Court.

More characteristic example that may be noted is the enforcement of the **Decision of the Constitutional Court U.no.228/2005 of 5 April 2006,** with which the Court annulled Article 38-e of the Criminal Code which envisaged a possibility to replace the pronounced prison sentence of up to one year with a fine. In its decision, the Court stated its view that the contested solution deviated from the entire concept of the penal-legal system and violated the principle of equality of the citizens before the law.

Following the decision of the Constitutional Court, a dilemma arise among the regular courts as to the manner in which the decision should be enforced (given that the prison sentence of certain convicts had already been replaced with a fine), and following the obtained knowledge that the decision was not being enforced, the Court had to address the Government and request that they ensure the enforcement of the Decision.