
PROTECTION OF FREEDOM AND RIGHTS OF CITIZENS BEFORE THE CONSTITUTIONAL COURT OF THE REPUBLIC OF NORTH MACEDONIA

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Abstract: The paper analyzes the protection of freedoms and human rights before the Constitutional Court of the Republic of North Macedonia. The constitutional framework of freedoms and rights whose protection is under the jurisdiction of the Constitutional Court of the Republic is contained in the provision of Article 110, line 3 of the Constitution. It is very narrow and covers the following human freedoms and rights: freedom of belief, conscience, thought and public expression of thought, political association and action and the prohibition of discrimination against citizens on the grounds of sex, race, religion, national, social and political affiliation. Such a narrow framework of freedoms and rights whose protection may be subject to proceedings before the Constitutional Court is not in accordance with the provision of Article 50, paragraph 1 of the Constitution according to which “Every citizen can invoke the protection of freedoms and rights established by the Constitution before the courts and before the Constitutional Court of the Republic of North Macedonia in a procedure based on the principles of priority and urgency.” This inconsistency creates confusion in the interpretation and application of the Constitution. The confusion has been somewhat removed by Article 51 of the Rules of Procedure of the Constitutional Court, which accepts the narrowed constitutional framework. But the Rules of Procedure are bylaws that must be fully based on the constitutional provisions and derive from them.

The second chapter of the paper analyzes the procedure for protection of human rights and freedoms before the Constitutional Court of the Republic. From the analysis of the work of the Constitutional Court in the procedures for protection of human rights and freedoms, it can be concluded that the citizens do not have much trust in the Constitutional Court. In this regard, there are indications that the Constitutional Court views the work on these cases as a secondary, less important matter. Therefore, he does not pay due attention to them which is opposed to efforts to ensure effective protection of human rights in a democratic world.

Finally, the third chapter of the paper analyzes the need to introduce a constitutional complaint, ie a lawsuit in the legal system of the Republic of Northern Macedonia. This chapter points out the division of the expert public in the Republic regarding the need to introduce this legal remedy in the system of constitutional protection of human rights and freedoms. A comparative review of this issue is then given by listing the countries in which this remedy has been introduced. After the comparative review, the position of the author regarding the introduction of this legal remedy in the Macedonian legal system is presented. According to the author, the introduction of a constitutional complaint or lawsuit will be a particularly major reform in the protection of human rights in the Republic of North Macedonia. Its introduction will significantly contribute to the improvement of the responsibility in the work and the quality of the decisions made by the judges in the regular courts and the officials in the state administration bodies. They, knowing that their decision may finally go to review in the Constitutional Court, will undoubtedly work more responsibly and with better quality in conducting proceedings and making decisions.

Keywords: freedoms, rights, constitution, constitutional court,

1. INTRODUCTION

According to Article 108 of the Constitution of the Republic of North Macedonia, the basic competence of the Constitutional Court, as a body of the Republic, ie its constitutional order, is to protect the constitutionality and legality

From this basic competence of the Constitutional Court arise its special competencies. In order to determine these competencies, the method of positive enumeration is applied in the Constitution, which comes down to their exhaustive enumeration. This was done with the provisions of Article 110 of the Constitution. According to these provisions, the Constitutional Court of the Republic of North Macedonia:

- decides on the conformity of the laws with the Constitution;
- decides on the conformity of other regulations and collective agreements with the Constitution;
- protects the freedoms and rights of man and citizen that relate to the freedom of belief, conscience, thought and public expression of thought, political association and action and the prohibition of discrimination against citizens on the grounds of sex, race, religion, national, social and political affiliation;
- decides on the conflict of competencies between the holders of the legislative, executive and judicial power;
- decides on the conflict of competencies between the bodies of the Republic and the units of local self-government;
- decides on the responsibility of the President of the Republic;

- decides on the constitutionality of the programs and statutes of the political parties and the citizens' associations and
- decides on other issues determined by the Constitution.

The subject of analysis in this paper is the protection of freedoms and rights of man and citizen. The term "man and citizen" sounds archaic. It is a lag behind the classical constitutional theory and norm and without a doubt it should be shortened so that only the word man will remain from it. There is no difference between a man and a citizen. The citizen is also a human being. He first becomes a man, and then a citizen - a citizen of a certain state. In fact, the term man most closely corresponds to the terminology of the Universal Declaration of Human Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and the documents derived there from.

The Constitution in the third line of Article 110 provides for direct protection of only a few human rights and freedoms listed in the text of the line above and not all the freedoms and rights guaranteed by the Constitution to the citizens of the Republic. The provision of this line is obviously not in line with the provision of Article 50, paragraph 1 of the Constitution, according to which: "Every citizen can invoke the protection of freedoms and rights determined by the Constitution before the regular courts, as well before the Constitutional Court of Macedonia, through a procedure based upon the principles of priority and urgency." So every citizen may in call for the protection of all rights guaranteed by the Constitution and the laws of the Republic, and not only the rights listed in the third line of Article 110 of the Constitution. There is no doubt that this inconsistency creates confusion in the application of the Constitutional provisions. The Constitutional Court, with its Rules of Procedure, decided to protect the freedoms and rights stated in the provision of line 3 of Article 110, and not the other freedoms and rights to which the provision of Article 50, paragraph 1 of the Constitution refers. Apparently, the Constitutional Court had in mind the fact that the provision of the third line of Article 110 is within the constitutional provisions that prescribe the constitutional position of the Court, and the provision of Article 50 within the provisions for the guarantees of fundamental freedoms and rights. . This provision therefore appears in the position of *lex generalis* in relation to the provision of the third line of Article 110, which, incidentally, is a *lex specialis*. In prescribing the provision of Article 51 of the Rules of Procedure, the Constitutional Court was obviously guided by the principle *Lex specialis derogat lege generali*.

On the other hand, the Constitution, as basic law of the Republic, hierarchically stands above the Rules of Procedure of the Constitutional Court, which is subconstitutional act. In this case, the Constitution has more weight as a hierarchically higher normative act. That is why the Constitutional Court should protect all human rights, not just those listed in the third line of Article 110. However, there is confusion as to the scope of human rights that the Constitutional Court should protect. In order to eliminate that confusion, an intervention in Article 110 of the Constitution is necessary, which will harmonize the provision of its third line with the provision of Article 50, paragraph 1.

2. CURRENT SITUATION OF PROTECTION OF HUMAN FREEDOMS AND RIGHTS BEFORE THE CONSTITUTIONAL COURT OF NORTH MACEDONIA

According to Article 51, paragraph 1 of the Rules of Procedure of the Constitutional Court of the Republic of North Macedonia, the protection of human rights and freedoms before the Constitutional Court is initiated by submitting a request for their protection.

In the Republic of Northern Macedonia today, a very important and very current issue is the effectiveness of this legal remedy in terms of protection of freedoms and rights of citizens. Practice shows that the number of cases for protection of freedoms and rights of citizens before the Constitutional Court is very small. In the period from January 1, 2010 to December 31, 2019, the Court decided on 121 requests for protection of freedoms and rights of man and citizen. Only three of them are respected (one in 2010, another in 2018 and a third in 2019). In the remaining 118 cases, the requests were either rejected as unfounded or rejected on various grounds. It is significant that only in 2010 the Court made the first decision which found a violation of freedoms and rights that means 19 years since the independence of the Republic as a state. It is about the decision on the case U.no. 84/2009, dated 10 February 2010 by which the Court found that the person J. R., from the village of Zajas, whose right to political action was violated. In the case U. No. 116/2009 the Court found that the applicant's right to freedom of thought and public expression of thought and the prohibition of discrimination on grounds of political affiliation had been violated. Finally, in the 2019 case, the Court found that the applicant's right to freedom of thought and public

expression had been violated and annulled the decisions of the Basic Court Skopje 1 and the Court of Appeals in Skopje. Otherwise, most of the cases are related to the prohibition of discrimination.⁵⁶

The large number of refused or rejected requests for protection of freedoms and rights, out of the already small number submitted, leads to the conclusion that the citizens are insufficiently acquainted with the conditions when protection of freedoms and rights can be requested, as well as with the legal nature of decisions of the Constitutional Court.

Also, the small number of submitted requests for protection of freedoms and rights of man and citizen before the Constitutional Court points to the conclusion that the citizens do not have much trust in the Constitutional Court. In this regard, there are indications that the Constitutional Court views the work on these cases as a secondary, less important matter. Therefore, he does not pay due attention to them. A second reason for the small number of cases for protection of freedoms and rights is a consequence of the very narrow constitutional framework in which citizens can seek protection of freedoms and rights. This imposes the need for the constitutional framework for protection of freedoms and rights of citizens before the Constitutional Court to be expanded, and for the introduction of the legal remedy constitutional appeal (lawsuit).⁵⁷

3. CONSTITUTIONAL APPEAL (LAWSUIT) - FOR AND AGAINST?

The constitutional appeal (lawsuit) is a legal remedy for protection of the freedoms and rights of the citizens before the Constitutional Courts.

The expert public in the Republic of North Macedonia is divided on the issue of introducing this legal remedy in the legal system of the Republic. According to some of them, we already have the constitutional appeal in the system of protection of the freedoms and rights of the citizens. This is the request for protection of man and citizen prescribed by the Rules of Procedure of the Constitutional Court, based on the provision of Article 110, line 3, of the Constitution. Given that the framework of freedoms and rights protected by the Constitutional Court is very narrow (it covers only the freedoms and rights related to freedom of belief, conscience, thought and public expression of opinion, political association and action and the prohibition of discrimination against citizens on the basis of sex, race, religion, nationality, social and political affiliation), it should be extended to other freedoms and rights guaranteed to citizens by the second chapter of the Constitution entitled "Fundamental freedoms and rights of man and citizen."⁵⁸

According to others, in the jurisdiction of the Constitutional Court it is necessary to introduce a legal remedy called a constitutional appeal or constitutional lawsuit. According to them, the constitutional appeal (lawsuit) has been introduced in all countries in the region (and beyond) and is based on the principle of subsidiarity - a principle required by the Council of Europe. It is in the jurisdiction of the constitutional courts of Slovenia, Croatia, Bosnia and Herzegovina (appeal), Serbia and Montenegro. Its introduction in these countries fully covers the protection of freedoms and rights of citizens in cases when no other judicial protection is provided or when all legal remedies for that protection before the regular courts or before the administrative bodies have been exhausted. In contrast, in the legal system of the Republic of North Macedonia there are areas for which either there is no legal remedy or the envisaged legal remedy is ineffective, so the citizens directly complain to the European Court of Human Rights in Strasbourg.

Furthermore, according to them, in a hypothetically "ideal" situation, with the constitutional appeal (lawsuit) the citizens would conditionally come to justice much faster, and the Constitutional Court would immediately review and decide whether a certain legal solution or procedure to which the citizen complains is in accordance with The Constitution.⁵⁹

⁵⁶ See: Risteski T., (2020) Functional analysis of the Constitutional Court of the Republic of Northern Macedonia, Institute for Human Rights, Skopje, page 37.

⁵⁷ See: Ibid.

⁵⁸ According to them, this legal remedy could be introduced in the legal system of the Republic of Northern Macedonia with an extensive interpretation (application of Article 50, paragraph 1 of the Constitution), even without amendments to Article 110 , line 3 of the Constitution.

⁵⁹ In 2014, an attempt was made to introduce a constitutional appeal with draft amendments to the Constitution of the Republic. The attempt failed. Regarding the draft amendments, the Venice Commission noted that this reform will be successful only with careful preparation that will require the adoption of a law on the Constitutional Court and a clear definition in the Constitution of the scope of fundamental rights that are protected. Regarding the arguments in the draft amendments to the Constitution for introducing a constitutional appeal, Margarita Caca Nikolovska writes: "The arguments given were not clear and concise at all, but on the contrary were proposed with a very short, inappropriate and unsubstantiated explanation and presented a state of confusion, especially given the establishment of a system of parallelism and the need for effective and efficient remedies." It is good that the Assembly did not put these draft amendments on the agenda, because there were many elements for inappropriate

If Macedonia introduces a Constitutional appeal or lawsuit as an effective domestic remedy, all applicants before going to Strasbourg, will be obliged to use this domestic remedy. This allows the Constitutional Court to review the situation before sending it to Strasbourg. With the introduction of the Constitutional appeal - lawsuit, the citizens would get justice much faster than with waiting for years in the European Court of Human Rights.

Therefore, the introduction of the constitutional appeal under the jurisdiction of the Constitutional Court of the Republic of North Macedonia will provide more effective protection of the freedoms and rights of citizens guaranteed by the Constitution of the Republic and the European Convention on Human Rights in cases where they are exhausted or there are not provided other domestic regular or extraordinary legal remedies for their protection.

The introduction of the constitutional appeal will be a particularly major reform in the protection of human rights. The introduction of this remedy for comprehensive protection of constitutional rights as well as the determination to resolve issues of protection of human rights at the national level was also supported by the Venice Commission,⁶⁰ which emphasizes that when a country approaches the introduction of a constitutional appeal, it should be done in a way that will not overly prolong the human rights process.

The introduction of this legal remedy will significantly contribute to the improvement of the responsibility in the work and the quality of the decisions made by the judges in the regular courts and the officials in the state administration bodies. They, knowing that their decision may finally go to review in the Constitutional Court, will undoubtedly work more responsibly and with better quality in conducting proceedings and making decisions.

4. CONCLUSION

The protection of human rights and freedoms is a matter of paramount interest to the modern democratic world. It is a notorious fact that the Macedonian constitutional law theory and practice should take into account. In relation to this issue, we will first address the discrepancy between the provision of Article 50, paragraph 1 and the provision of Article 110, line 3 of the Constitution of the Republic of North Macedonia.

The Constitutional Court, viewed from a formal legal point of view, is completely right in accepting in Article 51 of its Rules of Procedure the constitutional framework for protection of human rights and freedoms given in Article 110, line 3 of the Constitution. The provisions of Article 110 of the Constitution prescribe his competence and he could not formally and legally go beyond these provisions.

The provision of Article 110, line 3 from a formal legal point of view is *lex specialis* in relation to the provision of Article 50, paragraph 1. But if we look at things from a material legal point of view or, more precisely, from a substantive point of view we can do the opposite conclusion. The provision of Article 50, paragraph 1 is within the provisions of the second chapter of the Constitution entitled "Fundamental freedoms and rights of man and citizen." The objects of protection by the Constitutional Court are precisely human freedoms and rights. The provisions of Article 110 of the Constitution prescribe the competencies of the Constitutional Court, and the provisions of the second chapter of the Constitution prescribe the human freedoms and rights that the Constitutional Court should protect. That is why the provision of Article 50, paragraph 1 of the Constitution should be *lex specialis* in relation to the provision of Article 110, line 3, which in our case is not. The confusion is obvious and it should be removed inevitably with some of the future amendments to the Constitution of the Republic.

Regarding the indications for the treatment of the protection of human rights and freedoms as a less important matter in terms of deciding on the conformity of laws with the Constitution and the conformity of other regulations and collective agreements with the Constitution and the laws, inferior treatment of human rights and freedoms protection is absolutely not justified. Article 108 of the Constitution unequivocally states that the Constitutional Court of the Republic of North Macedonia is a body of the Republic that protects the constitutionality and legality. If the Constitutional Court protects the constitutionality and legality from its violations by normative acts (laws and bylaws), it should also protect it from violations by unconstitutional actions of the bodies and institutions of the state government as well as from other bodies and institutions of the society that have public powers. Therefore, there must be no difference in the treatment of protection of human rights and freedoms in terms of deciding on the conformity of laws with the Constitution and bylaws acts with the Constitution and the laws of the Republic.

The introduction of the legal remedy constitutional appeal, ie constitutional lawsuit is necessary. The views of the members of the part of the expert public that we already have this legal remedy in our legal system entitled as a request for protection of the freedoms and rights of the citizens are not justified. The provision of Article 51,

action, including: the accelerated parliamentary procedure in the absence of the opposition and the lack of public debate and expert debates on the content of these amendments. "See: Nikolovska - Caca M., (2016) Legal Dialogue No. 11/2016, Institute for Human Rights, Skopje.

⁶⁰ Final Report of the Jasna Omejec Mission, TAIEX Expert Mission for the Protection of Human Rights by The Constitutional Court, Skopje, February 2018 p. 15-18.

paragraph 1 of the Rules of Procedure clearly indicates the fact that the Constitutional Court adheres firmly to the Constitutional Framework of Article 110 which covers an extremely narrow circle on human rights protection of which a request can be submitted to the Constitutional Court. That circle consists of the freedoms and rights of man and citizen that refer to the freedom of belief, conscience, thought and public expression of thought, political association and action and the prohibition of discrimination of citizens on the grounds of sex, race, religion, national, social and political affiliation. The number of human rights guaranteed by international legal acts and the Constitution of the Republic of North Macedonia is huge. It encompasses a range of civil, political, economic, social and cultural rights. The constitutional framework of Article 110, line 3, covers only a few civil and political rights. The protection of other rights is left to the courts and other control and protection institutions of society. In conditions of high level of corruption in the society, numerous human rights violations by the courts and other control-protection institutions of the society are evident. The introduction of the constitutional complaint-lawsuit will enable our citizens to exercise protection, above all, within the legal system of the Republic. If they do not succeed, the doors of the European Court of Human Rights are always open to them. Citizens will be able to apply to the European Court of Human Rights for protection of their freedoms and rights only after going through the procedure for their protection before the Constitutional Court. There is no doubt that it is much better for the citizens to solve their problems related to the violations of their freedoms and rights at home, in the Republic, than to do so before the European Court of Human Rights. On the other hand, it will contribute to the courts, organ of the administration and other institutions of society that decide with specific legal acts (judgments and decisions) on the freedoms and rights of citizens, to work much more responsibly, and thus more professionally.

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