The effects of the European integration on the constitutional system of the Republic of North Macedonia and the role of the Constitutional Court

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Abstract

National constitutions play an important role in the process of accession to the European Union. This follows as a logic consequence of the fact that constitutions of the country aspiring the integration determinate the status of international treaties in the rights of this country, the procedure of accession to international organizations. Regarding relations with European Union, particular importance have the provisions that ensure implementation of the principles of the European Union Law. However, it should be noted that in terms of normative choices in the process of accession to the European Union, there is no unified model for constitutional changes, so the European institutions, in their assessment have access in the current state. Constitutional changes of the Republic of North Macedonia in process of accession in European Organization are inevitable. They should be understood as a comprehensive process that will involve all the relevant actors in order to adopt the pertinent amendments with high political legitimacy. In its way towards European integration, the Republic of North Macedonia already made first changes in its constitution affected by the Prespa agreement which led to the change of the country's name, consequently lifting of the Greek veto.

Keywords: constitutional system, process of accession, integration, European Union.

Introduction

In accordance with the Stabilization and Association Agreement, signed on April 9th, 2001, the Republic of North Macedonia awaited almost twenty years to change its status from a candidate country to become member state of the European Union[1] to a country waiting to start the accession negotiations. It is a long period of fulfilling the contiditons and developing the mutual economical and political relations. In the paper we will try to give our assessments regarding how much the Republic of North Macedonia, respectively its 1991 Constitution, supplemented by constitutional amendments, is able to accept the new reality, or the extent to which its provisions are in line with the normative acts that precede membership towards European integration. Furthermore, we will scrutinize in particular the role played by the Constitutional Court of the Republic of North Macedonia in this very important process for the state, we will see how much in its practice so far, the Constitutional Court has accepted the acts of the European Union, how much is invoked in them when reasoning its decisions, if it has shown resistance to accepting other legal sources outside national sources, if it has maintained a constant stance in its reasoning or has evolved into those attitudes as well as other issues which we think will be of interest to the paper. Also, we will pay special attention to the approach of the Constitutional Court to the European Convention on Human Rights, how much has been invoked in its decisions in the Convention and what is its role, as well as and how prepared it is to accept the

[1] The Stabilisation and Association Agreement entered in force on April 4th, 2004.

practice of the European Court of Justice.
National constitutions play an important role in the process of joining the European Union. This follows from the logical consequence of the fact that the constitutions of the country determine the status of international agreements in the law of the country, and in the procedure of accession to international organizations. Whereas, in relation to the European Union, the provisions are of special importance, which ensure the effective implementation of the principles of European Union law.
One of the challenges in the European integration process of the Republic of North Macedonia is the highest legal act - the Constitution which is the basis of political and economic regulation, respectively the Constitution of the Republic of Macedonia of 1991, with the relevant amendments.
One of the topics that open in the EU integration process is also the question of when constitutional changes should take place, before accession or after accession to the structures of the European Union.
We should emphasize a fact that in the practice of development of relations in the Republic of North Macedonia, the legal solutions and actions of the countries that emerged from the former Yugoslav Federation are taken as a basis. This, from the fact of common past and common or similar characteristics. And mainly, as model countries, are taken the Republic of Slovenia, and Croatia.[2]
However, it should be noted that in terms of normative solutions in the process of accession to the European Union, there is no unified model for constitutional changes, therefore the European institutions, in their assessments have access to the respective country.
It is up to the states themselves to assess the need for intervention, to highlight the problems in the national constitutions and present the solutions based on the national regulation of affairs, the solution of nomotechnics, mentality and legal culture. What the European institutions demand is to ensure unimpeded accession, elimination of potential constitutional conflicts, providing the legal basis for the effective implementation of the European Union law and the unimpeded realization of the freedoms and rights of its citizens.
Amendments to the Constitution of the Republic of North Macedonia in the process of accession to the European Union are inevitable. They should be understood as a comprehensive process that will involve all relevant actors in order to adopt relevant amendments with high political legitimacy.
The Constitutional Court of the Republic of North Macedonia must also undergo major changes, starting from the way judges are elected, to the expansion of competencies. The Republican Assembly's monopoly on the election of constitutional judges must be abandoned, and to accept the possibility for other branches of governance to participate in their election. The Constitutional Court should be given the competence to interpret the Constitution of the Republic of Macedonia. Without recognizing this right to the Constitutional Court, North Macedonia's Europeanization will be much more difficult and slower, and with more contradictions and conflicts in the field

[2] Similar normative solutions of the Constitution of the Republic of North Macedonia with the Constitution of the Republic of Croatia can be noticed, starting from the content and division of the highest legal act, up to the identical provisions that exist in the Constitution. An example is the provision from Article 2, point 1 of the Constitution of Croatia which states that "the sovereignty of the Republic of Croatia is indivisible, inalienable and can not be transferred." The same goes for Article 2, point 1 of the Constitution of Macedonia, which states that "the sovereignty of the Republic of North Macedonia is indivisible, inalienable and cannot be transferred."

of law. The constitutional courts of the member states of the European Union have the right to interpret the Constitution, as well as the Court of Justice when it comes to the interpretation of the founding acts of the European Union. It is necessary to make changes and additions to the material and formal sources of constitutional law in the Republic of North Macedonia. In terms of material resources, the jurisdiction of the European Court of Human Rights and the Court of Justice of the European Union must be broadly accepted, as well as the general principles of European law established by the Court of Justice in Luxembourg.[3]

During the preparation of constitutional amendments for the purpose of accession to the European Union. The constitutional provisions governing the procedure for amending the Constitution, in part VIII, must obviously be taken into account. In relation to the changes, the Constitution contains only three articles, which specify that the changes are made with constitutional amendments, and authorized proposers for changes are determined. Also, the procedure for amending Article 131 is defined, for taking a decision to amend the Constitution. determining the draft proposal, making the decision for changes and announcing the changes, making the decision for changes and announcing the changes.[4]

For full membership in the European Union, changes must be made to the Constitution of the Republic of North Macedonia. Definitely, the provisions related to sovereignty, citizenship, organization of state power and procedures for membership of the Republic of North Macedonia in the European Union needs do be changed. The constitutional basis for the transfer of sovereignty over the organs of the European Union must be created, the issue of European citizenship, as well as to determine the procedures for membership in the European Union must be regulated.

1. Experience of the Constitutional Court of the Republic of Macedonia in the application of international law

The relationship that an international agreement creates with the national law of states, depends on the Constitution of each state that has agreed to accede to it. The Vienna Convention on the Law of Treaties of May 23rd, 1969, Konventa e Vjenës për të Drejtën e Traktateve, e 23 maijit 1969, sets out two main criteria in the field of implementation of international treaties: *principle pactum sunt servanda (Article 26)*, according to which any treaty in force is binding on the parties and must be implemented by them in good faith and, the principle that a party can not use the provisions of national law, as a justification for its inability to implement a treaty (Article 27 of the Convention). Particular attention should be paid to the state report on the European Convention

[3] Svetomir Shkariq, "Evropskoto ustavno pravoi i evropizacija na makedonskoto ustavno pravo", *Evolucija na ustavniot sistem na Republika Makedonija vo presret na usvojuvanjeto na ustavniot dogovor na Evropskata unija*, Book 1, MASA, Skopje, 2008, pp 59.

[4] Article 129 of the Constitution of the Republic of North Macedonia states: "The Constitution of the Republic of Macedonia is amended and supplemented with constitutional amendments."
Article 130 provides: "The proposal for amendments to the Constitution of the Republic of North Macedonia may be submitted by the President of the Republic, the Government, at least 30 deputies or 150,000 voters."
Article 131 provides: "the decision to amend the Constitution is made by the Assembly by a two-thirds majority of the total number. The draft proposal for the amendment of the Constitution is brought by the Assembly with a majority of votes from the total number and is put up for public discussion. The decision to amend the Constitution is made by the Assembly by a two-thirds majority of the total number. The change of the constitution is announced by the Assembly".

on Human Rights. In relation to the member states of the Council of Europe, the position of the Convention is dependent on whether or not it has a direct effect on the national law of fundamental rights and freedoms protected by it, but also from the obligation that states have to obey the protection measures that come as a result of the violations committed. There are states that recognize the direct effect of the Convention on national law, as there are states, which offer in their legal system a greater protection of human rights than the Convention itself.

From the constitutional definition of international law in the legal order of the Republic of North Macedonia, together with the provisions defining the jurisdiction of the Constitutional Court, turn out to be problematic in many aspects. First, from the report of the Constitutional Court in determining the assessment of the constitutionality of international agreements, then in assessing the compliance of laws and bylaws with ratified international agreements and, finally, with the sources of international law, which were taken into account during the decision, by all courts in the Republic of Macedonia.

However, development progress can be noticed in the approach of the Constitutional Court. In the first years of parliamentary democracy, the most frequent criticisms about the Constitutional Court were of reasoning which often referred only to international instruments, which was assessed as "insufficient reasoning technique". Therefore, call only on a few provisions without consultation, e.g. of the decisions of the European Charter of Human Rights or in the scientific works of the relevant authorities in certain fields. In response to criticism from professional opinion, it began in further decisions to show readiness for direct application of international law in assessing constitutionality and legality.[5]

However, the question arises as to whether all international agreements adopted in accordance with the constitution to be implemented directly by the courts. The court in the above-mentioned judgment no. 40/98, citing Article 23 of the Law on the Entering into, Ratification and Enforcement of International Agreements, stressed that in the legal order of the Republic of North Macedonia, nontheless there are international agreements for the execution of which prior acts must be brought.

The evolutionary attitude of the Constitutional Court towards international law, is emphasized in the last ten years. If we analyze the decision no. 59/2004, we will see that there is a "resistance" to international law. With the decision rejecting the initiative for the assessment of constitutionality, the Constitutional Court states that, "the European Convention on Human Rights is an integral part of the national legal order. Although, its ranking is below the Constitution and, it can not represent a direct legal basis on which the Court would have based its decisions on the assessment of the constitutionality of the law. Indeed, the provisions of the European Convention on Human Rights as well as the practice of the European Court of Human Rights, may present only supplementary arguments in interpretations of constitutional provisions, which the court uses when assessing the constitutionality of legal provisions".[6]

Two years later, the Constitutional Court, with its Decision no. 31/2006, states "the importance of the European Convention on Human Rights not only as an internal part of the legal order of the Republic of Macedonia, but due to the general principles on which it is based and promoted". With this reasoning, the Constitutional Court annulled part of the provisions of the Law on Public Assemblies, stressing that it "does

[5] See decision u.nr 40/38, "decision to reject the initiative to initiate the procedure for assessing the constitutionality and legality of the Government Recommendations, filed by JSC. Makpetrol).

[6] Decision u.no 59/2004 and u.no 39/2004 dated 21.04.2004.

not comply with the Constitution, in relation to the European Convention on Human Rights".[7] From the content of point 2 of Article 11 of the European Convention on Human Rights and from the practice of the European Court of Justice, it follows that the Convention allows the realization of the right to public assembly which can be restricted only by law and only if it is necessary in a democratic society, in the interest of national security or public safety, for the prevention of riots or criminal offenses, or for the protection of the freedoms and rights of the citizen. In subsequent practice, the Constitutional Court states that "the interpretation of the relevant constitutional provisions must be based on those general principles contained in the Convention on Human Rights and are interpreted in the working practice of the Strasbourg Court of Human Rights, which in fact represents the expressed position of the Court with the above-mentioned judgments u.nr.31 / 06 dated 1 November 2006 and decisions u.nr28 / 2008, dated 23 April 2008.

In the reasoning stated on the one hand, the acceptance of the practice of the Court of Human Rights in Strasbourg is clearly confirmed as a source of law. On the other hand, referring to the positions presented in the above-mentioned decision, the continuity in the work of the Constitutional Court and the determination to continue with that practice is emphasized

Anyhow, the above decision brings a new stage in the evolutionary development of the work practice of the Constitutional Court of the Republic of North Macedonia.

It is worth mentioning the Judgment no. 104/2009 of the Constitutional Court, of 2010, which repeals the provisions of the law on the legal position of the church, religious communities and religious groups, which states that "the interpretation of the provisions of the European Convention on Human Rights, do not make it a member state according to their own views, but the European Court, according to its practice and the judgments it brings".[8] With this decision, the Constitutional Court very clearly acknowledges a very advanced position of implementation of the European Convention on Human Rights in accordance with unique and uniform standards of its implementation[9]. Otherwise, the opposite approach would leave the possibility of giving different meanings for the same provisions, and consequently, non-unified implementation of the Convention on Human Rights.

Such wording gives us to understand that the effective implementation of international agreements, implies the application of case law that does not lead to the expansion of the scope of sources of law, if we adhere to the textual wording of the constitutional provisions. With the above wording, the Constitutional Court justifies the need for its execution, emerging from a passive position and taking the position of the main

[7] See decision 31/2006 dated 1.11.2006. Judgment on the abrogation of Article 1 of the Law on Public Assemblies, (Official Gazette of the Republic of Macedonia, no. 55/1995 and 19/2006).

[8] See Decision u.no.104 / 2009 dated 22.09.2010.

[9] Recommendation REC (2004) 6 of the Committee of Ministers of the Council of Europe to member states "On improving the internal means of appeal" among other things it says: " The Convention has already become an integral part of the national legal framework in all States Parties. This evolution has brought about improvements in the validity of effective appeal tools. For more, This new development is also supported by the fact that the courts and the executive authorities increasingly respect the jurisprudence of the Court in the process of implementing national legislation and are aware that they have the obligation to act in accordance with the decisions of the Court in matters directly related to their States (Article 46 of the Convention). This trend has been further strengthened by the improvement, in line with Recommendation REC (2000) 2, of the possibilities that the competent national authorities have to review or reopen certain proceedings which have been the main cause of the violations observed by the Court."

factor in the Europeanization of the legal system of the Republic of North Macedonia. Of particular importance in reviewing the practice of the Constitutional Court is the decision no. 104/2009 for not initiating the procedure for constitutional review. The Applicant challenges the provisions of the Law on Courts, which provided for a new legal remedy – the determination of the violation of the right to a trial within a reasonable time, while in essence, the right of precedent of the Court of Justice in Strasbourg was also ascertained, as a source of law in the Republic of North Macedonia, the Constitutional Court, in its reasoning, uses a mild source of law – recommendations of the Committee of Ministers. But more important is the highlighting of the Constitutional Court that "The text of the Convention is inextricably linked to the interpretation by the European Court of Human Rights".[10] The Supreme Court of the Republic of North Macedonia, in the implementation of the European Convention on Human Rights, will not achieve its actual implementation, if it relates only to the context of the text and its interpretation outside the jurisprudence of the Strasbourg court. This means that if the domestic court interprets the provision of the Convention as it is written, without regard to the practice of the Court of Human Rights and principled attitudes of interpretation, it will not be able to ensure the protection of the right. Even with this decision, the Constitutional Court clearly shows its role in accepting the practice of the European Court of Human Rights in the domestic legal system, which also means the prohibition and interpretation, otherwise of the Convention in the sense that it can be given by the Strasbourg Court. The interpretation of the Constitutional Court in this case is clear and instructive for the courts, especially for the Supreme Court of the Republic of Macedonia, that the implementation of this part of international law – The European Convention on Human Rights implies the use of the Strasbourg practice. In this way, the Constitutional Court with its decision clearly shows the position for the effective protection of the rights guaranteed by the European Convention on Human Rights.

2. Practice of the Constitutional Court of the Republic of North Macedonia with the European Union law

The Constitutional Court of the Republic of North Macedonia is consistently declared incompetent for assessing the compliance of laws and bylaws with ratified international agreements, with the exception of Judgment u.nr140 / 2001, dated 04.12.2002, in the so-called OKTA case.[11] Such a passive position of the Constitutional

[10] Decision u.nr.104 / 2008 dated 20.11.2008, of the Constitutional Court of the Republic of North Macedonia.

[11] For more details see Judgment u.nr 140/2001 dated 04.12.2001, "1. The Law on Ratification of the Bilateral Agreement between the Republic of Macedonia and the Hellenic Republic on the Construction and Management of the Oil Pipeline is Repealed, (Official Gazette of the Republic of Macedonia, no. 622/99)… point 6. Having regard to the constitutional provisions, respectively Article 108, which is a general provision for the competence of the Court and Article 110, according to which the Constitutional Court, among other things, decides on the compatibility of laws with the constitution, which article actually represents the operationalization of the previous provision, The Court ruled that the Constitution allows the Court to assess both the formal and the material side of the Law on Ratification of the Bilateral Agreement concluded between the Republic of Macedonia and the Hellenic Republic on the construction and management of the oil pipeline.
International agreements with the act of ratification become part of the legal order of the Republic of Macedonia and as such they have a position over the laws, but must be in accordance with the Constitution of the Republic of Macedonia. Given that the investment agreement is part of the

Court of the Republic of North Macedonia is in a way in favor of the European integration processes. By analogy, with the view that the European Convention on Human Rights can only be interpreted by the Court in Strasbourg, through the practice,[12] respectively with the decision in question is accepted the final authority of the "international court",[13] thus minimizing the possibility of dual competence conflict and thus paving the way for the acceptance of European Union law in the legal order of the Republic of North Macedonia after membership in the European Union.

Today, at this stage in which the Republic of Macedonia is, in the position from a candidate country for membership in the European Union to a country with recommendation to start negotiations, it is important to consider the Constitutional Court's approach to European Union law, based on the Stabilization and Association Agreement, as well as the fact of harmonization with the legislation of the European Union, which is developing with high dynamics in recent years.

The first case where the European Union law is mentioned dates back to 2004, one month after the entry into force of the Stabilization and Association Agreement.[14] In its judgment, number u.nr 203/2003 dated 12.05.2004, he Constitutional Court finds that the legal regime foreseen by the legislator "complies with the insurance regime defined in European Union law, respectively in Directive 2002/83 / EC" dated 5. November 2002, dealing with life insurance.

Later, Judgment unr. 190/2004 dated 19.10.2005, which initiates the procedure for constitutional review, the Constitutional Court builds its arguments, invoking the concrete provisions of the Stabilization and Association Agreement and in addition, refers to legal acts of the acquis (in regulations and directives),[15] approaching also in their clarification and content. In Judgment unr. 30/2005, dated 09.11.2005, the Constitutional Court highlights that "Such a defined position of the directorate, as a separate and independent institution, with the status of a legal entity, with certain competencies and procedure, are also compatible with the content of Directives 94 / EC and 95 / EC of the European Parliament and of the Council of Ministers of the European Union, relating to the protection of personal data, inn terms of personal data processing"[16].

The Constitutional Court, with its decisions, unr. 132/2005, unr.168 / 2004, unr. 5/2005, rejected initiatives to assess the compliance of the law and bylaws with the Stabilization and Association Agreement. In this case the court was declared incompetent for their

Bilateral Agreement, it is actually an integral part of it and as such must be in accordance with the Constitution of the Republic of Macedonia.

[12] Judgment u.no.104 / 2009, dated 22.09.2010, "The Court emphasizes that the interpretation of the provisions of the European Convention on Human Rights is not made by the member states according to their approach, but by the European Court through its practice and the judgments it brings"

[13] In this case the term "international" is used as such, because after accession to the European Union, the European Convention on Human Rights should not be treated as an international act, because European law should be treated as the national law of the country.

[14] See Judgment unr.203 / 2003, dated 12.05.2004.

[15] In the decision unr.26 / 2009 dated 15.04.2009, The Constitutional Court states "that although the directives of the European Union, as a supranational right are not part of the legal order, respectively are not a source of law of the Republic of Macedonia and as such are not subject to assessment by the Constitutional Court, however, in arguing its legal opinion, the Court took into account Directive 2002/21 / EU of the European Parliament and of the Council of 7 March 2002".

[16] See Judgment unr.30 / 2005, dated 09.11.2005.

validity, in relation to the Stabilization and Association Agreement.
Analyzing the practice of the Constitutional Court, we can conclude that, when the procedure for assessing the constitutionality of ratified international agreements is initiated or the assessment of the compliance of laws or bylaws with ratified international agreements, the Court is declared incompetent. On the other hand, in all other decisions and judgments, the Constitutional Court uses, or takes into account, the international agreements ratified in its argumentation and gives them treatment of the internal legal order. Also, concrete acts from European Union law, such as regulations and directives, are used as a subsidiary source of law.
In 2007, the Constitutional Court issued decision unr. 85/2007,[17] for not initiating the procedure for the review of the constitutionality and legality of the Regulation in the field of civil flights. The Court bases its argument on the position that the sub-legal act was adopted on the basis of a ratified international agreement which is part of the national legal order, therefore international standards and European Union law defined in the provisions mentioned in the agreement are also an internal part. Then, it is accepted that "the international standard is part of the internal legal order" to finally assess that the regulation is not in conflict with the Constitution and the law.
It is worth noting that the interesting moment that attracted attention is the opinion divided in Judgment unr. 134/2008 dated 17.12.2008, by which the bylaws were repealed, respectively internal regulations, due to non-compliance with the Constitution and the law on registration of cash payments. Judge Igor Spirovski, although agreeing with the mentioned abrogation, shares his opinion, due to the position that, the Court had to make this decision not only because of the incompatibility of the regulations with the Constitution and laws, but also due to their incompatibility with the provisions of the Stabilization and Association Agreement. The separate decision confirms the Court's practice of declaring itself incompetent to decide on the compatibility of bylaws with ratified international agreements and emphasizes that ratified international agreements "should be subject to assessment in terms of compliance with the Constitution and be the basis for assessing the legality of bylaws." Whereas, the concrete competence of the Constitutional Court in principle, in the context of this, can be found in Article 110 of the Constitution, although it is not stated explicitly. At the same time, in its separate decision, the judge states that the repealed provisions of the regulations are not in accordance with the Stabilization and Association Agreement. Special attention deserves the final assessment of judge Igor Spirovski that "another opportunity was missed for the Constitutional Court to deal with the Stabilization and Association Agreement as a source of the effect of national law… and with it the possibility for the Constitutional Court to strengthen its role as a decisive factor in the "Europeanization" of the legal order of the Republic of North Macedonia.[18]

Conclusions

We should point out that as regards the normative solutions in the process of accession to the European Union, there is not a unified model for constitutional changes. That is why European institutions assess and evaluate each country separately. Countries themselves should assess the need of intervention, in order for them to point out

[17] For more details see decision unr.85 / 2007 dated 12.09. 2007.
[18] For more details, see the dissenting opinion of Judge Igor Spirovski on the judgment, unr 134/2008, dated 17.12.2008.

problems within their own national constitutions and present solutions based on their national context. What the European institutions are seeking is the accession of candidate countries without any problems, the elimination of potential constitutional issues, the provision of legal grounds for efficient implementation of EU laws and obstacle-free observation of the rights and freedoms of their own citizens. The experiences of other countries are indispensable to making a fair decision, given the general social-political circumstances. This is to ensure stability within the state itself, as a precondition for integration into the great European family.

For the full membership in the European Union, changes to the Constitution of the Republic of North Macedonia need to be made. It is necessary to amend the provisions relating to the sovereignty, citizenship, organization of the state power and the procedures for the accession of the Republic of North Macedonia to the European Union. Constitutional bases for transferring the sovereignty over the bodies of the European Union should be established, the issue of European citizenship should be regulated, and procedures for membership in the European Union should be determined.

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