

**ACCESS TO CONSTITUTIONAL JUSTICE OF THE CITIZENS: THE
EXPERIENCES OF THE CONSTITUTIONAL COURT OF THE
REPUBLIC OF NORTH MACEDONIA**

(Sofia, 27 October, 2023)

Dear attendees of the Conference,

President of the Constitutional Court of the Republic of Bulgaria,
Ms Pavlina Panova,

Vice-President of the European Commission, Ms Věra Jourova,

President of the Court of Justice of the European Union,
Mr Koen Lenaerts,

Judge and Vice-President of the European Court of Human Rights,
Mr Marko Bošnjak,

Deputy Prime Minister and Minister of Foreign Affairs of the Republic of
Bulgaria, Ms Mariya Gabriel,

Minister of Justice of the Republic of Bulgaria, Mr Atanas Slavov,

Presidents, judges and representatives from the Constitutional Courts,

Ladies and gentlemen,

It is a tremendous privilege to be present at the formation of the Balkan Forum of Constitutional Courts. This was only a notion about a year and a half ago, when at a meeting my dear Pavlina and I addressed the role and significance it will have in the Balkans, given the momentum. Because of this, I am even more delighted that the Forum is taking place today with the support of all of you, and I am truly convinced that all of our citizens will ultimately benefit the most from it.

Dear all,

The opportunity of a citizen to address the Constitutional Court and initiate a proceeding in which a Decision will be made regarding a matter of constitutionality and legality or their particular right would signify acceptance of their status as members of society with their viewpoint and attitude towards issues of social significance, thereby making it possible to be indicated

wrongdoing and demanded accountability when there is a violation of rights in specific circumstances.

In truth, it is a means of implementing the rule of law, protecting freedoms and rights, and directing to institutions that are answerable, accountable, and transparent, specifically established to promote the welfare and prosperity of the individual and society.

For these motives, the framework of legislation that governs access to constitutional justice should be clear and precise and provide for the broadest access feasible without needless limits or formalities, having specific time limits for taking action, an opportunity for citizens to participate directly in the proceedings, as well as the existence of effective mechanisms for implementing the decisions of the constitutional courts.

Unfortunately, there is only one provision in our Constitution from 1991 that mentions access to constitutional justice and does not cover all aspects of issues of citizens with the Court and based on its content, it can be comprehended as referring to only individual constitutional-judicial protection.¹

This constitutional norm states that every citizen has the right to request protection for the freedoms and rights guaranteed by the Constitution with the courts and the Constitutional Court of the Republic of North Macedonia, in accordance with a proceeding founded on the concepts of priority and urgency.

The systematisation in the section on protection of fundamental freedoms and rights reveals the intention of the author of the Constitution that in addition to their proclamation in the constitutional text, there is also the need for legal protection mechanisms in proceedings where priority and urgency are defined at the level of the constitutional concept.

It is not, however, specified the form to request protection from the Constitutional Court. Furthermore, it is not defined to which and from which acts the protection may be requested, the time frame of the request, and the procedural presumptions that must be met to initiate such a proceeding (exhaustion of all regular legal options).

The Rules of Procedure of the Court from 1992, adopted based on the constitutional authorization stated in Article 113 of the Constitution, which are still

¹ Article 50 Paragraph 1 of the Constitution.

in effect with a few minor amendments and additions, have eliminated this constitutional vagueness.

It is a unique constitutional mechanism for self-regulation, allowing the Constitutional Court to control matters relevant to the conduct of its operations, as well as the procedure within it.

Despite the fact that this arrangement has received a lot of criticism, I believe the past 31 years that it has been in operation have demonstrated that solutions are effective because the Constitutional Court is the most qualified to implement the proceeding and should arrange it by itself. In addition, its autonomy and independence are also preserved in this way, by preventing other state governmental authorities from imposing their will.

The aforementioned Rules of Procedure regulate several matters related to the possibility and method of addressing the Court to initiate a proceeding. It is important to promptly note that owing to the nature and the predetermined constitutional procedure, citizens cannot engage in some proceedings that will not be covered by this presentation.

It is specifically about the proceedings for determining the responsibility of the President of the Republic, revoking their immunity, determining the occurrence of the circumstances necessitating the termination of their office, as well as in the proceedings for revoking immunity and determining the permanent loss of the ability to perform the position of a judge of the Constitutional Court.

As opposed, a more thorough explanation will be provided regarding the proceedings to review the constitutionality and legality, resolving a conflict of competences, and protecting freedoms and rights according to Article 110, Indent 3 of the Constitution.

One of the methods for initiating the proceeding to review the constitutionality and legality is by filing an Initiative to the Court.²

The most inclusive formulation was selected to identify the group of authorised petitioners for this petition. Specifically, in accordance with Article 12

² The second method involves the Court taking action on its own initiative. In accordance with Article 14 Paragraph 1 of the Rules of Procedure, the Constitutional Court may initiate a proceeding for reviewing the constitutionality of a law, that is, the constitutionality and legality of a regulation or other general act, on its own.

of the Rules of Procedure, everyone may submit an Initiative to initiate a proceeding for reviewing the constitutionality of a law, the constitutionality and legality of a regulation or another general act.

The term "everyone" refers to a broader range than the nomotechnical method often utilised, which is restricted to a mere two categories of legal entities: both a natural person and legal entity, allowing for the possibility of addressing from entities without legal status (such as a striking board).

Based on past observations, it appears that citizens submit the majority of Initiatives. The following data shows the annual percentages of their Initiatives from the overall number of cases: 2023 (60%)³; 2022 (78%); 2021 (71%); 2020 (48%); 2019 (80,93%); 2018 (81%); 2017 (67,26%); 2016 (82,32%) etc.

Regarding the Initiative as a type of petition, the Rules of Procedure do not precisely state the requisite format for Initiatives but specify that the Initiative must be submitted in writing in two copies⁴ and that it must contain all of the required components⁵. On the other hand, it must be stated that the Court has prepared a sample Initiative for reviewing constitutionality and legality available on its website, and its sole goal is to assist individuals in the petitioning process, and while it is not required, it is frequently utilised.

If the Initiative does not include all of the required components, it does not necessarily indicate that it is not going to be reviewed, instead, the Secretary of the Court sets a further date for addressing any inadequacies, and if they are not fixed, it will be assumed that the Initiative was not submitted.

The Court intervenes to review the constitutionality and legality upon the stated in the Initiative, and as it is not only constrained by the allegations in the Initiative and the provisions that are identified as violating constitutionality and legality; rather, if it decides to review a provision, it may also decide to review other provisions or the act as a whole.

³ By the month of October.

⁴ Article 15 Paragraph 1 of the Rules of Procedure.

⁵ In accordance with Paragraph 2 of Article 15 of the Rules of Procedure, the Initiative for initiating a proceeding to review the legality and constitutionality of a law or the legality and constitutionality of a regulation or other general act contains the following: designation of the law, the regulation or general act, that is, the parts of the provisions that are contested, the grounds for contesting, the provisions of the Constitution, that is, the law violated by that act, and the name, that is, the title and the location of the petitioner of the Initiative.

The petitioner also has the status of a participant in the proceedings, which grants them additional procedural rights, including the right to view the case files, the right to participate or take part in the preparatory sessions and public hearings, the right to have the Decision sent by the court, etc.

In the subject of resolving a conflict of competences, citizens also have the option of addressing the Constitutional Court to settle a conflict of competences if they are unable to exercise their rights due to the acceptance or rejection of the competence of particular authorities.⁶

The Proposal for resolving a conflict of competences is the format in which this proceeding is initiated, the components of which are likewise determined by the Rules of Procedure.⁷ The Proposal therefore includes the subject of contention for the reason of which the conflict originated, the authorities involved in the conflict and the designation of the final, i.e. legally binding acts by which the authorities accepted or rejected their competence to decide on a particular subject. With a Decision resolving the conflict of competences, the Constitutional Court determines the competent authority to decide on the subject.⁸

The citizen is the sole subject authorised to initiate the third proceeding covered in this presentation. It concerns the proceeding for the protection of freedoms and rights within Article 110, Indent 3 of the Constitution, under which only certain constitutional freedoms and rights are protected, but not all, as in the context of a traditional constitutional complaint, or an appeal.

In contrast to the Initiatives, the number of such petitions submitted is substantially fewer, as is their percentage of all cases to the Court. As a case in point, the situation by year is as follows: 2023 (4%), 2022 (5.1%), 2021 (8.1%), 2020 (5.5%), 2019 (11.37%), 2018 (8%), 2017 (3%) and 2016 (4.42%).

It is apparent that there are more Initiatives submitted in comparison to the petitions for the protection of freedoms and rights from Article 110 Indent 3 of the Constitution.

It has to be subject to reform by establishing a constitutional appeal that would protect all fundamental freedoms and rights, something that I continually promote and urge. However, given that it takes a 2/3 majority of Members of the

⁶ Article 62 of the Rules of Procedure.

⁷ Article 64.

⁸ Article 65 of the Rules of Procedure.

Parliament to amend the Constitution, it is unlikely that this will happen in the foreseeable future.

On the other hand, if the specific situation continues to remain unchanged, it would still be essential to interfere in the part of the current Rules of Procedure that refers to the proceedings for petitions for the protection of freedoms and rights.

Firstly, it is essential to widen the range of authorised petitioners for the protection of legal entities, integrating citizens' associations as one of the forms of structures through which they exercise their rights.

The next step is to establish a single criterion as a procedural presumption for submitting a petition, and when all conventional legal options have been exhausted, it will be possible to petition for constitutional-judicial protection within an explicitly specified time frame. With the current situation, protection may be requested based on two grounds: violation by effective or final act and the second on violation by action (of a holder of public authority).

Different treatment is an effect of this arrangement. In the first case, citizens are required to exhaust all available regular legal options, whilst in the second this is not the case, so the Constitutional Court is given the role as a first-instance authority that should determine the factual situation. Additionally, given the second basis, it is now conceivable to hold simultaneous legal proceedings with the Constitutional Court and regular courts.

One of the most significant matters, in my opinion, is the legal framework governing the connection between the Decision of the Court determining the violation and the act that violated a fundamental right or freedom. Particularly in the context of effective judgements by the courts, which should not and cannot be appealed or annulled; instead, only a violation should be determined.

Thank you for your attention.