

REPUBLIC OF SERBIA
CONSTITUTIONAL COURT OF SERBIA

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SPEECH

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on

INSTITUTIONAL GUARANTEES OF INDEPENDENCE OF CONSTITUTIONAL
COURTS

-With special emphasis on the Constitutional Court of Serbia -

1. Opening

Analysis of the independence of the Constitutional Court and its justices, one of the most intriguing questions of constitutional justice. Disputes and dilemmas associated with the nature and volume of the constitutional independence of the judiciary, which under the Constitution, even "too independent", there are as many as the very idea of constitutional remedies. No intent to expand in this report that's already broad topic to emphasize that in evaluating the case, we must not fall into mythomania constitutional judicial independence because it by itself is not the goal. Guaranteed the independence and autonomy of the constitutional court and its special rank in the modern constitutional law in fact inextricably linked with the responsibility of the Constitutional Court and its judges for the implementation of tasks entrusted to them. Through the implementation of constitutional and judicial review (oversight), the court, in the general interest, should retain the constitution and protect the fundamental values of a modern constitutional state - the rule of law and fundamental rights and freedoms of citizens. In the end, the constitutional guarantees of judicial independence is not approved as a personal privilege constitutional court judges, and are motivated and conditioned by the necessity of enabling the court to exercise its constitutional role as guardian of the constitution, that is the guarantor of its acceptance and application.

The constitutions of European countries in transition, with some differences, there are numerous decisions that guaranteed the status and role of constitutional courts. These solutions are very similar to the decisions contained in the constitutional systems of countries where there are exemplary and authoritative constitutional courts. Based on this, at first glance one might conclude that the independence of constitutional justice is implied and is currently being implemented in countries in transition and that its breach actually occurs only in exceptional cases. But whether such is the case in the constitutional jurisprudence of the European post-socialist countries? In answering this

question is first necessary to state that proclaimed the constitution guarantees the independence of the Constitutional Court "may not be exercised by themselves, despite the fact that they are guaranteed by the framers of the Constitution and refer to the constitutional court, which is the author of the constitution has appointed his lawyer. In transition countries, constitutional courts operate in complex and contradictory social relations in which many social factors, from the holders of state power to individuals, managed by different partial interests (collective or individual) frequently disregard the constitution and the law (knowingly or unknowingly). In essence, the European post-socialist countries still have noticeable problems with the provision and operation of institutions, ie public authorities, in accordance with constitutional and democratic principles, as well as the recognition of the constitution and law in general by many actors in society, from government agencies to individuals. Noticeable lack of accountability in public bodies and agencies under the constitution, that is the responsible exercise of their constitutional challenges, which, among other things, manifested in the absence of a determination of their political and other liability not only for poor quality work, but also for the open contempt of the constitution (and violation of the law in general). Consequently, due to lack of capacity in the institutions of a democratic system and lack of accountability in the exercise of public authority (especially in unproductive and inefficient justice system), the constitutional courts in transition countries acquire the role of "central institution" in the creation of a constitutional (legal) state (I . Omeets). But the democratic constitutional state can not be based solely on the basis of a public body, whether this is the constitutional court, which the author of the Constitution has provided a special, unique position and the role of the "Supreme Controller" its recognition and application, whose decision on the request of the author's own constitution shall be final , enforceable and generally binding. It only created the overall activities of all government and public institutions and the general consensus in the country.

Thus, countries without a legal-based state and no institutions with considerable democratic potential to be a serious and difficult way to establish and maintain an independent constitutional justice. There is no doubt that the independence of the constitutional court in any country is not just a gift and can not be insured once and for all, and the constitutional court in the real world must continually fight for the independence guaranteed by the constitution. Only in a democratic environment, the Constitutional Court can be productive and respected supervisor respect the constitution in one country and can help put it into practice. If the constitutional court (whose members are elected by public institutions), "Missed Opportunity" and does not solve, that is, by the standards of the Constitution extends the author's decision on a particularly important public disputes occur as a result of violating the constitution of the state (public) power, he instead to defend the constitution and he "joins" to those who did not respect her. It is not only substandard, constitutional justice, but also serious damage the very foundations of the constitutional (democratic) state and the opening of the doors lawlessness.

2. Legal sources safeguards provisions of the Constitutional Court of Serbia

The Constitutional Court of Serbia today - the court with a continuous tradition that has lasted for almost five decades, since 1963, since in the former Yugoslavia and its republics member introduced the constitutional justice. Specific guarantees for the independence of constitutional courts as independent public bodies the authors of the Yugoslav constitution and the constitutions of the republics (everything) has argued since the introduction of our constitutional law. Naturally, the nature, form and amount of these guarantees were changed at various stages of constitutional development (which were common to us until the nineties). The basis of the Serbian Constitutional Court put the Austrian-German model of constitutional justice, in a theory known as the model of constitutional control "Kelsen. Naturally, should immediately conclude that the original concept of the constitutional court as a result of the empowerment of Modern Constitutional Court of Serbia are more susceptible to changes or more simply "diluted." Determined over basic constitutional values accepted in the liberal-democratic devices of Western European countries, while respecting certain constitutional decisions of our previous constitutional texts of the author of the Serbian Constitution in 2006 the Constitutional Court drew a crucial role, and according to that approved the guarantees of its status and independence. At this time, the author of the constitution to the Constitutional Court has devoted a separate part of the Constitution: Part of the sixth (with the provisions of Article 166-175 of the Constitution) and strongly endorsed the position and role of the Constitutional Court, the court determines as a "separate and independent public body which protects the constitutionality, legality and the rights and freedoms Human and Minority Rights, whose decisions "final, enforceable and generally binding" and that "everyone must accept and carry out." Since this "separate and independent public body" in addition to its previous function of the custodian, that is, defender of the constitutionality and legality ", and received the additional task of protecting the basic constitutional values - human rights and fundamental freedoms, this time led to the responsibilities of authors of the Constitution provide for separate legal means, that is, the powers and mechanisms to implement the role of the Constitutional Court.

The most important guarantees of the Constitutional Court of Serbia are contained in the text of the Constitution. The Constitution - an act regulated all important issues that determine the legal status of the Constitutional Court and its judges, and thus its institutional and personal independence. And from there it follows the regulatory stability of the institution, since its constitution, approved the position and role can be changed only by a special procedure for amending the constitution as the highest legal act of the state.

The nature of the constitution as fundamental law and the highest legal act, containing only the most significant for the state general rules do not allow for all questions relating to the constitutional court and the implementation of constitutional and judicial functions, in general, have been the subject of constitutional regulation. Therefore, in the Republic of Serbia and in the acts of the legislature meet certain guarantees of the independence of the Constitutional Court. For example, the Law on the Constitutional Court Act 2007 provides additional guarantees for the independence of the Constitutional Court, especially the judges. Although legal safeguards have some weight, since they, for their part, further supporting the independence of the Constitutional Court, they did not have

the "strength and stability, which have constitutional guarantees. These guarantees can be lighter and easier to undergo changes and be undone by a "superficial or hasty approach of political power." And finally, with individual guarantees "internal independence" of the Constitutional Court of Serbia also found in the text of the Rules of the Constitutional Court in 2008.

3. Review of the role of the Constitutional Court of Serbia as a special state body

Determining the position and role of the Constitutional Court of the author of the Serbian Constitution in 2006 confirmed the European continental model of constitutional justice in Serbia. However, this does not mean that removed from the agenda the question of the nature of the Constitutional Court as a public authority, that is the question of what is actually the Constitutional Court in the organization of the power of modern Serbia. Is it part of one of the three traditional branches of government or a special, separate authority, the system of separation of powers? Or did the Constitutional Court is the fourth branch of government, which operates parallel to the other three branches of government, despite the fact that as such is not mentioned in the text of Article 4 of the Constitution, devoted to "separation of powers." Some say that the Constitutional Court "nadkonstitutsionny" or "superkonstitutsionny" body, some call him a "hidden author of the constitution" or "always sitting by the constituent assembly." Many, on the other hand, say that the Constitutional Court "superlegislativa" not only "negative legislator". Still others argue that this "trial courts" or "inspector general" and "superrevizionnaya" power. Share the position, according to which the Constitutional Court of Serbia in the organizational and functional sense is not part of any of the three classic branches of government. He is not part of the judiciary, to which would indicate the name "court", but not the legislature, though has certain competences (powers), "similar" to the power of the court, it is the legislator. The last thing the Constitutional Court may be called a part of the executive branch. Modern Constitutional Court of Serbia - a separate constitutional institution, a separate constitutional body, which stores and protects the Constitution, which itself is subject to the Constitution and has no powers of traditional branches of government - legislative, executive or judicial.

Despite the fact that the nature and importance of the role of the Constitutional Court and its jurisdiction and powers arising directly from the Constitution, defined the special nature of this body, the Constitutional Court and in our country is often viewed merely as "another state institution." There is still no awareness that this court is superior to what he guardian of the Constitution as a "symbol of law and the guarantor of its application, ie the establishment of key constitutional values recorded in the Constitution, the real relationship. Today he is in any case, in Serbia and one from the major carriers of European legal values and core values "of modern legal culture in general. Its mission to be a "leader" in building a Serbia as a constitutional (legal) state of the state in which to seek sequential "rule of the constitution, and that not only in legal texts and on paper, but in a real relationship. However, to take up this initiative the Constitutional Court can not itself - it is their actions can make a significant contribution, and push, but a separate state, as already mentioned, there should be a general consensus, then there is general agreement about the legitimacy and importance of the constitution as the highest legal forms in the country, which must be respected by all, especially by public authorities.

4. The relationship of the Constitutional Court of Serbia and other public bodies

When reading the provisions of the sixth part of the Serbian Constitution, devoted to the Constitutional Court gave the impression of its uniqueness and of absolute independence and neutrality in relation to other public bodies. Of these provisions, on the one hand, it is clear that the Constitutional Court of the unique constitutional body with the mandate of the Comptroller of the universal respect for the Constitution by all, in order to maintain the necessary harmony and balance in the legal structure of the state, but also the fundamental democratic principles and values, as guaranteed by the Constitution. Consequently, the Constitutional Court, primarily oversees the constitutionality of legal acts without exception, namely: laws and other general acts of the National Assembly, the general acts of the President of the Republic (and its activities); acts and actions of government and administrative bodies; sentences and other individual acts and actions of courts, acts of the High Council of Justice and the State House prosecutors; acts and actions of all other government agencies, as well as holders of public functions and even general legal acts of political organizations, trade unions and religious communities. On the other hand, other state agencies do not have such powers in relation to the acts and actions of the Constitutional Court.

Successful completion of the power leads to a variety of roles in the life of the Constitutional Court of Serbia as a modern constitutional state. Assessment of the constitutionality (and law), now defined by the Constitutional Court is not only a posteriori, but a priori, which, in accordance with the Constitution, extends to the assessment of conformity of national and international law, the Court essentially provides a sense of unity in a multi-layered and complex legal system Republic of Serbia, which consists of the norms of national and international law, resolution of conflicts of competence established by the Constitution Court retains the balance and relationship between different government agencies in the system of separation of powers. The trial was a defender of the Constitution and the violations, which could allow himself head of state. Especially important is the fact that the Constitutional Court and became "the main guarantor of" human rights and freedoms at the national level and the last stronghold for the protection of "national dignity of the legal" before turning the citizens of Serbia to international institutions for the protection of fundamental human rights. Resolving disputes arising in the functioning of political parties, civic associations, trade unions and religious communities, as well as disputes relating to the election the Constitutional Court promotes the "preservation of the necessary socio-political order" and "the establishment of social harmony" in the country.

Except for rare exceptions modern constitutional courts simply "suffocate" in a large number of cases, especially in countries in transition. "Short of breath" and the Constitutional Court of Serbia, which in many ways became a kind of "people's court", that is, "the court of ordinary people." Too broadly defined powers have led to an overload of the Court and the need for its frequent "intervention." All this contributed to the fact that this court from the body, which was supposed to intervene only in exceptional cases began to turn into a body of "daily interference."

Thus, when considering the independence of the Constitutional Court is an important answer to the question whether the actions are approved, which includes the authority of

the Constitutional Court only in the Constitution by its author or other authorities for its acts (inferior to the Constitution) may determine the powers of the Constitutional Court. In other words, the functional independence of the Constitutional Court is not only important fact is whether the powers of the Constitutional Court on the type and value of reinforcing his authority custodian of the Constitution, and thus the independence of the Constitutional Court, but also whether these powers are "original" constitutional authority, or they may determine, that is, expand, and legislator in its sole discretion. The question is whether the scope of the powers of the Constitutional Court of Serbia today, providing the optimal functioning of the Court's exercise of its functions or that the volume number and variety of disputes "presses", and "strangles." Competence of the Constitutional Court of Serbia is traditionally the subject of a constitutional (materia constitutionis). And author of the modern Serbian Constitution in Article 167 of the Constitution by name (transfer) had approved the credentials of the Constitutional Court, but the separate powers of the Court identified in other provisions of the Constitution, which refers to paragraph 4 of this article. However, it remains controversial, "concluded whether it or not," the author of the Constitution list of the powers of the Constitutional Court, given that he once, at point 6, paragraph 2 of Article 167 of the Constitution made a decision in accordance with which the Constitutional Court "exercises and other activities authorized by the Constitution and the law. " Because of these provisions and before by the Constitutional Court has opened the question is whether the authority of the Constitutional Court only materia constitutionis, or, after all, the competence of the Court may determine and the law. In answering this question, we stand firmly on the position that the competence of the Constitutional Court by its nature is a constitutional matter, that is, what it is (given the position and role of this Court in our constitutional system) may be the only subject to regulation by the Constitution, that is, act having constitutional force (additions to the constitution, constitutional law, etc.), rather than subordinate act, but it means and not by the law. However, our legislators in a number of powers of the Constitutional Court included some "action" with respect to which rightly raises the question whether this is a constitutional nature and role of the Constitutional Court or, after all, the inclusion of these steps, the legislator "popped up" beyond the constitution. The Constitutional Court of Serbia - a body that for their activities, in accordance with the Constitution, shall not be liable to a government agency, and no body has no constitutional authority to "monitor the acts and actions of the Constitutional Court." Of course, in this case, we do not have in mind the responsibility of the Constitutional Court to professional and other public as well as the possibility of a sort of "verification" of its decisions in international institutions, primarily in the European Court in Strasbourg (think is very important in terms of increasing responsibility Constitutional Court). The Constitutional Court is the body which solely and exclusively "is the author of the constitution" with the conservation of fundamental constitutional values. Of the Constitution clearly seen the importance of the decisions of the Constitutional Court, which further strengthens its position. Its decisions are final, enforceable and generally binding. This decision, in respect of which does not provide a way to appeal, and no body in the country has the right to review them. On the contrary, all public bodies must obey the decision of the Constitutional Court, just as they should obey the Constitution and the laws applicable to each (inter omnes).

However, when we have in mind the constitutional solutions in general, the law can raise the question of whether the individual provide a constitutional ability to influence other government bodies on the Constitutional Court, and thus to carry out its role. Naturally, this question is impossible to give a simple answer. The fact that the Constitution does not exist categorical standards this does not mean that individual constitutional solutions make it impossible to provide a certain influence and even pressure on the Constitutional Court by certain public bodies (and thus its independence), or that public bodies and other entities that "control" the Constitutional Court, especially those that affect his decision, did not seek and do not try (sometimes less, sometimes considerably more, ie hidden) by their acts or actions to influence the Constitutional Court.

We recall only some of the ways in which in previous decades was not spared either our constitutional jurisprudence: (not) the nomination and (not) elect the members of the Constitutional Court by the competent authorities, the (non) participation of state bodies, acts and actions are challenged, that is, the Constitutional Court set their constitutionality and legality in constitutional court proceedings, failure to comply with the Court; (not) the implementation of decisions of the Constitutional Court, the abuse of the rights of initiative and eligible applicants, (not) An application to the Constitutional Court to resolve the constitutional dispute occurring or arising in the body; submission of an application to the Constitutional Court's decision and dispute resolution matters not within its powers - the so-called "driving the nose" of the Constitutional Court; unfounded and biased critics of the work and decisions of the Constitutional Court and to wage a "campaign" against the Court in the media, malicious and erroneous "interpretation of the Constitutional Court's decision in public, public display of certain decisions of the Court, the President and some of the judges on the target of" political "debate, etc.

Legislative power in the face of the National Assembly as a political entity has definitive authority in relation to the Constitutional Court, that is to perform its core functions (control of constitutionality of laws). However, it is undeniable that the legislature can "legally" in a certain way, to influence the Constitutional Court, and thus its independence. First of all it does it by electing its judges. Since The National Assembly as a political body based on the Constitution, shall elect one third of the members of the Constitutional Court (elect five of the ten candidates proposed to it by the President of the Republic), and because only the Assembly itself offers ten candidates from which the President appoints the second third, five others judges, it is, in essence, to a large extent determines the "constitutional court majority." At the same time, the National Assembly of independently decides when to elect judges, that is when "Recharge" abolished judicial seats. Further, only The National Assembly may decide to cease the function of Constitutional Court judge, regardless of who elected him, that is appointed.

The second group of office of the National Assembly, through which it can also affect the functioning of the Constitutional Court is manifested in the fact that the Assembly, on the basis of the categorical orders of the author of the Constitution, the law governs: a device that is the organization of the Court, proceedings before the Constitutional Court, the individual the status of the judges of the Constitutional Court, as well as the method of funding of the Court. There is no doubt that through the implementation of those legislative powers, ie the parliamentary majority, to a large extent can influence the organization and work of the Constitutional Court, and thus to exercise his functions. In

this case, it is particularly important to emphasize that this law shall be adopted by simple majority, than the author himself constitution made it possible for the parliament in any part of the majority without any problem to change the law to change the organization and the procedure of the Constitutional Court. This is a constitutional decision, anyway, does not support the independence of the Constitutional Court, but rather the independence indirectly by the parliamentary majority, "dissatisfied" decisions of the Constitutional Court, "can always be kept under control." Despite the fact that the Constitutional Court of Serbia may be assessed the constitutionality of any, including the law (on its own initiative), no doubt, that it would be better if all questions in connection with the implementation of constitutional and judicial functions have been settled by the author of the constitution. But since this is impossible because of the nature and character of the Constitution as the fundamental law of the state, the individual issues are governed by and the legislator. However, not all the same, governed by whether the individual questions of constitutional justice "constitutional" or "customary" law. Comparative practice confirms that the previously declared or made changes to the law used the parliamentary majority and as a means of pressure on the Constitutional Court. In our practice, this has not happened. Laws on the Constitutional Court were the most stable and, according to the rules, lasted the same number and the Constitution itself, under which they were taken. But, in practice, and nevynesenim, ie failure to take certain legislative decisions can affect the functioning of the court that, at the same time, can be used as a way to pressure on the court.

The author of the constitution of modern Serbia does not rule, neither the government nor head of state from the control of the constitutionality of their work. But, in accordance with the Constitution and the President of the Republic and the Government also has certain powers, the implementation of which can influence the Constitutional Court, and thus its independence. First, the President of the Republic, to the same extent as The National Assembly shall participate in the election, that is the appointment of judges of the Constitutional Court. These two bodies, in essence, define the "majority" of the Constitutional Court. President of the Republic may also (not) using their right to suspensive veto "miss" might unconstitutional laws, and thus the decision on its constitutionality to the Constitutional Court to provide, instead of such texts of the laws back in the National Assembly for a new trial. Of course the author of the constitution allowed the big mistake is not giving the President of the Republic of function eligible applicants in the process of monitoring the constitutionality of laws a priori, despite the fact that the President has available suspensive legislative veto. But no less "slip" in terms of status and role of the constitutional court as a sacred protector of constitutionality, is also President of the Republic Constitution provided an opportunity to proclaim the law in respect of which the Constitutional Court opened the case on the assessment of constitutionality.

In addition to this, the government in the hands of a very important tool that can seriously affect the independence of the Constitutional Court. First of all, the government introduced a bill on the Constitutional Court, as it offers a parliamentary majority (which also forms the Government) are usually adopted without change. Very strong, if not the most powerful means to influence the Government on the work of the Constitutional Court is located in the financing of the Court. Since only the Government approves the draft budget of the Constitutional Court is largely dependent on the will of the

Government, when making a proposal for identifying the resources for the Constitutional Court, their amount and purpose. In this case, the government sets the basic rate of remuneration for judges (salary and other compensation). Further, the competence of the Government is providing facilities for work and other conditions for the functioning of the Constitutional Court. And finally, the Government should, if necessary, to ensure implementation of decisions of the Constitutional Court.

The influence of the judiciary in the Constitutional Court, and thus its independence, compared with the legislative and executive powers, already at first glance, according to the provisions of the Constitution, is weaker. It occurs mainly in the fact that the judiciary is partly determines the composition of the Constitutional Court, appoint one-third of its judges: five judges elected by the Supreme Court of Cassation on the proposal of the High Council of Justice and the State House prosecutors. However, their action or inaction of the judicial power can greatly affect the exercise of the powers of the Constitutional Court, and thus its credibility. Thus, the 2006 Constitution the judiciary is the first time in Serbia actually subject to control of constitutionality by the institute of constitutional complaint, which is served in the Constitutional Court of subsidiarity as a legal means of protecting human rights and fundamental freedoms guaranteed by the Constitution. Hence, the Constitutional Court is the only body of constitutional and legal protection of human rights and freedoms in the country as "the last refuge of the citizen, who finds himself infringed their basic rights (E. Sharchevich). At the same time, the Constitutional Court of Serbia and the last is "a shield against leakage of disputes" of the Serbian state in the international institutions.

When it comes to controlling the constitutionality of judicial decisions, the Constitutional Court in this area are still being analyzed, and explores their potential. In implementing the "assessment" of the constitutionality of judicial acts and actions of the Constitutional Court so far mainly been guided by the principle of respect for autonomy and independence of the judiciary, showing restraint in its appeal of court decisions up to the boundary of their "clear unconstitutionality." However, at the very beginning the production of the Constitutional Court on constitutional complaints has led to some tension in the relations of the Constitutional and Supreme Courts. General courts often lose sight of the clear and unequivocal request of the author of the Constitution (which in many parts of the text is strictly defined in the Constitution itself) that the Constitution is the basic act, which they also must follow and apply directly in the conduct of affairs and dispute resolution. However, it is a fact that courts in transition countries generally not only ineffective, but still "shackled by law positivism." Their decisions are primarily based on the positive legislative decisions, even when the laws of containing them, are not consistent with the "new" constitutional decisions, or "generally accepted international law." This implies that the crucial importance is the fact that disputes within their jurisdiction, and courts of general jurisdiction in the Republic of Serbia decided using the democratic standards that are based on constitutional provisions on human rights and minority rights and the relevant international law, which is an integral part of our legal system. Can say that the Constitutional Court of Serbia, allowing the constitutional complaint in the past two years, gave a significant boost to direct application of constitutional norms. Particularly noticeable its primary contribution to "rooting" protecting fundamental rights and the practice of courts and other government

agencies, according to international standards, who has found his place in the Constitution of Serbia.

Independence and neutrality of the Constitutional Court not only implies the existence of safeguards to protect the court from outside pressure and influence of the government-controlled and overseen by the Constitutional Court, but the strict obedience and of the Constitutional Court will framers of the Constitution, as expressed in the Constitution, and non-interference in the competence of the Court, on the constitutionality of which he is constantly concerned. It is important to emphasize that in relation to other public authorities in the Constitutional Court the constitutionality of the monitoring process can not be a competitor to these authorities in the implementation of legislative, executive or judicial power, since he has no authority to deal with public relations, evaluation and monitoring of legislative policy, not authority to carry out the law, nor to "justice" in the disputes within the jurisdiction of the courts. It is empowered only to supervise and monitor compliance with the acts and actions of state bodies of the Constitution and, if in its survey finds them unconstitutional, such acts and actions to eliminate from the legal order.

And finally, given its role and function of the Constitutional Court as a "keeper" directly or indirectly exposed, and various other tests, the pressures and influences, along with those who allowed the state authorities. This is especially pronounced in politicized societies in which notable attempts to pressure and influence of the parliamentary parties (or those that constitute the parliamentary majority or the opposition), the various lobbies (particularly those with individual power of image), civil (NGO) sector, the media and other subjects. Bearing in mind the subject of constitutional litigation and the effectiveness of the Constitutional Court decisions, many of which entail far-reaching political consequences, we must not forget that especially present and expressed the political pressure on the work of the Constitutional Court. As a consequence, often the constitutional court (because of their decisions) and some of its judges (because of their positions) become the subject of "political debate" and harsh criticism in parliament and the executive branch, even outside of them, in that very often included and individual media.

5. Final score

Despite all of the constitutional guarantee of the independence of constitutional courts, we continue to care about the same question: how in countries in transition to ensure that the norms of the Constitution as a whole, including this segment did not experience the fate of the "barrenness" and move beyond this limit, and how to overcome ingrained habits and to ensure that not only adopt a new constitution and laws, but also to implement them.

Constitutional guarantees, no doubt, form the basis of independence of any constitutional court in carrying out its constitutional role, and, respectively, and the Constitutional Court of Serbia. However, the guarantee of institutional independence of the Constitutional Court as a special, special public authority and personal independence of its judges can not stay on the constitutional settlement of these issues. As in the case of other principles, and began the constitutional system itself, it does not automatically ensure the true independence of the Constitutional Court, since the proclamation of the

Constitution, independence of courts and judges does not, and their embodiment in real life. Similarly themselves guarantee the independence of the Constitutional Court and its judges, as they are numerous and strong are, do not automatically provide any constitutional court or the judge might "reflect on and make a decision by an independent method. There is no guarantee that can "fill in mediocrity, ignorance and immaturity in this work."

From the foregoing it follows that the question of independence of the constitutional court is much more difficult to purely constitutional and other legal regulation, so as to ensure its full implementation, besides those already mentioned, requires the existence and functioning of democratic institutions in the country. No less important political, economic, social and other conditions in which the constitutional court operates. "The best guarantee of" judicial independence - it is always a matter of time and circumstances. For all this, you must carefully nurture the "culture of judicial independence." Thus, the institutional independence of the Constitutional Court and the personal independence of its judges did not fit into the formal (normative) Determination and in its broadest sense can be defined as freedom from any foreign, inappropriate influence.



1. In this sense, the Constitution of 2006 made significant changes in the powers of the Constitutional Court, in its structure and organization, order of election and mandate of its judges.
2. The National Assembly of the Republic of Serbia, 24 November 2007 adopted the Law "On Constitutional Court" ("Official Gazette of RS», № 109/07).
3. Parliaments of the countries in transition and our Serbian in the legislative regulation of public relations as a whole, including matters that are subject to the law on constitutional justice, is still slowly abandon the traditional approach. Markedly similar "new with old legislative decisions, based on the Constitution, which ceased to have effect, lagged positive legislation on the values of modern constitutionalism, which is" today lost his very particular national and transnational character was wearing, as well as the backlog of legislative decisions, not only from the (new) constitutional values, but also from reality.
4. See Rules of the Constitutional Court ("Official Gazette of RS», № 24/08). Adoption of the Rules of the Constitutional Court as an act which the Court regulates its own method of work, of course, in the framework of the Constitution (and law), has traditionally been an expression of autonomy of the court.
5. N. Dimitrijevic, constitutional democracy is considered in a contextual sense, Edition of "The Word", Book Printing, Belgrade, 2007, p. 126 et seq.
6. The Constitutional Court, especially in an organizational sense, is an independent government body, separated from the rest of government, except in respect of the election of its members. Organizational independence of the Constitutional Court of Serbia shall ensure that the constitutional and based on their legislative decisions on: the composition and manner of election judges, election of chairman and deputy chairman of the Court, the law of the Court independently to regulate its internal organization and rules of court procedure and self-organize professional service of the Court.

7. The list of powers of the Constitutional Court of Serbia, which makes it one of the "richest" of the constitutional courts in comparative law are: 1) disputes on the compliance of laws and other regulations and general acts of the Constitution, 2) disputes under international treaties ratified by the Constitution, and 3) disputes of compliance with laws and regulations generally accepted rules of international law and ratified international treaties, and 4) disputes about compliance requirements and other general acts of law; 5) debate about conflicts of competence; 6) disputes relating to elections, not in the jurisdiction of other courts; 7) arguments about the protection of territorial autonomy; 8) arguments about the protection of local self-government; 9) arguments about the constitutionality and legality of general acts and the prohibition of political parties, trade unions, individuals and religious communities, 10) disputes the emergence of constitutional violations in the process of liberation from Presidency of the Republic; 11) debate on constitutional complaints, 12) disputes the remaining complaints as defined by the Constitution, etc.
8. The Constitutional Court in the protection of constitutionality must be primarily "to keep and defend" the Constitution approved by the relationship between legal acts in the legal system of the Republic of Serbia, which show how the principles of constitutionality. The court is doing exactly the implementation of direct regulatory oversight, which is due to the complexity of the relationship established in a legal manner and the versatility of general acts carried out by the various forms and procedures for decision-making on "abstract constitutional disputes. This is a general, centralized control, which may exercise only the Constitutional Court, and from which is not protected by any general act in the country legally.
9. Based on the fact when monitored constitutionality of the constitutional system of Serbia is now in a legal sense, there are two kinds of control: control a posteriori, which is essentially dominated by the work of the Court and executed in relation to all "living" laws and other general acts (when they become in force and within six months after their withdrawal), and preliminary or prophylactic control a priori, which is basically carried out only in relation to laws enacted before the text of the law will be perfect in the legal sense, that is, before it is proclaimed, officially published and will come into force. This kind of control is, and after four years since its introduction only a "constitutional possibility". For details, see B. Nenadich, the constitutionality of laws a priori, legal word was. Banja Luka, 2008
10. Based on the number of cases we can conclude that the decision of the Constitutional Court on constitutional complaints has become the dominant powers of the Court which the Court is much more busy than the implementation of regulatory control. For example, on 1 July 2010 the Constitutional Court, there were about 4500 disputes on constitutional complaints, and about 500 disputes over regulatory control.
11. Law "On Constitutional Court" as does Article 2, with the approval of the Constitutional Court determines that the Constitutional Court "resolve issues within its mandate authorized by the Constitution" and "exercises and other activities authorized by the Constitution and the law."

12. B. Nenadich, Preface to the Law On Constitutional Court ", pages 11 and 12.
13. Naturally, the National Assembly of the President of the Republic and the Government as the public authorities have the property of eligible applicants to initiate proceedings before the Constitutional Court, especially in the control of the constitutionality of laws and other general acts. Thus the data and the public authorities may, whenever decide to "intensify" the Constitutional Court and to induce him to take action.
14. A sufficient number of discussions and in our constitutional and legal sphere is about the constitution (or law) provided the majority required for election and appointment of judges of the Constitutional Court and the Institute of so-called "judges successors." In connection with these issues is not uncommon position that constitutional court judges for their legitimacy and fairness for all, without exception, must be elected (and appointed), the so-called sverhbolshinstvom, ie two thirds of the total votes of all deputies, that is, the judges of the Supreme Court of Cassation.
15. There were periods when, for example, the Assembly or the Government did not "responded" to the requirement of the Constitutional Court in assessing the constitutionality of their acts to express their views, that is to provide answers to contentious issues. See Review of the Constitutional Court in 2006 (www.ustavni.sud.rs).
16. The Constitutional Court of Serbia in the production of regulatory control a posteriori can bring himself (ex officio). This power of the Court considered the power of a strong constitutional court and a tool to help enhance the constitutional court in a positive way. It is always justified and appropriate when used in the function of promoting human rights and freedoms, or their more efficient and effective protection. In addition, this power is also a major obstacle to influence by the laws of the legislator, ie the parliamentary majority for independence and functioning of the Constitutional Court. But many believe that this power is the Court led to a kind of "sudokratii" and the dangers of prejudging the decisions of the Constitutional Court, because the same court and the accused "and" judges ", and some believe that this power does damage the legitimacy and neutrality of the Court that is, provides the possibility of participation of its judges in the political life that is not comparable to the role of this body.
17. On these and other shortcomings of the constitutional decisions relating to the prior control of the constitutionality of laws, see More BS Nenadich, the constitutionality of laws a priori, legal word, Banja Luka, 2008.
18. Believe that the issue of financial independence is now the weakest segment of the independence of the Constitutional Court and that if this is not strictly defined by the Constitution, the law would need to be clear to ensure a greater degree of financial independence of the Court by the so-called "constitutional and judicial budget." From a legal point of view, the Constitutional Court in this important segment and then is in the distinct dependence on the government. Tools for working and functioning of the Constitutional Court provided the budget of the Republic of Serbia on the original proposal of the Court, but the fate of this proposal lies in the hands of the executive authority - the Ministry of Finance and

the Government as the sole body mandated by the Constitution, to make the draft budget. In cases of inconsistency of the proposal of the Constitutional Court with a proposal to the Ministry of Finance in respect of volume and destination of funds, the Court "in talks" with the government, though not with the Assembly.

19. Exercising regulatory control, the Constitutional Court of Serbia is not an organ, creating a constitution or laws, and the body that in carrying out the functions of protection of the Constitution and the constitutionality of eliminating violations of the Constitution of the legislature or the executive branch, so that the legal order "eliminates" Laws and other general acts , inconsistent with the Constitution (which makes a "negative legislator" by denying the legal force unconstitutional laws and other regulations).