



Strasbourg, 19 August 2014

CDL-REF(2014)030

Eng. only

Opinion 779 / 2014

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT AMENDMENTS (*)
(XXXIII, XXXIV, XXXV, XXXVI, XXXVII, XXXVIII AND XXXIX)

TO THE CONSTITUTION

of “the former Yugoslav Republic of Macedonia”

**concerning, in particular, the Judicial Council,
the competence of the Constitutional Court,
and the State Audit Office**

and

Explanatory Note

(*) Provided by the Ministry of Justice of “the former Yugoslav Republic of Macedonia”

Draft

**TEXT OF DRAFT AMENDMENTS
XXXIII, XXXIV, XXXV, XXXVI, XXXVII, XXXVIII AND XXXIX
TO THE CONSTITUTION OF THE REPUBLIC OF MACEDONIA**

These Amendments are an integral part of the Constitution of the Republic of Macedonia and shall enter into force on the date of their promulgation.

AMENDMENT XXXIII

1. Marriage shall be a life union solely of one woman and one man.
2. A registered cohabitation, or any other registered form of life partnership, shall be a life union solely between one woman and one man.
3. With item 1 of this amendment a new paragraph 2 shall be added to Article 40 of the Constitution of the Republic of Macedonia, and with item 2 a new paragraph 3 shall be added to Article 40 of the Constitution of the Republic of Macedonia.

AMENDMENT XXXIV

1. An international financial zone shall be established by law on the territory of the Republic of Macedonia.

The establishment and the organization of the zone, the rights and obligations of the bodies managing the zone and the special judicial and regulatory authorities, and the resolution of disputes within the zone shall be governed by a special act of the zone.

A special legal regulation shall be applied to the zone, except the regulations from the field of criminal law of the Republic of Macedonia. The zone shall adopt acts governing the prevention of money laundering terrorism financing and supervision under the applicable standards of the United Nations Organisation.

Tax, commercial-business and civil laws of the Republic of Macedonia shall not be applied in the zone. The regulation in these legal areas shall be adopted by acts of the zone, in accordance with the highest international standards.

2. This amendment shall supplement Section II, item 4 of the Constitution of the Republic of Macedonia.

AMENDMENT XXXV

1. The Bank of the Republic of Macedonia is the central bank of the Republic of Macedonia. The basic objective of the Bank of the Republic of Macedonia shall be to achieve and maintain price stability.

The Bank of the Republic of Macedonia shall be independent in achieving the objectives set.

The Bank of the Republic of Macedonia is a legal entity with a functional, institutional, personnel and financial independence the organization and work of which shall be regulated by a special law.

2. This amendment shall replace Article 60 of the Constitution of the Republic of Macedonia.

AMENDMENT XXXVI

1. The State Audit Office shall be an autonomous and independent body auditing public funds.

The Assembly of the Republic of Macedonia shall elect and dismiss the principal state auditor.

The conditions and manner of performance of state audit, the competences, organisation and work of the State Audit Office shall be regulated by law.

2. This amendment shall supplement Section II, item 4 of the Constitution of the Republic of Macedonia.

AMENDMENT XXXVII

1. The Government of the Republic of Macedonia shall define the fiscal policy in the Republic of Macedonia within the frameworks of the established fiscal rules, as follows:

- The Budget deficit of the Republic of Macedonia may not exceed 3% of the gross domestic product;

- The public debt may not exceed 60% of the gross domestic product.

The Government of the Republic of Macedonia may, in exceptional situations only, deviate from the established fiscal rules, which is in case of natural disasters and external shocks affecting the jeopardization of national security, public health or in case of a significant decline in real gross domestic product.

The occurrence of exceptional situations shall be determined by the Assembly of the Republic of Macedonia by a two-third majority vote.

The Government of the Republic of Macedonia shall be obliged to submit a report to the Assembly of the Republic of Macedonia on the deviations in the exceptional situations, clearly specifying:

- the reasons for the deviation from the fiscal rules;
- the measures it will take in order to re-establish the fiscal rules; and
- a time period within which fiscal policy will be implemented again within the frameworks of the established fiscal rules.

The established fiscal rules shall commence to be implemented as of 1 January 2017.

2. With item 1 of this amendment a new paragraph 2 shall be added to Article 91 of the Constitution of the Republic of Macedonia.

AMENDMENT XXXVIII

1. The Judicial Council of the Republic of Macedonia is an autonomous and independent body of the judiciary. The Council shall ensure and guarantee the autonomy and independence of the judicial branch.

The Council consists of fifteen members.

Ten members of the Council are elected by the judges from their ranks. Three of the elected members belong to the communities that are not in the majority in the Republic of Macedonia, whereby the proper and equitable representation of the citizens belonging to all communities shall be observed.

Three members of the Council are elected by the Assembly of the Republic of Macedonia by a majority vote of the total number of Representatives, whereby there must be a majority vote of the total number of Representatives belonging to the communities that are not the majority in the Republic of Macedonia.

Two members of the Council are proposed by the President of the Republic of Macedonia, and are elected by the Assembly of the Republic of Macedonia. One of them belongs to the communities that are not the majority in the Republic of Macedonia.

The members of the Council that are elected by the Assembly of the Republic of Macedonia, that is, that are proposed by the President of the Republic of Macedonia are from among the ranks of university professors of law, lawyers and other eminent legal experts.

The term of office of the elected members of the Council shall be six years, without the right to be a consecutive re-election.

The conditions and procedure for election, and the grounds and procedure for termination of office and dismissal of a member of the Council shall be governed by law.

The office of an elected member of the Council shall be incompatible with membership in a political party or performance of other public offices and professions defined by law.

2. This amendment shall replace Amendment XXVIII to the Constitution of the Republic of Macedonia.

AMENDMENT XXXIX

1. Decides on a constitutional appeal lodged by a natural or legal person, against an individual act or action of a state body, a local self-government unit or holder of public mandates violating the freedoms and rights of the individual and citizen, as follows: the equality of the citizen in the freedoms and rights irrespective of sex, race, colour of skin, national and social origin, political and religious conviction, property and social status, the right to life, prohibition of torture, inhuman or degrading treatment, punishment and forced labour, the right to freedom of the individual, the right to presumption of innocence and a fair trial, freedom of conviction, conscience, thought and public expression of thought, the freedom of speech, public address, public information, and the free establishment of institutions for public information, the freedom and inviolability of correspondence and all other forms of communication, security and confidentiality of personal data, the freedom of confession, the freedom of association, the right to assembly and expression of public protest, respect and protection of the privacy of personal and family life, dignity and reputation, inviolability of the home, and the right to freedom of movement, when other domestic regular or extraordinary remedies for their protection have been exhausted or are not envisaged.

2. Decides on an appeal lodged against a decision of the Judicial Council of the Republic of Macedonia on the election, dismissal, or other disciplinary sanctions pronounced against a judge of a president of a court.

3. Decides on an appeal lodged against a decision of the Council of Public Prosecutors on the election, dismissal, or other disciplinary sanction pronounced against a public prosecutor.

4. Item 1 of this amendment shall replace line 3 of Article 110 of the Constitution of the Republic of Macedonia, item 2 shall add a new line 8 to Article 110 of the Constitution of the Republic of Macedonia, and item 3 shall add a new line 9 to Article 110 of the Constitution of the Republic of Macedonia.

EXPLANATORY NOTE**REASONING
OF THE DRAFT AMENDMENTS
XXXIII, XXXIV, XXXV, XXXVI, XXXVII, XXXVIII AND XXXIX
TO THE CONSTITUTION
OF THE REPUBLIC OF MACEDONIA****- Reasoning of Amendment XXXIII**

In the functioning of the constitutional system of the Republic of Macedonia since the adoption of the Constitution of the Republic of Macedonia in 1991 until present day a need has been imposed for a clear and precise constitutional definition of marriage as a union solely between one woman and one man.

Article 40 paragraphs 1 and 2 of the Constitution of the Republic of Macedonia defines that "The Republic provides particular care and protection for the family. The legal relations in marriage, family and cohabitation are regulated by law".

The amendments to the Constitution of the Republic of Macedonia shall enable a more precise definition of marriage, which is why there is a need to amend this article in the direction in which it shall be defined that marriage is a union solely between one woman and one man.

In Article 40 paragraphs 1 and 2 of the Constitution of the Republic of Macedonia define that "The Republic provides particular care and protection for the family. The legal relations in marriage, family and cohabitation are regulated by law".

Under Article 6 of the Law on Family marriage is defined as follows:

Under Article 5 of the Law on Prevention and Protection against Discrimination, marriage is defined as follows: "Marriage is a union of life solely between one man and one woman in which the interests of the spouses, family and society are realised".

With the amendment to the Constitution this legal status of marriage should be constitutionally defined as a union solely between one woman and one man, in which the interests of the spouses, family and society are realised.

Family, marriage, motherhood, fatherhood and the care for the children are among the most important moral obligations. Marriage as a union is faced with the challenges of modern times, the attempts for its redefinition, deinstitutionalisation and gradual marginalisation.

This is particularly relevant if one takes into consideration that marriage has an enormous effect on the relations in the family, on the spouses and children, and therewith on the entire society and entire conditions in the society.

Marriage should be a union of solely one woman and one man, and the purpose of marriage is emotional, spiritual, physical, and material union of the man and woman, as husband and wife, in a solid and stable mutual union, based on the principles of equality, trust, and mutual respect, support and understanding, which as values are transmitted to future generations, in accordance with the legal regulations of the state.

Marriage as a union solely between one woman and one man is an integral part of human history, has been a constant and centuries-long tradition in the region.

Marriage is one of the basic pillars of society. The marriage thus defined as a union solely between one woman and one man in the Constitution of the Republic of Macedonia shall

contribute to the institution marriage being further acknowledged and promoted in our society.

Due to the exceptional role that marriage has had in the development of societies, it has become an extremely important form of legal relationship. Moral, ethical and religious principles of all religions in the Republic of Macedonia define marriage as a union solely between one woman and one man.

For all these reasons the Republic of Macedonia should with constitutional mechanisms determine and protect the traditional definition of marriage, clearly supporting family values. Thus, marriage as a union shall be protected, promoted, acknowledged and clearly defined.

In addition to marriage, the Republic of Macedonia should also with constitutional mechanisms determine and protect a registered cohabitation, or any other form of a registered life partnership, as a life union solely between one woman and one man.

- Reasoning of Amendment XXXIV

The proposed amendments to the Constitution of the Republic of Macedonia envisage the creation a constitutional possibility for the establishment of an international financial zone, which would be developing separate legal and financial regulations based on the highest international standards. The establishment of the financial zone will encourage the development of financial services in the Republic of Macedonia by creating conditions to attract international financial trade companies.

- Reasoning of Amendment XXXV

The National Bank is independent and responsible for the stability of the currency, monetary policy and general liquidity of payments in the Republic and abroad. The organisation and operation of the National Bank are governed by law.

The amendment to the Constitution is aimed at intervening in the name of this institution in terms of renaming it into the Bank of the Republic of Macedonia and redefining the basic objective that the Bank should accomplish in accordance with the international standards and practices.

Comparative experiences demonstrate that the name of this institution and the objectives to be accomplished as defined in the Constitution are not appropriate, as a result of which there is a need to change the name into the Bank of the Republic of Macedonia, and price stability should be the basic objective of the Bank in conditions of market economy.

Given the importance of the primary aims and objectives of the Bank of the Republic of Macedonia, it should be defined that the Bank of the Republic of Macedonia has a high level of independence in terms of political and other entities which is achieved by defining the four basic principles of independence that are elaborated in the special law. This formulation is in accordance with the Statute of the ESCB and the ECB, the Treaty on the Functionng of the European Union and the Treaty on the European Union.

- Reasoning of Amendment XXXVI

The progress reports of the European Commission for the Republic of Macedonia for Chapter 32 Financial Control, regarding external audit, state that "The independence of the SAO remains to be defined in the Constitution".

This is important also in terms of meeting the criteria for opening and closing the accession negotiations on Chapter 32. Financial Control, established by the European Commission on 22 June 2006, where what is established as a criterion for the commencement of the

negotiations is that the “Supreme Audit Institution (SAI) should have a solid foundation in the Constitution and be regulated by a special law”.

The proposed amendment to the Constitution of the Republic of Macedonia in terms of the State Audit Office is aimed at reinforcing the independence of the State Audit Office. Namely, the standards for the independence of the State Audit Office are embedded into the International Standards of Supreme Audit Institutions (ISSAI), which are applied in the conduct of state audit in the Republic of Macedonia. Pursuant to ISSAI 1, Lima Declaration, Section 5. Independence of Supreme Audit Institutions, states that:

1. Supreme Audit Institutions can accomplish their task objectively and effectively only if they are independent from the audited entities and are protected from external influences.
2. Although state institutions may not be fully independent since they are part of the state as a whole, Supreme Audit Institutions should have functional and organisational independence which is required to perform their tasks.
3. The establishment of the Supreme Audit Institutions and the required level of independence will be defined in the Constitution; details may be regulated also by law. Adequate legal protection against any impact on the independence and the audit authority of Supreme Audit Institutions will be specially guaranteed”.

Regarding the independence of the elected functionaries in Supreme Audit Institutions, in Section 6. of ISSAI 1 – Lima Declaration, it is stated:

1. The independence of Supreme Audit Institutions is inseparably linked with the independence of their members. Members should be those persons who make decisions on the Supreme Audit Institution and are responsible for such decisions before third persons, then the members of the collective body who take decisions or the head (main auditor) of the monocratically positioned Supreme Audit Institution.
2. The independence of the members will also be guaranteed by the Constitution. In particular, the procedures for revocation, which will also be enshrined in the Constitution, may not impair the independence of the members. The manner of appointment and revocation of the members depends on the constitutional setup of the country in question.
3. Given their professional career, the auditors in the Supreme Audit Institutions may not be exposed to influences by the audited entities and may not be dependent on such entities. The Draft Constitutional Amendment proposes that the autonomy and independence of the State Audit Office be elevated to the level of a constitutional category. Thereby, with a view to ensuring full independence it is proposed that the Assembly of the Republic of Macedonia elect and dismiss the principal state auditor.

Also, the said amendment proposes that the conditions and manner of conducting state audit, and the competences, organisation and operation of the State Audit Office be regulated by law.

- Reasoning of Amendment XXXVII

The main task and challenge of responsible and modern Governments is to ensure fiscal sustainability, that is, the efficient management of public finances, establishment of stable fiscal position in the long term without jeopardising the solvency in view of the undertaken obligations and the payment of expenditures.

Following the example of the European countries, the Government of the Republic of Macedonia proposes to introduce fiscal rules which provide:

- a framework for conducting a stable, predictable and sustainable fiscal policy;
- an increase in budget discipline and responsibility;
- an increase in the credibility of macroeconomic policy;
- equitable and sustainable allocation of expenditures between the current and future generation of consumers of public goods.

The definition of fiscal rules is the foundation of fiscal responsibility, transparency and earmarked utilisation of budget funds.

- Reasoning of Amendment XXXVIII

The Report of the European Commission on the Republic of Macedonia considers the issue of the composition of the Judicial Council, with guidelines for exemption of the Minister of Justice from this body.

In the opinion of the Venice Commission on the 2005 Draft Amendments it is underlined that: "The proposed reform is welcome, given that it is aimed at achieving depoliticisation of the election and dismissal of judges. The presence of the majority of judges in the Council is welcome ..."

Regarding the participation of the Minister of Justice as a member of the Judicial Council, the opinion of the Venice Commission on the 2005 Draft Amendments notes that: "In order to minimise the impact of the executive power, the membership of the Minister of Justice in the State Judicial Council may be replaced with the right of the Minister of Justice to attend the sessions of the Council or membership without a voting right."

The proposed solutions for increasing the number of members in the Judicial Council from among the judges contained in the Draft Amendment are **based on the international standards in this area and the comparative experiences of European Union member states**. Namely, the basic international standards in this area are contained in the following international instruments: the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Council of Europe Recommendation (94) 12 on the independence, efficiency and responsibilities of judges, the Council of Europe Recommendation (2010) 12 on the independence, efficiency and responsibilities of judges, Opinion No.10 (2007) of the Consultative Council of European Judges on Judicial Councils, and the European Charter on the statute for judges.

The Council of Europe Recommendation (2010)12 on the independence, efficacy and responsibilities of judges, Chapter IV governs the issue of judicial councils. Namely, Section 26 stipulates that judicial councils are independent bodies established by law or on the basis of the Constitution, seeking to preserve the independence of the judiciary and of individual judges and thus to promote the efficient functioning of the judicial system. Also, Section 27 states that "**Not less than half of the members of the councils should be judges elected by their colleagues from all levels of the judiciary and by respecting pluralism inside the judiciary.**"

In the European Charter on the statute for judges it is noted that every decision affecting the selection, recruitment, appointment, career progress or termination of office of a judge should **be made by an independent authority within which judicial representatives will be dominant.**

In Opinion No.10 (2007) of the Consultative Council of European Judges on Judicial Councils it is noted that the **judicial councils should be composed of either judges only or to have a mixed composition (judges and representatives outside the judiciary)**. Thereby it is stressed that if the judicial councils are of mixed composition, the significant majority is required to be judges who would be elected from their ranks. In terms of the members who

are elected from outside the judiciary, the opinion states that they should be elected from among the eminent lawyers and university professors with extensive experience.

Comparative analysis of the composition of judicial councils in European countries shows that most of these bodies are composed of representatives of the judiciary and representatives outside the judiciary. In most European countries, judicial councils have an important role in the appointment of judges. This is the case in Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, France, Georgia, Lithuania, Moldova, Montenegro, Romania, Serbia, Slovenia, Sweden, Turkey. Only in the Russian Federation and Iceland it is the Supreme Court that is responsible for the appointment of judges.

Most of the judicial councils in European countries are made up of judges and representatives from external professions (academics, lawyers, and sometimes representatives of the Ministry of Justice) - Albania, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Slovakia, Spain, Sweden, Switzerland, Turkey, Northern Ireland, Scotland and England. Only in a few European countries the judicial councils are composed solely of judges (Cyprus, Latvia, Lithuania).

Generally, the comparative analysis shows that judicial councils provide an opinion on the appointment of judges and public prosecutors, which in certain cases is mandatory for formal authorities that are granted jurisdiction for the appointment of a judge or public prosecutor. Most often, this formal authority is granted to the executive power, or the President (France, Hungary, Lithuania, Luxembourg, Moldova, Monaco, Romania) or the government (Malta, Sweden). Appointments by the legislative power are rarer (Serbia, Slovenia).

In other countries, there are judicial committees or councils responsible for appointment (Denmark, Finland, Ireland, Latvia, Norway, Poland). Most of these councils are composed of judges and legal practitioners. Often councils are responsible for preparing proposals for appointment. These proposals are addressed to the ministries of justice or parliaments that are responsible for the formal nomination/appointment of judges. However, in Finland the appointment of judges is the responsibility of the President upon the recommendation of the Ministry of Justice after the nomination by the Board on Judicial Appointments. It is also noted that in Switzerland, judges of Supreme Cantonal Courts and the Federal Court are generally appointed by the cantonal parliaments and the Federal Parliament, while judges of the trial courts are appointed by the judges of the Supreme Cantonal Courts.

The 2005 Amendment XXVIII established the Judicial Council of the Republic of Macedonia as an autonomous and independent body of the judiciary ensuring and guaranteeing the autonomy and independence of the judicial power. The majority in this body belongs to the judges elected from their ranks in direct elections. Namely, the Council consists of fifteen members. *Ex officio* members are the President of the Supreme Court of the Republic of Macedonia and the Minister of Justice, while eight members of the Council are elected by the judges from their ranks. Three of the elected members from the ranks of judges are members of the communities that are not in the majority in the Republic of Macedonia, whereby proper and equitable representation of the citizens belonging to all communities shall be observed. Also, in the Judicial Council there are three members who are elected by the Assembly of the Republic of Macedonia by a majority vote of the total number of Representatives, whereby there must be a majority vote of the total number of Representatives belonging to the communities that are not in the majority in the Republic of Macedonia. In addition to the said members, the Council also consists of two members who are nominated by the President of the Republic of Macedonia, and are elected by the Assembly of the Republic of Macedonia, one of whom belongs to the communities that are not in the majority in the Republic of Macedonia. In terms of the members who are not from the ranks of judges, it is stipulated that the members of the Council that are elected by the Assembly of the Republic of Macedonia, that is, that are nominated by the President of the

Republic of Macedonia are from among the university professors of law, lawyers and other eminent law experts.

The increase of the number of judges as members of the Judicial Council is proposed for the purposes of further reinforcement of the independence of the judiciary. The advantage of this model, according to which the majority of the Judicial Council are judges elected by all judges in the Republic of Macedonia, is aimed at preventing any possible political influence on the judiciary.

Also, the proposed constitutional changes are aimed at avoiding any possible politicization in the process of election and dismissal of judges, given that judges are elected by their ranks will be more numerous in relation to other members.

On the basis of the above, it is proposed to redefine the composition of the Judicial Council by increasing the members from the ranks of judges elected in secret and direct elections by the judges. It is also proposed to redefine the composition of the Judicial Council in view of the *ex officio* members – the Minister of Justice and the President of the Supreme Court of the Republic of Macedonia. Thereby the independence and autonomy of the judicial power will be reinforced. These changes are proposed to comply with the international standards in the area of the judiciary that have been taken in most European states. At the same time, it is proposed that the term of office of the elected members of the Council be for a period of six years, without a right to a consecutive re-election.

The said Amendment proposes that the Judicial Council consist of 15 members. In it the judges would have the majority of 10 members, while the representatives from outside the judiciary would be represented by five members.

- Reasoning of Amendment XXXIX

This Amendment introduces two significant novelties in the powers of the Constitutional Court of the Republic of Macedonia:

- constitutional appeal; and
- decision-making on the appeal against the decisions of the Judicial Council of the Republic of Macedonia on the election of judges, dismissal or other disciplinary sanction pronounced against a judge or a president of a court and introduction of a competence to decide on an appeal against the decisions of the Council of Public Prosecutors of the Republic of Macedonia on the election of public prosecutors, dismissal or other disciplinary sanction pronounced against a public prosecutor.

1. Constitutional appeal

The institute of constitutional appeal does not exist in the Republic of Macedonia. Namely, within the competences of the Constitutional Court of the Republic of Macedonia, among others, are also defined those related to the protection of the freedoms and rights of the individual and citizen which refer to the freedom of conviction, conscience, thought and public expression of thought, political association and activity and the prohibition of discrimination against citizens on grounds of sex, race, religious, national, social and political affiliation.

This institute has been introduced in several states. It is aimed at reinforcing the protection of human rights and freedoms defined in the Constitution. The further part of the initiative provides a comparative review of some of the states that have introduced the constitutional appeal into their legal systems.

This initiative proposes the introduction of a competence of the Constitutional Court of the Republic of Macedonia to decide on a constitutional appeal lodged against individual acts or actions of state authorities, local self-government units or holders of public mandates violating the fundamental freedoms and rights of the individual and citizen concerning: the equality of the citizen in his/her freedoms and rights regardless of sex, race, color of skin, national or social origin, political and religious beliefs, property and social status, the right to life, prohibition of torture, inhuman or degrading treatment, punishment and forced labor, the right to freedom of man, the right of presumption of innocence and a fair trial, freedom of conviction, conscience, thought and public expression of thought, freedom of speech, public address, public information, and free establishment of institutions for public information, freedom and inviolability of correspondence and all other forms of communication, security and confidentiality of personal data, freedom of religion, freedom of association, freedom of assembly and expression of public protest, respect and protection of the privacy of personal and family life, dignity and reputation, inviolability of the home, and the right to freedom of movement, when other domestic regular or extraordinary remedies for their protection have been exhausted or are not envisaged. At the same time, the procedure for filing a constitutional appeal, which will be exclusively submitted only by natural and legal persons who have had the aforementioned freedoms and rights violated, and the deadline for submission of the constitutional appeal will be regulated by law.

Constitutional appeal in Croatia

In the Republic of Croatia the constitutional appeal is regulated by the Constitution, the Constitutional Law and the Rules of Procedure of the Constitutional Court. Namely, pursuant to Article 125 of the consolidated text of the Constitution of the Republic of Croatia (of 15 January 2014) the Constitutional Court of Croatia decides on constitutional appeals against individual decisions of state bodies, the bodies of the local and district (regional) self-government units and legal entities with public mandates, when those decisions violated their human rights and fundamental freedoms, including the rights of local and district (regional) self-government guaranteed by the Constitution of Croatia.

The part connected with the procedure upon the constitutional appeal is regulated by the Constitutional Law – consolidated text (3 May 2002). Section 5 (Articles 62 through 80) stipulates the protection of human rights and fundamental freedoms and Article 62 paragraph 1 envisages that any person may file a constitutional appeal to the Constitutional Court if he/she believes that an individual act of state bodies, the bodies of the local and district (regional) self-government units and legal entities with public mandates with which it was decided on his/her rights and obligations, or in case of suspicion or accusation of a criminal offence, has violated a human right and fundamental freedom guaranteed by the Constitution, that is, a constitutionally guaranteed right of local and district (regional) self-government.

A constitutional appeal may be filed only if all other domestic remedies envisaged by law have been exhausted. If an administrative dispute, revision (in litigation or non-litigation procedure) is allowed, it is considered that the remedy is exhausted once a decision is made on these remedies (Article 62 para.3). In cases of a violation of the right to a trial within a reasonable time, the constitutional appeal may be filed even before the exhaustion of the remedies (Article 63 para.1).

The constitutional appeal may be filed within 30 days from the date the decision was received. Article 65 stipulates the form of the constitutional appeal (para.1) and the documentation to be submitted in attachment (para.2).

The constitutional appeal does not suspend the execution of the challenged act.

A council composed of 6 judges decides on the constitutional appeal (Article 68 para.1). When there are no process prerequisites for decision-making on the constitutional appeal

(inadmissible, filed by an unauthorised person, etc.) a council composed of 3 judges decides on that appeal. The council may take its decisions unanimously and in full composition only. In case of failure to take a unanimous decision or if the council believes that the constitutional appeal has wider significance, the constitutional appeal shall be decided at a session of the Constitutional Court.

The council decides only upon those allegations for a violation of certain constitutional right that are listed in the appeal.

The Constitutional Court shall dismiss the constitutional appeal with a resolution if it is not competent to act, if the constitutional appeal is untimely, incomplete, incomprehensible or inadmissible.

The Constitutional Court decides upon the constitutional appeal with a decision, whereby the constitutional appeal may be sustained or rejected for lack of merits. If it is determined that the constitutional right of the applicant has been violated not only by the challenged act but also by another act adopted on that case, the Constitutional Court shall repeal, fully or in part, that act with a decision.

The decision, that is, resolution is signed by the president of the council (if a council decided on the constitutional appeal) or by the President of the Constitutional Court (if the constitutional appeal was decided at a session of the Constitutional Court), and by the judge-rapporteur and an adviser.

With the decision sustaining the constitutional appeal the Constitutional Court shall repeal the challenged act and shall remit the case for another decision-making. In the adoption of a new act, the body competent for the adoption of that act is obliged to respect the legal opinion of the Constitutional Court noted in the decision repealing that act.

Constitutional appeal in Bosnia and Herzegovina

The constitutional appeal in Bosnia and Herzegovina is envisaged by Article 6 paragraph 3 b) of the Constitution of Bosnia and Herzegovina. The procedure on the constitutional appeal is regulated by the Rules of the Constitutional Court, which pursuant to the powers under the Constitution are adopted by the Constitutional Court itself. Pursuant to Article 6 paragraph 3 b) of the Constitution of BiH, the Constitutional Court has appellate jurisdiction in matters contained in the Constitution, when they are the subject of dispute due to a judgment of any court in BiH. This institute before the Constitutional Court is the last instance for the protection of human rights and fundamental freedoms in BiH.

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he constitutional appeal, pursuant to the Rules of the Constitutional Court of BiH (adopted at a plenary session held on 23 January and 12 February 2013), may be filed only if all efficient remedies envisaged by law have been exhausted, and if it has been filed within 60 days from the date of receipt of the decision on the last efficient remedy that was used.

The Constitutional Court may review the appeal even when no decision by the competent court is made if the appeal indicates serious violations of the rights and fundamental freedoms safeguarded by the Constitution or international documents that apply in BiH.

The appeal is submitted on a special form which is available in the Constitutional Court or on the website of the Constitutional Court and shall include: The court decision being challenged, provisions of the Constitution or international documents that apply in BiH which the applicant considers to have been violated, allegations and evidence on which the appeal is based, if there is no decision, the reasons for filing the appeal, the applicant's signature and power of attorney (if the applicant has a representative).

In the decision-making, the Constitutional Court takes into consideration only those alleged violations listed in the appeal.

The Constitutional Court decides on the appeal at a plenary session by a majority vote of all the judges of the Constitutional Court, and in a Grand Chamber by a majority vote of all judges (and at least 5 judges).

With the decision sustaining the constitutional appeal the Constitutional Court shall repeal the contested act and remit the case to be decided again, except in the cases when the consequences of the violation of the constitutional right may be resolved in another way.

When adopting a new act, the authority competent to take such act is obliged to respect the legal opinion of the Constitutional Court stated in its decision repealing the act. In some cases, the Constitutional Court can decide on the merits.

The decisions of the Constitutional Court are final and binding. The European Court of Human Rights concluded that the filing of an appeal before the Constitutional Court is an effective remedy that must be exhausted before an application is submitted to it.

Constitutional appeal in Slovenia

The institute a "constitutional complaint or appeal" was introduced into Slovenia with the 1991 Constitution. However, this remedy became operational only after the adoption of the Law on the Constitutional Court in 1994. The access to the constitutional appeal in Slovenia is rather wide - despite the rights and freedoms enshrined in the Constitution, a ground for filing a constitutional appeal may be any other right guaranteed by a ratified international treaty. The filing of the constitutional appeal is not subject to court or any other fees. There is no obligation to engage a legal representative. A constitutional appeal may be filed by any natural or legal person against an individual legal act with which a decision was made on certain rights or obligations of his. The deadline for filing a constitutional appeal to the Constitutional Court of Slovenia is 60 days from the date of adoption of the individual act, or failure to adopt, or the disputed commission. A constitutional appeal may be filed after using all possible remedies, and as an exception even before using such remedies, for example when the violation is obvious.

Within the Constitutional Court there are a civil, criminal and administrative councils. These councils, composed of three judges, in principle decide on the admissibility of any constitutional appeal. As a rule, the council decide unanimously on admissibility. Thereby these councils may declare the filed constitutional appeal inadmissible or manifestly ill-founded. If it does pass the threshold of admissibility, the Plenary Session of the Constitutional Court decides on the merits, except in cases when it comes to a constitutional issue on which the Constitutional Court has previously adjudicated. In these cases the decision upon the constitutional appeal may also be made by the Council of the Constitutional Court. While oral hearings in proceedings on a constitutional appeal are possible, in principle occur rarely before the Constitutional Court in Slovenia. Analyses indicate that the courts, for instance the Supreme Court which in regular court proceedings dealt with a specific case in connection with which a constitutional appeal was filed, rarely stated their view in response to them.

If the Constitutional Court finds a violation of constitutionally guaranteed rights by an individual act, the Constitutional Court repeals the contested decision and remits the case to be handled again to the competent authority, for instance the Supreme Court or administrative body, depending on who committed the violation. Thereby, if in the procedure upon a constitutional appeal, the Constitutional Court comes to the conclusion that the individual act about which the constitutional appeal was filed is based on an unconstitutional law or by-law, in a procedure taking place on the sidelines of the proceedings upon the constitutional appeal it may repeal such act - in which case this decision has an *erga omnes* effect. Especially interesting is the power that derives from Article 60 of the Law on the Constitutional Court, under which it is entitled to make a decision that will replace the

contested decision that is subject to the constitutional appeal. This is an especially powerful instrument in the hands of the Constitutional Court in cases where the competent authority is expected to manifest resistance in making a decision that would be in line with that of the Constitutional Court regarding the particular constitutional appeal. Such authority for instance is not granted to the Constitutional Court in Croatia, and the Constitutional Court of BiH introduced it through the Rules of the Constitutional Court. However, it is important to emphasize that it is a power and authority which the Constitutional Court of Slovenia uses extraordinarily rarely (only a couple of times and in the same cases concerning military pensions).

Constitutional appeal in Serbia

In Serbia there is a constitutional appeal as a separate remedy which may be brought against individual acts or actions of state bodies or organisations exercising public mandates, which violated human or minority rights or freedoms guaranteed by the Constitution of the State, if all remedies are exhausted or no other remedies for their protection are provided, or their legal protection is ruled out by law. A constitutional appeal before the Constitutional Court of Serbia may be filed by any natural or legal person within 30 days from the date of serving of the individual legal act passed in the last instance, that is, from the commencement of the action or its termination, when subject of the constitutional appeal are actions, whereby the period is calculated from the date the applicant learned about the commencement or termination of the disputed action.

The Constitutional Court of Serbia may not decide instead of the body whose act or action is subject to the constitutional appeal. It only decides whether there has been a violation of human and minority rights and freedoms in the specific case. When the Constitutional Court finds a violation of the rights or freedoms guaranteed by the Constitution, it also decides on the manner of fair compensation. As an exception, only in cases when the Constitutional Court finds a violation of a constitutionally guaranteed right or freedom, whereby the detrimental consequences of such violation may not be removed otherwise it may repeal / annul an individual legal act, thereby remitting the case to be handled again. Then the Constitutional Court may prohibit certain action or order certain action, and to determine a deadline within which the detrimental consequences from the violation should be removed. When the Constitutional Court sustains the filed constitutional appeal with a decision it decides whether it can be a basis for damages.

When the Constitutional Court finds a violation and consequently invalidates certain individual legal act, the consequences arising from the cancellation of the same, if it refers to more people and only some of them have filed a constitutional complaint, the decision of the Constitutional Court that is its effect is expanded and it has legal validity in relation to these people as well, assuming that they are in the same legal situation.

As a rule, the constitutional appeal does not suspend the execution of the individual acts in respect of which it is filed. However, the Constitutional Court is authorised under certain conditions to postpone the execution of the disputed individual legal act.

The decision of the Constitutional Court sustaining the constitutional appeal is the basis for the application for damages. Such request shall be submitted to the Commission for damage compensation, for the purpose of reaching an agreement in respect of the amount of the compensation. If the Commission fails to sustain the application or if within 30 days of submission of the application the Commission fails to take a decision on the constitutional appeal the applicant may file a claim for damages before the competent court.

2. Redefinition of the jurisdiction of the Constitutional Court to rule on an appeal against the decisions of the Judicial Council of the Republic of Macedonia on the selection of judges, dismissal or other disciplinary sanction pronounced against a judge or the president of the court and introduction of the jurisdiction to decide on appeals against the decisions of the Council of Public Prosecutors of the Republic of Macedonia on the election of public prosecutors, dismissal or other disciplinary sanction pronounced against a public prosecutor.

One of the international standards in the area of the independence of the judiciary is the one that ensures that when deciding on disciplinary sanctions the judge has the right to appeal to a higher judicial institution. This is stated in Opinion No.3 of the Consultative Council of European Judges, and point 72 of the European Charter on the Statute for Judges, point 5.1. Namely, the proposed initiative proposes to introduce competence of the Constitutional Court to decide on appeals against the decisions of the Judicial Council of the Republic of Macedonia on the election of judges, dismissal or other disciplinary sanction pronounced against a judge or the president of the court and to introduce jurisdiction to decide on an appeal against the decisions of the Council of Public Prosecutors of the Republic of Macedonia on the election of public prosecutors, dismissal or other disciplinary sanction pronounced against a public prosecutor.

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MINISTRY OF JUSTICE

Skopje, July 2014