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The role of the Constitutional Court in protecting the freedom of expression in the Republic of Macedonia

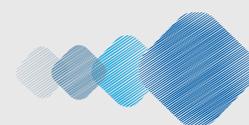
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▶ Let's Start

“This policy brief has been prepared in the framework of the TRAIN Programme 2016 (Think Tanks Providing Research and Advice through Interaction and Networking), which is supported by the German Federal Foreign Office (Stability Pact for South East Europe) and implemented by the German Council on Foreign Relations (DGAP).”

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Section 01

According to the European Court of Human Rights, “freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and each individual's self-fulfillment”.¹ Moreover, the freedom of expression is considered to be an EU accession priority, as part of the defined key areas within the principle called *fundamentals first*. The European Commission's Annual Strategy on EU Enlargement, adopted in October 2014, highlighted the freedom of expression and media as one of the most important challenges for the countries aspiring to EU membership. What is worrisome is the fact that it is in precisely these two key areas that Macedonia is stagnating and/or backsliding. More precisely, the 2015 European Commission Report on the Republic of Macedonia noted backsliding in three areas, among which are the judiciary and the freedom of expression.

The Constitution of the Republic of Macedonia guarantees the freedom of expression, thus imposing an obligation for its protection. Analyzing the freedom of expression through the prism of judicial protection, since the Law on Civil Liability for Defamation entered into force in November 2012, more than 550 trials have been raised before Macedonian courts. Many of these cases involve lawsuits triggered by high-level governmental representatives against journalists, raising concerns about the existence of double standards in favour of governmental parties and their representatives.² The Recommendations of the Senior Experts' Group on systemic Rule of Law issues related to the communications interception revealed in Spring 2015, also known as the Priebe Report, clearly state that: *Defamation actions should not be used as a means to stifle debate or prevent public figures from being held to account. It is of particular concern when politicians sue journalists for defamation, but also when they sue other political figures, instead of resolving their differences through other means such as public debate.* Moreover, the Urgent Reform Priorities refer to the protection of the freedom of expression in court cases on defamation: *Courts should develop a clear and foreseeable practice on the protection of freedom of expression in view of defamation claims.*

This situation imposes a need for studying the judicial protection of the freedom of expression. Despite the protection provided through the regular courts on the basis of the Constitution of the Republic of Macedonia, the Constitutional Court only has the competence to protect a limited set of *stricto sensu* defined freedoms and rights, among which is the freedom of expression. The rationale behind this mechanism is to ensure the comprehensive protection of the freedom of expression, on one side by the directness of the request (as a constitutional complaint), but also by the fact that a court decision at any instance may be disputed. This policy brief starts from the premise that the number of complaints about the protection of the freedom of expression is negligible, while at the same time freedom of expression is backsliding. The research aims to detect the reasons behind these trends.

The main policy problem that will be examined with this research is the (non)functioning of the mechanism of constitutional complaint regarding the freedom of expression in the Republic of Macedonia. This involves presentation of the legal framework and a comparison between this mechanism and cases before the regular courts. The main emphasis is on the current implementation of this policy and the identified shortcomings, accompanied by an analysis of relevant court cases. **On the basis of empirical findings, this research provides policy recommendations for advancing the mechanism of constitutional complaint for the protection of the freedom of expression, but the identified shortcomings and recommendations are also relevant regarding the overall functioning of the Constitutional Court.** Further improvement of the judicial protection of the freedom of expression is necessary both in order to implement the Urgent Reform Priorities and regarding the crucial Chapter 23. Progress in this area is therefore vital to further progress in the EU accession process.

¹Lingens v. Austria, Application no. 9815/82, Judgment, Strasbourg, 8th July 1986

²NVO Infocentar, *Politicians and Defamation Action Trials*, NVO Infocentar, Skopje, 2015, p.4

Section 02

Current legislative framework for the protection of the freedom of expression

Following the Council of Europe, constitutional justice is considered a cornerstone of constitutional democracy.³ The formulation of Article 16 of the Constitution of the Republic of Macedonia, which guarantees the freedom of expression, is in line with the European Convention for Human Rights (ECHR). The Constitution utilizes the terms *freedom of thought and public expression of thought*. The jurisdiction of the Constitutional Court to decide upon the protection of a limited set of freedoms and rights is also regulated by the Constitution of 1991 in Article 110, paragraph 3. The Constitutional Court protects the freedoms and rights of the individual and the citizen regarding the freedom of conviction, conscience, thought and public expression, political association and activities, and the prohibition of discrimination among citizens on grounds of sex, race, religious, national, social and political affiliation.

In a way that is very much different from abstract normative control, individual acts and activities of the organs of the public authority which the citizens consider to violate some of the declared constitutional rights are subject to scrutiny under this mechanism for protection of the human rights and freedoms before the Constitutional Court. The procedure for the protection of freedoms and rights is regulated by the Rules of Procedure of the Constitutional Court. Any citizen considering that an individual act or action has infringed upon his or her right or freedom, he or she may request protection by the Constitutional Court within two months after the day of delivery of the final or legally enforced individual act, specifically the date on which the citizen became aware of the activity which created an infringement, but not later than five years after the day of the undertaking. The deadlines for this procedure are quite short: the request for the protection of human rights and freedoms is submitted for response to the other party within 15 days, while the report for the submitted case shall be prepared within 30 days at the latest from the day when the case has been given to be worked on. The Constitutional Court decides, by rule, on the basis of a public hearing.

This procedure is based on the principles of priority and urgency. One of the main characteristics of the procedure is the directness of the request for protection of rights (constitutional complaint) that were violated by an individual act or action. As stated by the Venice Commission, direct access comprises all legal means given to individuals to directly petition the constitutional court without the intervention of a third body.⁴ What is also specific for this competence is that the subject of complaint may not only be an administrative act, but provides also that a court decision at any instance may be disputed. At the same time, submitting such a request does not call for previous exhaustion of all the legal remedies against a final or effective act, but the Constitutional Court serves to protect the freedoms and rights solely when they are violated by a final and effective act.⁵ With the decision, the Constitutional Court defines whether there is an infringement and, depending on that, it will annul the individual act, prohibit the action causing the infringement, or refuse the request. It may also prescribe an interim measure. The decision of the Constitutional Court is final, meaning that there is no other instance at which to appeal.

On the other hand, since the Law on Civil Liability for Defamation and Insult entered into force, the previous criminal liability has been replaced by a civil liability for defamation and insult. The court proceeding is conducted in accordance with the principles of the civil procedure. Among other things, it involves certain court fees and multistage procedures. The constitutional complaint for the protection of the freedom of expression has a wider scope. For example, a group of journalists submitted a constitutional complaint regarding the protection of the freedom of expression due to their expulsion from the Assembly hall on 24th December 2012 (also known as “Black Monday”).⁶ To submit a constitutional complaint involves no court taxes. The use of this mechanism can be also considered in the case of exhaustion of domestic legal remedies to meet the admissibility criteria for applying before the European Court of Human Rights (ECtHR). When examining the fulfillment of this criterion, the Court takes into consideration the effectiveness and availability of legal remedies and not solely their existence. Having in mind the principle of subsidiarity under which the national courts must have the opportunity to consider and redress the alleged violation(s), it is extremely important for the mechanism to be functioning and properly so.

⁴European Commission for Democracy through Law (Venice Commission), *Study on Individual Access to Constitutional Justice*, Adopted by the Venice Commission at its 85th Plenary Session, Venice, 17-18 December 2010, p.7

⁵Stojanovski, V., Karamandi, Lj., Shulevska, H., Tsatsa-Nikolovska, M., *The Constitutional Court in the Grip between Political Interests and Human Rights*, Helsinki Committee for Human Rights of the Republic of Macedonia, Skopje, 2016, p. 14

⁶On 24th December 2012, during a plenary session for adoption of the budget, MPs from the opposition party were boycotting the vote in order to prevent rise of the national debt by adopting such budget. Therefore, they were unlawfully expelled from the Assembly of the Republic of Macedonia along with all journalists, and the budget was approved solely by MPs from the ruling parties.

³La Pergola, A., Introductory statement in: *The role of the Constitutional Court in the consolidation of the Rule of Law*, Proceedings of the UniDem Seminar organized in Budapest on 8-10 June 1994, Council of Europe Press, Strasbourg, 1994, p. 12

Section 03

(Non)functioning of the mechanism of constitutional complaint regarding the freedom of expression in the Republic of Macedonia

The existing legislative framework shows that the constitutional complaint as a mechanism could improve access to justice in the Republic of Macedonia, by having the Constitutional Court immediately examine and decide whether a legal decision or course of action represents a violation of fundamental rights, particularly the freedom of expression. According to the 2015 Annual Report of the Constitutional Court, 13 requests for protection of the freedoms and rights were submitted, equal to the number in 2014, which shows a decrease compared to past years (22 requests in 2013, 25 requests in 2012 and 23 requests in 2011). Even the Constitutional Court itself underlines that there has been a decrease in the number of submitted requests.

Only three requests submitted in 2015 referred to the protection of the freedom of belief, conscience, thought and public expression of thought. As was already mentioned, since the entry into force of the Law on Civil Liability for Defamation, over the period of only two years, from November 2012 to December 2014, a total of 520 defamation cases have been raised before the Macedonian courts (Gostivar, Tetovo, Štip, Veles, Bitola, Prilep, Strumica and the Basic Court Skopje 2 in Skopje). The majority of these cases were raised before the Basic Court Skopje 2 – 328 litigations or 63% of the total number. In 2015, there were 30 new defamation lawsuits filed within this court, 17 of which (56%) involved journalists and media outlets as defendants.⁷ At the same time, certain decisions that were reached by the Constitutional Court, called into question its independence. In November 2015, the Constitutional Court rejected the appeal in the case *Apostolov and Kostova* (Decision No. 164/2014), who were respectively a journalist and editor of the newspaper "Fokus", to protect the freedom of public expression of thought. The Court justified its decision to reject the appeal by arguing that the published texts did not intend to cause public debate, but to harm the

personal rights of Mijalkov, the former Director of the Security and Counter-Intelligence Agency, which raised public reactions.⁸

The UN Rapporteur for the freedom of speech, Frank La Rue, in his 2013 Report on the promotion and protection of the right to freedom of opinion and expression in the Republic of Macedonia, mentioned this case while it was in a procedure before regular courts. He expressed concern about the additional negative impact of this decision on the work of newspaper "Fokus" and considered it completely inappropriate for the courts to even consider claims of defamation regarding the factual reporting of declarations by state officials or other third parties. Additionally, he emphasized the importance of the further efforts required to revise such practices in the courts.

When examining this policy, one must have in mind the situation regarding the freedom of expression in the Republic of Macedonia and the region in general, but this research focuses on the judicial protection expressed through the mentioned mechanism. As other papers on this topic also concluded, there are four main obstacles and deficiencies that influence the (non)functioning of the constitutional complaint as a mechanism for the protection of the freedom of expression, and the overall functioning of this mechanism when it comes to protection of the limited set of rights:

- Lack of public trust in the composition of the Constitutional Court;
- Restrictive competence of the Constitutional Court in the protection of the freedoms and rights;
- Procedural aspects;
- Restrictive interpretation of international legal acts, especially the European Convention for Human Rights.

01

Lack of public trust in the composition of the Constitutional Court

The disproportion between the number of submitted requests for protection of the freedom of expression before the Constitutional Court and the number of trials before "regular" courts can be thought of as an indicator for low public trust in the independence of the Constitutional Court. This distrust may be partially due to the Courts' composition. The Constitutional

⁷ NVO Infocentar, *Analysis: Freedom of expression v. Defamation*, NVO Infocentar, Skopje, 2015, p. 2-4

⁸ Network 23, *Monitoring brief on the implementation of the Urgent Reform Priorities for the period 21.10-06.11.2015*, European Policy Institute, Skopje, 2015

Restrictive competence of the Constitutional Court in the protection of the freedoms and rights

Court is composed of nine judges, with the criteria for appointment prescribed in the Constitution of the Republic of Macedonia. Any candidate for the position of Constitutional judge should be a “prominent lawyer”, while the procedural criteria requires that an absolute majority of votes is needed (majority of the total majority of votes). The decrease in the number of submitted requests is especially visible after a majority of the constitutional judge positions changed in 2012. In the period between 2011 and 2013, five new judges were appointed to the Constitutional Court. These judges currently comprise the majority in this court. Their election was highly controversial given that neither of them had been previously known or could be considered a “prominent lawyer”, as is required by the Constitution. Namely, the new judges have no scientific title, such as Master or Doctor of Philosophy, nor have they produced any academic work or published scientific papers.⁹ Some of them were appointed in the period when the opposition was absent from the Parliament. This has caused suspicions that their appointment reflects their political background. As stated in the 2014 European Commission Progress Report on Macedonia, *there are also concerns that changes in the composition of the Constitutional Court in recent years have affected its independence, and that it has started to delay and compromise on decisions.*

Moreover, one actual judge was appointed on 24th December 2012, on the same day when the MPs of the opposition and journalists were expelled from the Assembly hall, in which case the journalists had requested protection of the freedom of expression right before the Constitutional Court. Therefore, the judge was appointed solely by the ruling parties, in absence of the opposition parties. Most of the cases for the protection of the freedom of expression involve journalists and high-level governmental representatives. Therefore, having in mind the orchestrated attack of the governmental party on the freedom of expression on the one side, and the unlawful interference in the judiciary on the other side, doubts on the independence of the Constitutional judges can be a significant factor, especially when it comes to determining whether the citizens will require protection of the freedom of expression. The independence and competence of the composition of the Constitutional Court must be better ensured.

Within the limited set of freedoms and rights on the protection of which the Constitutional Court is competent to decide, only four rights are covered. In the period between 1991 and 2016, around 300 requests for protection of the prescribed freedoms and rights were submitted before the Constitutional Court, among which there was only one request that the Court decided to accept. Moreover, in 39 cases, court decisions rejected the requests on the basis of finding no violation of the rights and freedoms, while the rest of the applications were rejected due to incompetence of the Court, procedural obstacles, or to the fact that the request had been finished in administrative procedure.

The restrictive competence of the Constitutional Court to decide upon the protection of only four rights and freedoms affects the functioning of the constitutional complaint mechanism. Also, it implies an insufficiency of constitutional practice on the protection of the freedoms and rights. The criterion for selection of these rights remains unknown and unexplained among the professional public.¹⁰ When it comes to the protection of the freedom of expression, it is very important to take into consideration its interrelation with other freedom and rights (for example, the right to private life and family life). Due to this restrictiveness, the Constitutional Court's competence is limited to decide only on certain aspects related with the freedom of expression, without having an opportunity to examine the linkage with other freedoms and rights. For example, in the mentioned case *Apostolov and Kostova* (Decision No. 164/2014), plaintiff Mijalkov, claimed liability for defamation against the journalist Vlado Apostolov and the editor Jadranka Kostova for publishing the statement of the former ambassador Igor Ilievski in the newspaper “Fokus”, saying that the former ambassador was forced to escape from the Czech Republic due to the pressure exerted by Mijalkov.¹¹ After receiving the decision of the Appellate Court, the defendants approached the Constitutional Court. One of the main issues was the distinction between the public interest and the private interest. In its decision, the Constitutional Court does not discuss this aspect at all.

¹⁰ Trenea-Deskoska, R., *Constitutionalism and Human Rights*, Faculty of Law, Justinianus Primus, Skopje, 2006, p.271

¹¹ Ilic Dimoski, D., Hadzi-Zafirov, Z., *Courts of Law: Guardians of public interest or of individual interest*, Institute for Communications Studies, Skopje, 2015, p. 18

⁹ Chalovska, N., Stojanovski, V., Jovanoski, A., *Shadow Report on Chapter 23*, European Policy Institute and Helsinki Committee for Human Rights, Skopje, 2016, p. 10

In June of 2014, the Government of the Republic of Macedonia proposed amendments to the Constitution, including the introduction of a comprehensive constitutional complaint, which would expand the jurisdiction of the Constitutional Court to decide on appeals on a wide range of fundamental rights and freedoms, not just those mentioned above. On request by the Council of Europe, almost all European countries have introduced such a comprehensive constitutional complaint mechanism. Although such an initiative was widely discussed by the expert public prior to its submission, the procedure for adoption of these amendments was controversial. First of all, the main opposition party was absent from the Parliament during the debate. Secondly, there was an attempt to adopt several constitutional amendments all at once, without broader consultation with the expert public on the concrete proposals. Thirdly, the particular proposal on the introduction of a comprehensive constitutional complaint mechanism contained several significant shortcomings, so that its adoption would have caused more harm in terms of protection of the human rights and freedoms than benefits. With regards to the amendments on the constitutional complaint mechanism, the Venice Commission criticized its insufficient preparation, the persistence of a limited list of freedoms and rights despite its extension, the lack of clarification of certain terms, and the separation of one particular right into several others.¹² This amendment has not yet been adopted.

03

Procedural aspects

Article 28 of the Rules of Procedure of the Constitutional Court provides that the Court will reject an initiative:

- if it is not competent to decide upon the request;
- if it has already dealt with the same matter, and there are no basis for a different decision or,
- if there are other procedural obstacles to decide upon the initiative.

The last point is inexhaustible and is left open to interpretation. But in practice it is shown that multiple complaints for the protection of freedoms and rights are rejected due to the fact that they had been submitted by legal entities. If the text of the Constitution is interpreted strictly, Article 110 paragraph 3, which prescribes the competence of the Constitutional Court in the protection of the freedom

of expression, refers to “citizens” and individuals” as plaintiffs. Therefore, only natural entities are authorized to submit constitutional complaints. Hence, regarding the freedom of expression, only journalists can request protection before Constitutional Court, but not the media that they represent as a legal entity. This situation leads to inconsistencies. The news articles prepared by journalists are specified and approved by the editors on behalf of the media. One of the questions that arises is who would be authorized to request protection, the journalist, the editor, or both, given the strict rule that only individuals and citizens can request protection? What if there are several journalists who together have authored the news article? If all the individuals who belong to such an entity need to demand their rights individually in their own name, the Court could find itself in a situation where it would be faced with complaints from hundreds of citizens.¹³ The European Convention on Human Rights, in contrast, recognizes groups of people as applicants.

Referring back to the above-mentioned data, most of the complaints submitted before the Constitutional Court are rejected due to the Court declaring itself incompetent to rule. One of the reasons behind this trend might be the quality of the complaints. It must be taken into consideration that most of the journalists reach out to this mechanism once they have already initiated proceedings before a regular court or have been sued, and thus are financially exhausted. Related with the fact that only individuals can request protection of the freedoms and rights before the Constitutional Court, journalists might not be able to hire a lawyer. Therefore, their complaints are not well prepared and due to that, are eventually rejected.

Moreover, in the Rules of Procedure, it is stated that the Constitutional Court decides, by rule, on the basis of a public hearing. But this rule is not imperative and there is a practice of not convening a public hearing when there are no contentious requests. The reason for such a practice is not imposing financial costs. But this practice in the case *Naser Selmani and others* (Decision No. 27/2013) resulted in very negative consequences. The factual situation for one very controversial event, the expulsion of journalists from the Assembly hall on 24th December 2012, was determined on the basis of the written documentation, although no other court has ruled on the case. In her dissenting opinion regarding the Courts' final decision,¹⁴ Judge Natasha Gaber-Damjanovska stated that the main reason for such an opinion was the fact that she was unable to

¹² European Commission for Democracy through Law, *Opinion on the Seven Amendments to the Constitution of the Republic of Macedonia concerning, in particular, the Judicial Council, the competence of the Constitutional Court and special financial zones*, Adopted by the Venice Commission at its 100th Plenary Session, Rome, 10-11 October 2014, p. 16-19

¹³ Filipov, S., *Effectiveness of the constitutional complaint in the Republic of Macedonia according to the criteria of the European Convention for the Protection of Human Rights and Fundamental Freedoms*, published in *Legal Dialogue No. 4*, Skopje: Institute for Human Rights, 2011, available on: <http://www.ihr.org.mk/p.php?pid=34>

¹⁴ Gaber-Damjanovska, N., *In defence of the Constitution and civilizational achievements*, Macedonian Centre for International Cooperation, Skopje, 2016, p. 28

objectively decide upon the subject. She suggested that given this very specific case, it should have been evaluated on the basis of all information clarifying the legal and factual circumstances related to it. By not holding a public hearing, the Court showed an unwillingness to clarify the dilemmas which would allow for an accurate insight into the facts that would be based on detailed information about the event from all involved parties.

▶ 04

Restrictive interpretation of international legal acts, especially the European Convention for Human Rights

According to the Constitution of the Republic of Macedonia, courts make decisions on the basis of the Constitution, laws and ratified international agreements. Moreover, ratified international agreements have a stronger legal effect than national laws, in a context that cannot be changed by law. When there is a collision between the provisions from the international agreements and provisions prescribed by laws, the first ones have to be applied. The Urgent Reform Priorities provide revising of the legislation to remove "honour", "dignity" and "offence"-type cases, most of which are raised under the statutory definition of insult and which fall outside the scope of defamation in the sense of Article 10 of the European Convention on Human Rights. Therefore, the legislation does not meet the criteria stipulated by the Convention. Additionally, the adoption of a new Media Law was envisaged as one of the main conditions for fair and level playing elections. In such a situation when there is legal uncertainty, legislation that does not meet international standards, and/or the legislations' implementation is not ensured in practice, the application of the acts of international law is extremely important.

According to the Constitutional Courts' explanations of decisions, there is a restrictive interpretation of the norms of international law and international agreements ratified in accordance with the Constitution, in particular the European Convention on Human Rights and the jurisprudence of the ECtHR. In her dissenting opinion in the case of expulsion of journalists from the Assembly hall, Judge Natasha Gaber-Damjanovska emphasized that the purpose of protecting freedom of expression in the mentioned case must be interpreted more broadly, implying that the Court did not implement the Convention properly but instead very restrictively.

Section 04

Recommendations for improvement of the constitutional complaint for protection of the freedom of expression

On the basis of the previous discussion, this policy paper aims to provide recommendations for improvement of the constitutional complaint for the protection of the freedom of expression. As mentioned, while the focus rests upon the protection of the freedom of expression, the identified shortcomings are relevant regarding the constitutional complaint in general, and the recommendations can therefore also be used to improve the overall functioning of this mechanism.

As the European Commission noted backsliding in the area of freedom of expression in the Republic of Macedonia, similarly, one of the main conditions for solving the current deep political crisis is an improvement of this situation. The involvement of the European Union in the political crisis must be used in that context, emphasizing that without adequate protection of the freedom of expression there cannot be democracy and rule of law. Civil society, especially media organizations and trade unions, must also strongly emphasize that this issue must not be left out as was the case in previous rounds of negotiation when there was no agreement and the overall negotiations took place behind closed doors and solely between the political parties.

The recommendations address each of the identified shortcomings in turn. They aim to feed into the ongoing discussion on the proposed constitutional amendments.

▶ 01

Lack of public trust in the composition of the Constitutional Court

A clearer definition of the term "prominent lawyer" is needed. Also, the names and professional biography of the proposed candidate should be published and discussed by the professional and wider public prior to their appointment. This should especially be the case

regarding the judges that are proposed by the Assembly of the Republic of Macedonia (five from the total of nine judges). Another step forward could be the increasing of the Assembly majority required for the appointment of the Constitutional judges to two-thirds majority vote. According to the existing framework, an absolute majority is needed, which led to a situation where judges were appointed in absence of the opposition parties. For a comparison, a two-thirds majority vote is also needed for adoption of law on the types of courts, their spheres of competence, their establishment, abrogation, organization and composition, and the procedure they follow.

02

Restrictive competence of the Constitutional Court in the protection of the freedoms and rights

Broadening the competence of the Constitutional Court in the protection of the freedoms and rights represents significant progress in this field. So, the proposed broadening of the competence of the Constitutional Court in this regard should be approved, but the possible introduction of a new remedy of that kind requires careful preparation and wide discussion in society. Public and expert debate, accompanied with extensive and comprehensive insight on this topic, are more than necessary. If the constitutional complaint exists as a mechanism for the protection of the freedoms and rights, it must be effective in light of the criteria provided by the European Convention of Human Rights. There should not be a limited list of rights; rather, this mechanism should protect all the rights provided by the Constitution or the rights protected by the European Convention of Human Rights.

Regarding the freedom of expression, the broadening of the competence of Constitutional Court would contribute to more developed and predictable judicial practices and with decisions on requests taking into consideration linkages with other freedoms and rights.

03

Procedural aspects

Conditions for rejecting a request regarding the protection of the freedoms and rights must be more accurate. This is particularly the case regarding the paragraph 3, Article 28 of the Rules of Procedure, which prescribes other procedural obstacles as a condition for rejection. Changes must be made in order

to permit legal entities to submit requests for the protection of the freedoms and rights. This is very important when it comes to the protection of the freedom of expression, so the media as entities can also be authorized to complain. Then, the journalists would not have to carry the entire burden themselves. Incomplete complaints and complaints prepared with insufficient quality should not be rejected automatically, with such an ease. In both the criminal and civil procedures, if the submissions are not compiled properly, the courts should return the submissions for the completion of adjustments by a certain deadline. This provision is very important in the context of access to justice. It is also important when it comes to the protection of freedom of expression, where, related with the above-stated, the journalists have to submit complaints as individuals and often cannot hire lawyers, especially if prior to this procedure there had been a trial before regular courts. Also, the critical media are often exhausted by payments of compensation for non-pecuniary damage and financial controls.

The principle of publicity when deciding upon constitutional complaints must be respected more strictly in order to determine the factual situation, especially when the case was not subject to prior trial. Moreover, public hearings can serve as an opportunity to regain the trust of the citizens towards the Constitutional Court and its capability and expertise.

04

Restrictive interpretation of the international legal acts, especially the European Convention for Human Rights

The Constitutional Court must take into consideration the ratified international agreements, above all the European Convention of Human Rights. This is extremely relevant where, when it comes to the protection of the freedom of expression, the national legislation does not meet the established standards or comply with international obligations. Use of this legal source by the Constitutional Court could serve as an example for the regular courts. With the above-mentioned possibility for introduction of comprehensive constitutional complaint, this issue becomes even more important, given that in such case Constitutional Court would constitute the last resort within the state for considering protection of human rights and freedoms prior to exercising the possibility to apply to the ECtHR.