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CONSTITUTIONAL COURT OF THE REPUBLIC OF MACEDONIA - PRACTICE ON BYLAWS

Abstract

The Constitutional Court of the Republic of Macedonia holds within its authority the duty to analyze the constitutionality and legality of bylaws. Being the handy practical instruments of further regulating the general legal principles, rights and freedoms of citizens they may show some inconsistencies and/or non-compliance with the more general constitutional and legal frame. Some illustrations of such examples are the several that are commented in this article, coupled with the theoretical basic description of the nature and role of these acts in the legal system in general. Special attention while drafting these acts, should be dedicated to the way in which a certain right or obligation of the citizen is stipulated, in order to preserve the harmonious link to all other higher legal acts, as well as not to exceed the already given limits or powers of the enacting body.

Keywords: Constitutional Court, bylaws, constitutionality and legality

INTRODUCTION

Bylaws have always been the handy practical instruments of further regulating the general legal principles, rights and freedoms of citizens. At times, they may show some inconsistencies and/or non-compliance with the more general constitutional and legal frame. It is the Constitutional Court of the Republic of Macedonia who holds within its authority the duty to analyze and decide upon their constitutionality and legality. This article offers some illustrations of such examples, coupled with the theoretical basic description of the nature and role of these acts in the legal system in general. Deficiencies located by the Constitutional Court from the aspect of their constitutionality and legality, should serve as guidelines while drafting these acts in the future. The final goal is to preserve the harmonious link to all other higher legal acts, as well as not to exceed the already given limits or powers of the enacting body.

BYLAWS – NOTION AND ROLE IN THE LEGAL SYSTEM

Bylaws are effective implementing instruments of the executive power, but also acts of numerous other governmental and non-governmental bodies and organisations at state or local level. Plainly defined, they represent "a rule adopted by an organization chiefly for the government of its members and the regulation of its affairs"[12]. They *vivify in practice* the higher normative acts ranging from the Constitution and to the more general standards, definitions, rules and criteria regulated by laws. Like other sources of law, bylaws are a tool enabling application of the principle of legal certainty and equality, because all potential participants in certain social relations know in advance how to behave, and on the other hand social rules have a uniform effect on everybody. They are general legal acts lower in hierarchy from the laws, vary by name and purpose, as well as by the body that introduces and applies them.

Bylaws as a source of law in the material sense represent the need for *more specific regulation* of certain matter. They reflect the current social "living" dynamics which by using wider legally set frameworks resolves all practical issues related to the regulated phenomenon. Bylaws are useful practical tools - executors of the statutory imperative, its embodiments through which the principle of the rule of law in a state is most directly reflected. They are the product of a delegated legislation, lead by bodies beneath parliament to pass their own legislation.

Anyway, the *process of adopting* laws fundamentally differs from that which refers to laws. The main difference between the bylaw and the law is that the first

[12] Merriam-Webster definition

is passed by a non-sovereign body, which derives its authority from a higher body and can refer to a limited list of issues. In material terms, the relation between laws and bylaws is that laws are an expression of popular will and they may determine rights, duties and powers, while lower regulations can only determine the way in which these powers and responsibilities should be exercised. This principle is covered by Article 51 paragraph 1 of the Constitution which stipulates that in the Republic of Macedonia laws shall be in accordance with the Constitution and all other regulations with the Constitution and law. The case law of the Constitutional Court is based on this general principle and approach. Laws are adopted by the Assembly of the Republic of Macedonia[13] having previously gone through the parliamentary procedure, while bylaws are adopted in a much faster way by the executive power and are not subject to such a system of "check" or debate. It is therefore very easy for the executive to adopt them and to directly maneuver with the practical application of the laws in a highly efficient manner. After all, it is the concrete application of laws that citizens feel the most.

In terms of the *subordination* of the acts, statutory legal rules governing the matter concerned are not actually able to comprehensively and in all details regulate it. Thus, there is a need for further regulation with other lower-ranking normative acts. In addition, there is a technical reason from which originates such hierarchical regulation of acts, given that the legal text must be clear, precise, unambiguous and perspicuous in the regulation of the rights and obligations of citizens and bylaws unburden the legal text of the details that are not an immanent legal element. The further development or further specification of the legally set criteria and rules is the task of the bylaw, which vivifies the specific details, procedures, technical parameters, the formal operating rules, etc. and whose starting point should be clearly and precisely laid down in the legal text[14].

By definition in legal theory, bylaws are *general acts of lower legal force than laws* which differ in their name, adopter and legal nature. They may be adopted by the executive power, that is, the bodies of local self-government units, organisations with public mandates, political parties, trade unions, associations of citizens, and they must comply with the law and the Constitution. These acts which the Constitutional Court considers on their merits, by its content are acts - rules prescribing a general

[13] Under Article 68 paragraph 1 line 2 of the Constitution.

[14] Identically, the legal "open" or wider provisions set at the end of the article, used for practical reasons in regulating future currently unforeseen conditions, have similar role. Such "open" clause must enable dynamic input of changes and anticipate future developmental changes for which the law transfers it such capacity through new, practical shapes, forms and standards acceptable in nomotechnics and manageable at the level of a bylaw. However, within the entire process attention must be paid not to violate the principled hierarchy of the normative acts and the limits of the allowed range of regulating relations through a bylaw.

and abstract rule for an unlimited number of social subjects, cases and persons (*erga omnes* effect) to which the regulated matter refers. Bylaws are *characterized* with: legality, concreteness, authoritativeness, legal effect and enforceability.

Considering the heterogeneous function that bylaws perform, practice knows very extensive list of *types* of bylaws, which include: regulation[15], the Rules, the decision, order, instruction, rules of procedure, resolution, conclusion, statute, collective agreements, acts of various regulatory bodies, government authorities and organisations, as well as local self-government units including urban plans. The Constitutional Court has the authority to examine them in terms of their constitutionality and legality.Also, the Constitutional Court in accordance with Article 110 line 7 of the Constitution has jurisdiction to rule only on the constitutionality of the programs and statutes of the political parties and associations of citizens. This Article states that the Constitutional Court is competent to decide only on the acts specified in this article, not all acts adopted by these entities. For this reason, initiatives aimed at assessing other bylaws adopted by them are rejected by the Court for lack of jurisdiction.

Most often, bylaws are a dynamic *tool of the administration* and include all legal acts and material action it adopts or takes in performing administrative activities. The regulatory activity of the organs of administration consists in adopting secondary general legal acts only when they are empowered for that by law. They may not establish new rights and obligations for the citizens, but only specify and further develop the laws. In the Republic of Macedonia often the need for adoption of the bylaws is directly stated in the substantive laws due to the need of more detailed and more practical regulation of the area concerned, which at the same time may be subject to more dynamic modification or adaptation according to changing social needs. In addition to the legal ground the law may also determine the period within which the bylaw is to be adopted, the subject that should adopt it (person, body or authority), and the general form and content of the elements that should be included and detailed. Those bylaws that are not specifically mentioned in the substantive law to be adopted but there is, nevertheless, indication of the need for the further regulation of the matter with a bylaw are adopted in sole discretion, with reference to Article 55 of the Law on the Organisation and Work of Bodies of State Administration, which states the general authorisation of the Minister and/or Director of the independent state body to adopt bylaws[16].

[15] Article 91 paragraph 1 line 5 of the Constitution, "the Government of the Republic of Macedonia ...adopts decgrees and other regulations for enforcement of laws".

[16] Law on the Organisation and Work of State Administration, Official Gazette of the Republic of Macedonia, no.58/2000.

The bylaws must be *passed* in the legally prescribed procedure, whereby the expected outlined for of the act must be observed. The authorisation the bylaw obtains and which is transferred from the law must not be exceeded and may not be used contrary to the purpose for which it is given. In case these limits are not respected, the adopted act shall be unconstitutional and unlawful. Therefore, constitutional provisions are the starting point in appraising the bylaws in terms of the separation and structure of state government, including the mutual relations of the bodies of the state, and in particular executive power. The Constitutional Court of the Republic of Macedonia often finds itself in a situation to appraise the constitutionality and legality of a number of bylaws from these very aspects. If the bylaw is in breach of the Constitution or law it may be repealed or annulled[17].

The Constitutional Court of the Republic of Macedonia *takes into consideration* the initiatives relating to the assessment of the constitutionality of a *regulation or other general act*[18]. The determination as to *what* the Constitutional Court of the Republic of Macedonia considers to be a *regulation* that would be eligible for a constitutional court assessment is cited in numerous cases, which generally covers the approach that the act, *inter alia*, should contain general norms, regulate relations in a general way, and that rights and responsibilities for an indefinite number of subjects in the law derive from it. The Court considers the merits of all writs that regulate in a general way rights and obligations, whatever the formal title of the act[19] but taking into account its legal effect on citizens. The specific legal acts do not fall within the jurisdiction of the Constitutional Court, except when falling under Article 110 paragraph 1 line 3 of the Constitution which relate to the protection of the freedoms and rights of citizens[20].

CONSTITUTIONAL COURT CASE LAW ON BYLAWS

Although in theory an impression may be prevailing that the limits of the scope of laws vis-à-vis the *matter* de facto governed by bylaws are clearly divided, in

[17] The annulment annuls all legal consequences that this act has produced since the moment of its entry into force (ex tunc), while with the repeal of the act it cannot have legal application in the future, starting from the moment when it is repealed (ex nunc). However, even in cases where no proceedings are initiated for assessing the constitutionality and legality of the bylaw, with its stated position the Constitutional Court aids in the unification and standardization in the understanding and application of the provisions.

[18] Articles 11, 12, 13 and 14 of the Rules of the Constitutional Court of the Republic of Macedonia, 1992.

[19] In practice examples with letters addressed tocitizens imposing on them obligations.

[20] This procedure is elaboratedin Chapter IVArticles 51-57of the Rules of the Constitutional Court.

the constitutional case law is reflected the real situation, where there are a number of issues of this kind. In some cases it is appraised whether the way in which the competent minister based on the law governs the subject matter by a bylaw in a certain way is constitutional or not. This can be seen in the case 87/2013 were Article 6 paragraph 4 was challenged in the part "the content and" of the Law on Termination of Pregnancy[21]. Given that Article 6 paragraph 3 precisely states and lists the contents of the counseling that the pregnant women will get[22]the question arises whether there is a violation of the constitutionality and legality of paragraph 4 of the same Article which stipulates that "The content and the method of counseling referred to in paragraph 3 of this Article shall be prescribed by the Minister of Health by a special act."The Court did not initiate proceedings on this matter, but the dilemma remains[23].

In the case law of the Constitutional Court there is often challenging of the constitutionality and legality of collective agreements. An indicative example is U.br.73/2014 where the collective agreement of air navigation M-NAV AD Skopje was challenged[24] fully and separate provisions of its. Concomitantly, it should be noted that the collective agreements of this joint stock company had been before the subject-matter of consitutional court assessment[25]. In the present case, the Court repealed some of the contested provisions finding that they were not in accordance with the Constitution and the law stating that: it is legally unfounded when filling in vacant posts to give priority to those who are already employed by the employer; coefficients for the complexity of the jobs that are used to determine the various

[21] "Official Gazette of the Republic of Macedonia" no.87/2013.

[22] Lists the possible advantagesof continuing the pregnancy, the risks of implementation or non-implementation of the intervention for termination of pregnancy upon the health and life of the woman, the methods for carrying out the termination of pregnancy, and the opportunities and methods to prevent pregnancy.

[23] As the dissenting opinion states: "With the mere fact that the contents of the special act that should be adopted by the health minister is again mentioned and legally authorizes him to regulate it with a separate act, the Law continues to leaves a room for intervention by the Minister in the content of the bylaw, and beyond the already set legal framework, with new elements of counseling that are unknown in advance. In case the intention of the legislator was still to understand the advising of pregnant women only as operationalisation of the law, and not as right to original determination of other contents of the consultation, makes this legal formulation fully redundant and pointless, and also justified for constitutional court intervention" - Quote from the dissenting opinion accompanying the Resolution on this case.

[24] Under number 02-103/1 from17.01.2014, concluded between trade unions at M-NAV AD SkopjeAir Traffic Control (SSKL) and Air Traffic Staff (OHR) and the Board of Directors of M-NAV AD Skopje.

[25] With its Resolution U.br. 60/2013the Constitutional Court initiated proceedings for assessing the constitutionality and legality of several provisions of the Collective Agreement ofM-NAB AD Skopje under No.03-1793/1 from 10.12.2012.

titles under the law should not be considered an official secret and be regulated in a separate annex to the collective agreement; there is no legal limit to the number of union representatives who may be selected by the union, and their legal protection applies to all of them irrespective of whether they originate from a representative trade union or not; and consent to the cancellation of the employment contract of the trade union representative during the performance of duties is required from the union that selected the worker and whose interests he represents, and not the "representative trade union" as stated by the collective agreement.

Also illegality represents the deadline assigned to the re-enactment of a new collective agreement, given that the Labour Law states that "the collective agreement may be concluded for a definite time period of two years, with the possibility of extension, with the written consent of the contracting parties"[26]given that in this case the time dynamics of changing the act, without thereby containing any essential changes, is again less than the prescribed minimum period specified in the Law. Given that such agreements are the foundation and safeguard of labor and social rights of employees, it is more than clear that their frequent change undermines legal certainty for all concerned, leaving a room for irregularities and possible abuses.

A general stance of the Court, both in this and other examples, and at the same time in accordance with the Labor Law,is that *collective agreements may not determine fewer rights than those stipulated by law,* and if they contain such provisions they are considered null and void and the relevant legal provisions apply.

The Constitutional Court has extensive case law[27] of reviewing the decisions on the adoption of detailed urban plans (DUP) whereby the jurisdiction of the Court in reviewing these bylaws is generally whether there has been observance of the statutory procedure for drafting and adoption of the act under the Law on Spatial and Urban Planning[28], and whether there has been compliance with other legal provisions of the respective area. This procedure is developed in Articles 7 and 48 of the said Law and the preparation, adoption and implementation of urban plans is of public interest. In these provisions in order to ensure the organisation and humanisation of space and protection and improvement of the environment and nature as a fundamental value of the constitutional order of the Republic of Macedonia the legislator has established precise regulations relating to spatial

[26] Article 226 of the Labour Law.

[27] Examples from recent case law of the Constitutional Court: U.br.63/2014,U.br.73/2013, U.br.3/2013, U.br.6/2013.

[28] "Official Gazette of the Republic of Macedonia", nos.51/2005, 137/2007, 151/2007, 91/2009, 124/2010, 18/2011 and 53/2011.

planning, specifically defining the plans for spatial and urban planning, their content and the procedure for their adoption[29].

With its Resolution U.br.14/2013 the Court initiated proceedings for assessing the constitutionality and legality of the Decision on adoption of the changes in and supplements to the DUP "Dolno Vodno" Centar Municipality - Skopje. As stated in the reasoning: "... the spatial planning which is performed in a procedure and by competent authorities is aimed at keeping or changing the existing situation of the area in a procedure in which the needs of citizens should be expressed which is the concept of the Law, for the purposes of which the public poll is conducted. Any other acting and changing of the plan beyond what is provided for in the draft plan and is not the result of the public survey essentially makes senseless and defaces the purpose of the public poll .... ". Upon establishing the facts, according to which it is evident that "... the challenged plan in the part being disputed with the initiative is not identical with the proposed plan that was presented on the occasion of the last conducted public presentation and public poll, in a way that the presented Proposed Plan in the part being challenged with the initiative has undergone a substantial change in terms of the individual class of land use, including with respect to the access road ", the Court concluded that when a plan is publicly displayed to the citizens for an insight and has certain content and a final plan is presented with other content, it questions the rule of law as a fundamental value of the constitutional order of the Republic of Macedonia, that is, legal certainty of citizens.

Given the trends of continuous decline in the standard and increase in the cost of living and the expressed interest of the citizens in issues related to the supply and use of various types of energy, the Constitutional Court has often

[29] While the jurisdiction of the Court is to appraise the merits whether the adopter has complied with all stages of the proceedings, it does not go into issues of vocational-technical character, does not appraise the very content of the plans, does not appreciate the conclusions of the justification or lack of justification of sustained or dismissed observations and proposals on questionnaires by citizens, and does not involve itself in assessing the plan in terms of a bylaw (since they represent acts of the same rank) or in determining ownership and other individual rights of the citizens. Supporting documents, such as the adoption of programs on preparation of urban plans or decisions on determining the need to enact urban planning documentation for harmonisation of the purpose of the construction land, are not under the jurisdiction of the Court to be considered on their merits. Examples: In case U.br.3/2013 the Court initiated proceedings for assessing the constitutionality and legality of the Decision on adopting and changing the DUP number 07-1019/13 made by Kumanovo Municipality, as the adopter of the decision had not submitted the draft plan and proposed plan and because there was a dispute on the facts regarding the observance of the stages of the procedure provided for in the Law, whereby there was a violation of the constitutional principle of the rule of law. Also, the Constitutional Court repealed the Decision on adopting an urban plan outside an inhabited place GP1 in block 4.3, 2011-2021, No.07-5169/3 Municipality of Ohrid, because among other shortcomings in the legal procedure, through the procedure for the adoption of a new spatial plan what was actually done was amending an already planned space with a valid plan and the change was not made in a procedure for amending an existing plan.

considered initiatives aimed at assessing the constitutionality and legality of the Network Rules for Distribution of Heating Energy, the Tariff System for the Sale of Energy, the Tariff System for Electricity Transmission, Tariff System for Electricity Distribution, the Tariff System for the Sale of Electricity to Tariff Consumers and the like, which are commonly made by of a regulatory body, in this case the Energy Regulatory Commission of the Republic of Macedonia. The initiatives placed under the constitutional and legal test the requirements and process of connecting and disconnecting users of heating energy, the dilemma whether it is possible through the bylaw that is adopted by the minister, that is, the regulatory bodies to prescribe the jurisdiction of other authorities or to establish rights and obligations for the citizens and other legal entities, and other legal issues[30].

Indicative in this respect is the case U.br.125/2012, where the goal of the initiative were the Rules for the supply of heating energy. Analyzing the specifics of the collective housing buildings and the passive taking of heating energy during its passage through the vertical pipes, the Court indicated that: "the user of heating energy in the collective housing facility is not in a subordinated relationship with other users, but it is an interrelated activity in the use of heating energy, and in terms of costs as well." The conclusion is that in collective housing buildings even the consumers disconnected from the thermal system objectively use certain heating energy due to the inability to remove it, which creates the merits of their obligation to pay for it proportionally to the energy consumed and not to use it at the expense of the consumers who are not disconnected. With this view the Court decided not to initiate a procedure for assessment of the constitutionality of the challenged provision (Article 53 paragraph 2)[31].

[30] The rules for heating energy supply were discussed in U.br.125/2012,U.br.197/2012,U.br.83/2013, 98/2013 and U.br.80/2013. In some there were procedural obstacles to decide, since the act was no longer valid and in use (U.br.95/2013).

[31] Cases which in practice have certain physical and technical specifics have been referred individually to regulate the objectivity of their condition, if needed in court. However, for this reason in the same case the Court quashed Article 13 and Article 53 paragraph 1 in the part which requires that individual disconnection of consumers at their request can be made only after prior consent of the total number of consumers in that collective housing facility. Based on this intervention of the Court, new, but so far unsuccessful initiatives followed, aiming at some of the computational elements for determining the price of electricity supplied to tariff consumers. Such as reactive power, active power or engaged heating power. The dissenting opinion in this case states that given that the Law does not set forth an obligation to pay compensation for heating energy by persons living in collective housing buildings, who have ceased to be beneficiaries of heating energy due to the disconnection of the heating space unconstitutionally the duty for them to pay part of the compensation for heating energy is determined by a bylaw passed by Regulatory Commission. Due to this situation, this issue should be subject to assessment by the regular courts, and not to be determined by a bylaw, as it was done.

In the case of U.149/2013 the Constitutional Court initiated proceedings for assessing the constitutionality and legality of Article 12 paragraph 1 item 10 of the Rules for implementing the Law on Excise Duty[32] as a result of the known position and case law in a number of laws and bylaws governing the matter of a different nature. Notably, the Court stated that it was unconstitutional "to enclose with the application for excise license a certificate issued by a competent court stating that there are no criminal proceedings against the applicant... because it violates the principle of presumption of innocence laid down in Article 13 paragraph 1 of the Constitution and Article 2 of the Criminal Procedure Code." This for reasons that the person who by law would like to obtain an excise license if he wants to produce, store, receive or send goods subject to excise duty (and no criminal proceedings are conducted against him), practically in case of a procedure of absence of conditions for excise debt, the contested provision considers him guilty of committing a criminal offense before being found guilty by a final court decision as a result of which this provision in its essence in this part is actually penal provision, that is, it contains elements of a legal consequence from conviction on the person which does not arise from the conviction, but occurs by force of law (*ex lege*) and thus expands the legal effect of a conviction, for which there is no constitutional basis.

As for bylaws that are adopted by the local self-government units (LSGU), an interesting example is the case U.br.152/2013, where the Court initiated proceedings for assessing the constitutionality and legality for a reason that Jegunovce Municipalityin its adopted criteria for determining the market value of real estate in Jegunovce Municipality[33] determined drastically different number of points (which formed the basis for determining the market value) depending on the title of ownership of the real estate, specifically depending on whether the owner is a natural or legal person (5 versus 40 points). This regulation is in direct contradiction and outside the legal framework established in the Law on Property Taxes and the Methodology for Determining the Market Value of the Real Estate.

Similar cases in which the Court had interventional (repealing or annulling) role and where it was held that the adopter of the bylaw acted contrary to the principle of constitutionality and legality are: anticipating additional criteria, other than the legally set main criterion for acquiring tenancy rights[34]; independent pricing of the health services that are borne by the Health Insurance Fund, outside the

[32] "Official Gazette of the Republic of Macedonia", no .40/2001, 72/2001, 89/2001, 50/2002, 86/2002, 19/2003, 54/2003, 6/2004, 6/2005, 44/2006, 137/2006, 25/2008, 125/2008, 53/2009, 94/2009, 122/2009, 46/2010, 85/2010, 156/2010, 29/2012 and 106/2012.

[33] Number 07-300/16 of 28.02.2013, the "Official Journal of the Municipality of Jegunovce" number 47/2013 of 01.03.2013

[34] Provided in the Rules to address the housing needs of workers, adopted by the Council of the Institute of Agriculture, Skopje, U.br.238/1992

standards and norms, that is,frameworks of the Health Care Law[35]; regulation of the categorisation of professionals outside the legal framework, stipulating more conditions than the legal ones for acquiring the title of certified accountant and establishing numerous restrictions on performers of this activity which are beyond the legal framework[36]; determining the maximum number of points that the chosen doctor may obtain regardless of the number of patients to whom he provides health care which limits the right of the insured to free choice of a doctor and additional determination of public duty[37]; adding new criteria, beyond the legal ones for the establishment of the organisational units in public health institutions that may not be leased[38]; authorisation by the legislator to the Judicial Council to prescribe other criteria for assessing the competence and ethics of a judge other than those set forth in the Law on the Courts with a bylaw[39]; prescribing the categorisation of users of utility services through which it is gone beyond the legal requirements and criteria for setting the price of utility services and an unequal treatment between legal persons[40]; through *de facto* alteration of the conditions for direct payments for agricultural activities the government conducted a retroactive effect of laws and regulations and called into question the principle of the rule of law[41]; etc.

Similarly, in the case U.br.4/2007 the Constitutional Court quashed the criteria for compensation for non-pecuniary damage due to demise, corporal injury and health damage from the use of motor vehicles, adopted in October 2006 by the Commission for Automobile Liability Insurance within the Government the Republic of Macedonia. Since the criteria on which it will depend how much compensation

[35] The price list for health services of the "Borka Taleski" medical centre from Prilep was challenged, U.br.135/1993.

[36] Provided for in the Rules on conditions and criteriafor acquiring professional titles in accounting, adopted by the Assembly of the Union of Accountants, Financial Experts and Auditors of the Republic of Macedonia1994/95, and the Rules on conditions and criteria for acquiring a professional title in the field of accounting - certified accountant, adopted by the Conference of the Chamber of Accounting and Financial Professionals in 1995, U.br.247/1995.

[37] Provided in the Rules for the payment of health services in primary health care adopted by the Board of Directors of the Health Insurance Fund, "Official Gazette of RM" No.48/2001, U.br.170/2001.

[38] Provided for in the Rulebook on the criteria for determining the organisational units in PHI that cannot be leased, "Official Gazette of RM" no. 32/2006 and4/2007, adopted by the Ministerof Health, U.br.16/2007.

[39] Rules on the procedure and criteria for monitoring and evaluating the work of judges, "OfficialGazette of RM" no.31/2008, U.br.237/2009.

[40] Decision on approval of the fee for collection and transportation of municipal waste in the City of Skopje, the Official Journal of the City of Skopje, No.12/2010, U.br.12/2011.

[41] Decree amending the Decree on specific criteria for direct payments, the beneficiaries of the funds, the maximum amounts and the method of direct payments for 2011, adopted by the Government, "Official Gazette of RM", No.52/2011, U.118/2011.

will be awarded in judicial proceedings are already set out in Article 189 of the Law on Obligations, which also lists the factors that influence the determination of the amount of damages, the Court holds that there is no constitutional justification for the government's normative move. In a state of clearly defined criteria that determine the amount of the awarded non-pecuniary damages and in a situation of constitutionally defined autonomous and independent courts, the courts may not be imposed to determine the compensation together with the Law and based on the framework and criteria established in the Criteria for non-pecuniary damages due to demise, corporal injury and health damage from the use of motor vehicles. The situation may certainly be used as an example of the interference of the executive power in the judicial power, which should be independent and autonomous. This is especially because the final provisions of this bylaw provided that the Criteria be communicated to all basic and appellate courts and the Supreme Court of the Republic of Macedonia within a specified period, for the purposes of deciding in determining this type of compensation of all cases that are pending.

CONCLUDING THOUGHT

This aforementioned Constitutional Court practice highlights the importance of constitutional-legal review of bylaws. Being the practical implementer of legal principles and rules they simultaneously carry the peril of human rights and freedoms breach if these regulatory rules get out or distort the intended legal frame. This is why legal professionals and the wider public need to stay alert and follow how their applicability has been performed.

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