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PROCEDURAL UNCONSTITUTIONALITY AND ILLEGALITY OF THE PRESPA AGREEMENT²

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The Prespa Agreement signed on June 17, 2018, which changed the constitutional name of the Republic of Macedonia, is a precedent on international law. In the procedure of his conclusion, ratification, and execution were committed serious violations of procedural rules. Although the violations that this agreement produces are numerous, and with different nature, the focus of this paper is on procedural violations. The Prespa Agreement also has a lot of substantial mistakes which is in confrontation with the Constitutional, and the international law because the Prespa Agreements provisions derogate some essentially fundamental rights as a right of self-determination. But this paper is focused only on fundamental violations of legal norms that prescribes the procedure for promulgation of the Prespa Agreement - the process of negotiation, conclusion, ratification, and publishing. The process of negotiating, signing and ratifying the Prespa Agreement is followed by flagrant violations of the constitutional norms, statute norms, and the norms of the Vienna Convention on the Law of Treaties in the part that regulates the issue of persons who was competence for adopting an authenticating the text of a treaty. Besides the introductory part and historical introduction to the genesis of the problem, the focus of this paper is the procedure of negotiating, concluding, and ratifying the Prespa Agreement. The procedural aspects of the referendum on the Prespa Agreement will be elaborate in the part called “negotiation and conclusion of international agreement” because, by the time being, this referendum was issue notice after the conclusion phase and before ratification.

Key words: *Prespa Agreement, President, decree, Constitution, law, ratification*

1. INTRODUCTION

On June 17, 2018, on the Macedonian-Greek border, on the Macedonian side in Nivitsi, was signed the Prespa Agreement which “finally” resolved the name

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² In this paper for the name of the country the author will use the name “Republic of Macedonia” or just “Macedonia”.

issue of the Republic of Macedonia³. This international agreement, who regarding of its legal effect and the subject which it regulates is a precedent in international law, for the Republic of Macedonia, has created a legal obligation to intervene in the Constitution to change the constitutional name “Republic of Macedonia” to “Republic of North Macedonia”.

The following of this paper will summarize the historical genesis of the name issue.

Greek - Macedonian dispute regarding the constitutional name of the Republic of Macedonia on the international level became a reality after publishing the results of the Macedonian independence referendum held on September 8, 1991 - according to the referendum results, the independence from the former federal state, Yugoslavia, was declared with a large majority of residents who voted. With this referendum was pronounced the name “Republic of Macedonia” as an official name of the country⁴. Under the influence of the Greek “concern” for territorial aspiration, on January 6, 1992, by the Assembly of the Republic of Macedonia was adopted amendments I and II to amend Articles 3⁵ and 49⁶ of the Constitution. Practically, this was the first constitutional intervention shortly after the independence proclamation. After the fulfillment of this obligation, on 7 April 1993, the UN Security Council adopted Resolution (817) approving the Republic of Macedonia’s membership on the UN. Whith this Resolution was recommended that the primary reference “the former Yugoslav Republic of Macedonia” will be used as an official name of the Republic

³ The original name of Prespa Agreement is “Final Agreement for the Settlement of the Differences as Described in the United Nacion Security Council Resolutions 817 (1993) and 845 (1993), the Termination of the Intern Accord of 1995, and the Establishment of a Strategic Partnership Between the Parties”.

<https://vlada.mk/sites/default/files/dokumenti/spogodba-en.pdf>. (4. 12. 2019) In the following of this paper will be using the term “Prespa Agreement” or just “Agreement”.

⁴ The independence of Macedonia from the Yugoslav federation accomplished in three-phase: in the first phase in January 1991 the Assembly adopted the Declaration for independents (Official Gazette of the RM, no. 42/91); in the second phase was accomplished proclamation for independence based on Decision adopted by the Assembly of Republic of Macedonia which was announced on 8 August 1991 in the Official Gazette of the Republic of Macedonia (Official Gazette of RM, no. 37/91); and in the third phase by the Assembly was adopted the Constitution of Republic of Macedonia wherewith procedure for establishing independent state became finally concluded. Constitution of the Republic of Macedonia (Official Gazette of the RM, no. 52/1991). Amendment I и II from Constitution of Republic of Macedonia (Official Gazette of the RM, no. 1/1992), Amendment III from Constitution of Republic of Macedonia (Official Gazette of the RM, no. 31/1998), Amendments IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII и XVIII from Constitution of Republic of Macedonia (Official Gazette of the RM, no. 91/2001), Amendmen XIX from Constitution of Republic of Macedonia Official Gazette of the RM, no. 84/2003), Amendmen XX, XXI, XXII, XXIII, XXIV, XXV, XXVI, XXVII, XXVIII, XXIX и XXX from Constitution of Republic of Macedonia на Official Gazette of the RM, no. 107/2005), Amendment XXXI from Constitution of Republic of Macedonia Official Gazette of the RM, no. 3/2009), rectify an error on Amendment XXXI from the Constitution of Republic of Macedonia Official Gazette of the RM, no. 13/2009) and Amendment XXXII from the Constitution of Republic of Macedonia Official Gazette of the RM, no. 49/2011). Also see: Сулејманов, З.; Сулејманов, Д., *Уставно судство*, Скопје, 2013., p. 627.

⁵ Amendment I replaced Art. 3 of the Constitution. According to this amendment provisions, the Republic of Macedonia pronounces its non-territorial aspiration on Greece territory. Official Gazette of RM, no. 1/92 https://www.constituteproject.org/constitution/Macedonia_2011.pdf?lang=en (6.12.2019)

⁶ With Amendment II, the Republic of Macedonia pronounces that it will not interfere in the sovereign rights of other states or their internal affairs. Official Gazette of RM, no. 1/92.

of Macedonia. But not only in a frame on the UN, in the following years was broadened application on the primary reference in other international organizations in which the Republic of Macedonia has a membership. Following the Resolution, this primary reference will be used until the dispute between these two countries reached a resolve⁷.

Considering that the adoption of Resolution 817 did not make any progress in negotiation, the UN Security Council in a short time adopted a new Resolution (845), which requests an acceleration of a negotiation process of the name issue⁸. As a consequence of Resolution 845, between Greece and Macedonia was signed Interim Accord on September 13, 1995⁹. From the conclusion of the Interim Accord to the day the Final Agreement was reached, UN mediators including mediator Matthew Nimetz proposed various formulas with intention the “desirous” agreement as soon as possible to be signed. Some of those proposals were pretty unbecomingly and offensively to the Macedonian state and Macedonian people¹⁰.

Besides a historical overview of the problem, the main focus of this paper is the procedural aspect of the Prespa Agreement. Although this agreement abounds with legal and procedural omissions, this paper will only analyze the procedural impact that precedes the promulgation of the Prespa Agreement in the Official Gazette of the Republic. ***The basic hypothesis that this paper intends to prove is: in process on signing, ratification, and promulgation of the Prespa Agreement were caused several flagrant violations of constitution and laws provisions, as well as an on series of articles of Assembly’s Rules of Procedure. Signing the Prespa Agreement also violates the Vienna Convention on the Law of Treaties, 1969 procedural rules***¹¹.

To understand the violations of legal norms, it’s particularly important to properly determine the position of the executive authority regarding the jurisdiction to conclude international agreements.

⁷ Resolution 817 https://www.mfa.gr/images/docs/fyrom/resolution_unsc_817_1993.pdf (6.12.2019). The UN General Assembly on April 8, 1993, adopting the Resolution 225, accept the Republic of Macedonia as a 181 UN member state with primary reference.

⁸ Resolution 845 was adopted on June 18, 1993 https://www.mfa.gr/images/docs/fyrom/resolution_unsc_845_1993.pdf (6. 12. 2019)

⁹ The purpose of the Interim Accord was the parties to continue their efforts to find an acceptable solution under Resolutions 817 and 845. Among other things, Art. 6 of the Interim Accord for Macedonia has made an obligation under which no article of the Constitution of Macedonia, and in particular Art. 3 and Art. 49, respectively, amendments I and II, including the Preamble, shall never be caused any territorial pretensions on the parts of Greece territory. With this international agreement, the Republic of Macedonia also accepts the obligation for changing the state flag. <http://www.hri.org/docs/fyrom/95-27866.html> (10. 12. 2019)

¹⁰ Спорот за името меѓу Грција и Македонија, *ЈП Службен весник на РМ*, Скопје, 2008., p. 409-514.

¹¹ This is an important constatation because all the states that were part of Yugoslavia by succession are members of the Vienna Convention on the Law of Treaties, 1969. Todić D., *Zalkučivanje i izvršavanje međunarodnih ugovora u pravnom sistemu Bosne i Hercegovine, Crne Gore i Hrvatske*, Strani pravni život. Vol. 61, No. 2, 2017., p. 107. The author of this reference writes about Croatia, BiH, and Montenegro, but since Macedonia was also a full member of the former Yugoslav community, this conclusion also affects over Macedonia - although the Macedonian legal system is not covered by its research.

Place of an international agreement in Macedonia's Constitution is a very important theme that is closely related to the subject of this paper and which certainly deserves a basic treatment in order to obtain a clear picture of the flagrant violations of law committed in the process of conclusion and ratification of the Prespa Agreement¹².

In Macedonia, experts have relatively weak coverage of the aspects of the Prespa Agreement. The author of this paper has managed to find only two scientific papers. The first paper segmentally elaborates the procedural impact that preceded the publication of the Prespa¹³. The second one elaborates only superficially and descriptive fundamental weaknesses of the Prespa Agreement, without an analytical approach to the procedural or material aspects¹⁴.

Despite the flagrant violation of the constitutional provisions regulating the intervention in the Constitution, the paper won't elaborate Representative's declaring way for opening and closing the process for changing the constitutional name of the Republic of Macedonia. That is a matter for a, particularly research.

2. EXECUTIVE AUTHORITY AND CONCLUSION OF THE INTERNATIONAL AGREEMENTS

A public authority in the Republic of Macedonia is organized according to the principle of separation of powers - legislative, executive and judiciary system¹⁵. This principle, among other principles¹⁶, is established as a fundamental value of the legal regime¹⁷. The basic characteristics of the contemporary model on the organization of constitutional regime allow the Republic of Macedonia to be reckon among the group of states with a mixed political system¹⁸ where the central position in the relations between public authorities is attribution to the lawmakers. Executive

¹² About international agreement in former Yugoslavia see: Šeks V., *Jugoslavija i međunarodni pravni dokumenti o pravima čovjeka*, Revija za sociologiju, Vol. 20, No. 8-9, 1989., p. 351-362.

¹³ Апасиев Д., *Правните аспекти на референдумот за т.н. Преспански договор меѓу Република Грција и "Втората страна*, Годишник на Правниот факултет во Штип, год. 8, 2018., p. 5-19.

¹⁴ Никодиковска-Крстевска А., *Договорот од Преспа помеѓу Република Македонија и Република Грција низ призмата на меѓународното право*, Годишник на Правниот факултет во Штип, год. 8, 2018., p. 125-137.

¹⁵ Chapter III, Art. 61-107 from the Constitution.

¹⁶ The basic freedoms and rights of the individual and citizen, recognized in international law and set down in the Constitution; the free expression of national identity; the rule of law; political pluralism and free, direct and democratic elections; the legal protection of property; the freedom of the market and entrepreneurship; humanism, social justice, and solidarity; local self-government; proper urban and rural planning to promote a congenial human environment, as well as ecological protection and development; and respect for the generally accepted norms of international law. Art. 8 from the Constitution.

¹⁷ Art. 8 par. 4 from the Constitution.

¹⁸ Силјановска-Давкова Г., *Современи "модел" на организација на власта: дилем и предизвици*, Zbornik Pravnog fakulteta u Zagrebu, Vol. 60, No. 2, 2011., p., 374. Климовски, С.; Каракамишева – Јованоска Т.; Спасеновски А., *Политички систем*, Скопје, 2017., p. 113-116. Климовски, С.; Каракамишева Т, Дескоска Р., *Уставно право и политички системи*, Скопје, 2012., p. 485.

power is defined as bicephalous. Following the Constitution, executive authorization is divided between the President of the State as a particular authority¹⁹ ²⁰ and the Government as a collegiate authority²¹.

The legitimacy of the President of the State to proceed from the citizens in general and direct election²². Opposite of President, the Government is a political authority elected by the Assembly²³.

According to the constitutional law, the competences of the Government and the President of the State, are grouped into several fields²⁴. Among these constitutional competences is reckon and those who refer to foreign affairs. For this authorization of the Government, the Constitution doesn't use the phrase "foreign policy"²⁵. Also, the Constitution doesn't use this formulation for the authorization of the President of the State²⁶. In general, the Government is the bearer of effective executive jurisdiction, and the President has "symbolic jurisdiction despite direct elections"²⁷. Following the Constitution in the part of foreign policy in the field of international relations, the Government decides on the recognition of states and governments, establishes diplomatic and consular relations with other states, makes decisions on opening diplomatic and consular offices abroad, and make proposes the appointment of ambassadors and Representatives of the Republic of Macedonia abroad and appoints chiefs of consular offices²⁸. Regarding foreign policy, the President of State

¹⁹ The President of the State along with the Constitutional Court are only public authorities whose legal status is regulated by the constitutional provisions. In the legal system of Macedonia did not exist discrete law for the President and the Constitutional Court to regulate certain aspects bound up with related functioning and organization of each of these public authorities. - Art. 79-87 and Art. 113 of the Constitution. See: Шкарик С., *Научно толкување на Уставот*, Скопје, 2014., p. 350.

²⁰ In theory, the nonentity of a discrete law for the President of the State is frequently justified by the standpoint that the best way to strengthening the function of "President" in the legal system is by adopting constitutional amendments. Therefore the function of "President" constantly will be lie-up with constitutional provisions. Otherwise, if the function "President" is regulated with Constitution and with law, to be forthcoming danger of weakening of this function regarding the Assembly. Following the Macedonian legal system, these statutes are voted by a majority of the total number of Representatives (61 votes). For example, the decision to initiate a change in the Constitution is made by the Assembly by a two-thirds majority vote of the total number of Representatives (81 votes). The same majority is necessary for adopting the provisions of the constitutional amendment. Светомир Шкарик, *op. cit.*, p. 350.

²¹ Art. 89 from the Constitution.

²² Art. 80 from the Constitution.

²³ Art. 68 and Art. 92 from the Constitution.

²⁴ Determines the policy of carrying out the laws and other regulations of the Assembly and is responsible for their execution; proposes law adopts bylaws and other acts for the execution of laws. The Constitution also prescribe jurisdiction in the field of war and emergency. The Government disposal with another competence by the Constitution and by law. Сулејманов, З.; Сулејманов, Д., *op. cit.* p. 653., Климовски, С.; Каракамишева, Т.; Дескоска, Р., *op. cit.* p. 477-479.

²⁵ Art. 91 from the Constitution.

²⁶ Art. 84 of the Constitution. The formulation "foreign policy" for the authorization of President of the State and the Government used in theory.

²⁷ Силјановска – Давкова Г., *op. cit.* p. 374.

²⁸ Сулејманов, З.; Сулејманов, Д., *op. cit.* p. 633, Климовски, С.; Каракамишева, Т.; Дескоска, Р., *op. cit.* p. 477-479.; Шкарик С., *op. cit.* 373-376.; Чл. 91 и амандман XIV од Уставот.

represents the country in international relations²⁹. Hence, it's fairly clear that in this segment of international relations, the Government is *Primus*, because he disposes with authority to make decisions with political-legal implications, and the President is *Secundus* because in foreign policy his responsibilities are only ceremonial - represents the country in international relations. The President's actions on this part of foreign policy can produce only political implications.

The quoted Government and the President's authorization for this area of international relations (foreign policy) have political and legal implications with ascendant for the functioning of a legal and political system. Admittedly, Government has a dominant position in this area on international relations. But for this paper is the especially important authorization of executive authorities for concluding international agreements. The constitution-makers haven't regulated the jurisdiction for concluding international agreements as a particular competence in a Government's and the President's frame competence. But the constitution-makers decide to institutionalize competence for conclusion international agreement into a Constitution in a particular section devoted to international relations - Chapter VI. Authorization for conclusion international agreements is stipulated in Art. 119 of the Constitution. Precisely, in this segment of international relations field, the position of the President has changed regarding the Government, principally because according to the Constitution, President of the State is a public authority who can create any implications in the legal system by concluding international agreements. Namely, following this constitutional provision, international agreements are concluded in the name of the Republic of Macedonia by the President of the Republic of Macedonia³⁰. International agreements may also be concluded by the Government of the Republic of Macedonia when it is so determined by law³¹.

With prescribing the international relations field, precisely the competence for concluding international agreements in the name of the state, the constitutional-makers empowered the President in the position as *Primus* and the Government as *Secundus* in the Constitution³². Namely, the President of the State has privilege status concerning the authority for concluding international treaties in the name of the Republic of Macedonia originates from the constitutional provision.

But this position of the President is not for a surprise. Undoubtedly is that at a time where the Constitution was created especially in the field of international relations chapter the constitution-makers were carrying from the standpoint that for signing

²⁹ Силјановска – Давкова Г., *op. cit.* p. 374.; Сулејманов, З.; Сулејманов, Д., *op. cit.* p. 634. Art. 79 from the Constitution. According to Art. 84, the President appoints and dismisses by decree ambassadors and other diplomatic representatives of the Republic of Macedonia; accepts the credentials and letters of recall of foreign diplomatic representatives. Among these jurisdictions, the President of the Republic is Commander-in-Chief of the Armed Forces of Macedonia In addition to this competence (Art. 79). Promulgates laws (Art. 75), nominates a mandator to constitute the Government of the Republic of Macedonia (Art. 84). The President of the Republic addresses the Assembly on issues within his/her sphere of competence at least once a year. The Assembly may request the President of the Republic to state an opinion on issues within his sphere of competence. (Art. 85)

³⁰ Art. 119 par. 1 from the Constitution.

³¹ Art. 119 par. 2 from the Constitution.

³² Art. 119 par. 1 and 2 from the Constitution.

the international agreement, the President of the State must be in a privileged position regarding the Government. This standpoint justifies whit affirmation according to the President's legitimacy source who originates from general and direct elections. From hence this accrues different positions of a constitutional provision that regulates competence for international agreement's conclusion. Following the Art. 119 par. 1 from the Constitution the President of the State is the bearer of exclusively competent for concluding international treaties. An exception to the rule the Constitution allowed international agreement also to be concluded by the Government, but only in areas specified by discrete statute. That discrete statute is Law for Conclusion, Ratification, and Execution of International Agreements.³³ Regarding this field, the Law for Conclusion, Ratification, and Execution of International Agreements has the status of a *lex specialis* to regulate a one legal issue from the large legal field. The constitutional fundamental for this specializes statute is Art. 119 par. 2 of the Constitution. Therefore is confirmed the sovereign position of the President of the State for concluding the international agreements³⁴.

Analysis of Art. 3 ref. 2 shows that the Law for Conclusion, Ratification, and Execution of International Agreements delegates the Government some authorization corps for concluding the international agreements. This standpoint, according to the Constitution, means that besides the President, the Government also in a limitate way is part of executive authority in the conclusion international agreements field. It's pretty clear that in time where this Law was making, lawmakers used principle *numerus clausus*, respectively the principle of enumeration. To that in consideration of this affirmation following the Law, the Government has the authority to conclude the international agreement only in 16 fields: 1) Economy, 2) Finance, 3) Science, 4) Culture, 5) Education and Sports, 6) Transport and Communications, 7) Urbanism, 8) Architecture and Environment, 9) Agriculture, Forestry, and Water Economy, 10) Health 11) Energy, 12) Justice, 13) Labor and Social Policy, 14) Human Rights, 15) Diplomatic-Consular Relations, and 16) Defense and Security³⁵.

In the same article is prescribe that for association in a union or community, or dissociation from a union or community with other states as well concluding other international agreement who according to international law as a matter of habit is concluded by the head of states is exclusively submitted by President of the Republic of Macedonia. S. Shkaric in his book also confirmed the privileged position of the President of the State in the authorization for concluding international agreements. According to the author, "the President of the Republic is the main public authority for concluding international agreements because he represents the state at home and in international relations"³⁶.

³³ Art. 3 for the Conclusion, Ratification, and Execution of International Agreements, Official Gazette of the RM, no. 5/1998. Not only the Republic of Macedonia but BiH, Croatia, and Montenegro as well have specialized statutes who regulate issues for concluding, ratification and execution international agreements. Todić D., *op. cit.* p. 107. Due to the complexity of the name of this statute, in this paper for her denomination will using "Law on international agreements".

³⁴ Art. 3 par. 1 from the International agreements law.

³⁵ Also see: Шкарпик С., *op. cit.* p. 425.

³⁶ *Ibid.*

Therefore, the Government represented by the Minister of Foreign Affairs in no case can't submit the Prespa Agreement considering the sensitivity of the issue regulated by the provision on this international agreement. Unless this provision, on this legal prohibition for any public authority for signing the international agreement, indicated and following articles of Statute for concludes, the process of ratification, and execution international agreements. Provision of this specialized statute in detail regulated process of negotiation, making acceptance, submit and ratification of international agreements.

In the following of this paper in particularly segments gonna by elaborate any phase of the process of publication of the Prespa Agreement. This paper intends to prove that the procedural aspect of this international agreement violates a couple of legal norms witch make the Prespa Agreement worthless (ineffective).

2.1. The procedure of negotiation, conclusion, ratification, and execution of the international agreements

a) The phase of negotiation and conclusion of the Prespa Agreement

The Prespa agreement was signed by the Minister of Foreign Affairs³⁷. Consideration of determinate conclusions of a position of the Government regarding jurisdiction for submitting international agreements the question is raised by what authority was signed the Prespa agreement by Minister of Foreign Affairs? Under witch constitutional or statute grounds Minister of Foreign Affairs concludes this extremely important international agreement³⁸ that affected identity components, particularly in the right to self-determination?

Hence, the answer to this question originates from the Law for the Conclusion, Ratification, and Execution of International Agreements, but also from the Law for Foreign Affairs which precisely defines the status of the Foreign Affairs Minister as a government official regarding international relations³⁹.

The laws who regulate authorization for concluding international agreements and the status on the Minister for Foreign Affairs in the process who precede on the act of committing the treaty provides that:

Firstly, the President of the State has exclusive jurisdiction in the negotiating process, and in the act of signing international agreements who have not included whit the *numerus clausus* principle regulated in Art. 3 par. 2 in the Law for the Conclusion, Ratification, and Execution of the International Agreement⁴⁰.

³⁷ Voynov, A., *The Resolution of Macedonia Name Dispute: A Study of the Factors That lead to the Signing of the Prespa Agreement*, Master thesis, Leiden, 2019. p. 4; Никодиковска-Крстевска, А., *op. cit.* p. 127.

³⁸ For types of international agreements see: Фрчковски, Љ.; Тупурковски, В.; Ортаковски, В., *Меѓународно јавно право*, Скопје, 1995., p. 213-216.

³⁹ Law for Foreign Affairs, Official Gazette of the RM, no. 103/2015.

⁴⁰ Art. 4 of the Law for the Conclusion, Ratification, and Execution of International Agreements, Official Gazette of the RM, no. 5/1998.

Accordingly, this acting of the Ministry of Foreign Affairs has made an action out of his jurisdiction⁴¹, which it's done *ultra vires* violence of fundamental legal norms in the process of signing of the international agreement⁴².

Secondly, the procedure for negotiating international agreements must be inaugurated by the President of the State. The decision for the inauguration of the negotiation process the President takes by his initiative, whenever he thinks that the country should be a party to an international agreement. Then, the President must make this decision if the referendum is publicly and if the majority of voters in a referendum adopted the decision under the condition that more than half of the total number of voters voted⁴³. And finally, the President can begin with the negotiation process on the conclusion of an international agreement if the Assembly decides, or if the proposal to start the negotiations comes to accrue from the Government⁴⁴. Anyway, when proposal originate from these public authorities the final decision to begin with the negotiation process is made by the President. But in this case, the act of negotiation is not taken following the statute provision, because the President was precluded from the negotiation process for the conclusion of the Prespa Agreement. On the contrary, the Government has the authority to take the negotiation process for the conclusion of international agreements only in the fields enumerated in Art. 3 p. 2 of the Law for international agreements⁴⁵. Therefore, the Government doesn't have any authority, to begin with, negotiations for the conclusion of the Prespa Agreement, because the subject regulated by the treaty provision - and that is the name of the country "Republic of Macedonia" - don't reckon among fields identified with Art. 3 p. 2. This point of view is correct because the name of any state, not only Macedonia's name, is the product of a sublime way for right of self-determination of the nations which according to international law have the status of *ius cogens* norm⁴⁶. *Ius cogens* norms comparing with the constitutional norms in the domestic law of the Republic of Macedonia have the status of constitutional norms in international

⁴¹ Art. 9 of the Law for Foreign Affairs, Official Gazette of the RM, no. 103/2015.

⁴² Никодиковска-Крстевска А., *op. cit.* 127.

⁴³ Art. 30 of the Law on Referendum, People's Initiative and Other Forms of Direct Votes. Official Gazette of the RM, no. 81/2005. Due to the complexity of the name of this statute, in this Article for her denomination will using "Law on Referendum" or just "Law".

⁴⁴ Art. 5 par. 1 of the Law for the Conclusion, Ratification, and Execution of International Agreements, Official Gazette of the RM, no. 5/1998.

⁴⁵ Art. 5 par. 2 of the Law for the Conclusion, Ratification, and Execution of International Agreements, Official Gazette of the RM, no. 5/1998.

⁴⁶ Јовић Њ., *Ius cogens* као основ ништавности и као основ престанка дејство међународног уговора, Годишењак Правног факултета у Бањој Луци, Vol. 35, No. 35, 2013., p. 183-203; Orakhelashvili A., *The Impact of Peremptory norms of the Interpretation and application of United Nations and Security Council*, The European Journal of International Law Vol. 16 no.1 © EJIL 2005., p. 63- 67; Abdolgader M, Shiklaf M, Mohamed A. M, Fathija S, Ibn Arabi, A., *Pojam I značenje peremptornih normi u međunarodnom pravu. Pravo – teproja I praksa* No. 10-12/2015., p. 47-64; Nieto-Navia Rafael., *International Peremptory norms (ius cogens) and International Humanitarian Law*

https://www.dphu.org/uploads/attachements/books/books_4008_0.pdf (19. 12. 2019)

Ulf Linderfalk. The Creation of Jus Cogens – Making Sense of Article 53 of the Vienna Convention

https://www.zoerv.de/71_2011/71_2011_2_a_359_378.pdf (19. 12. 2019)

Christine Griffioen. Self-Determination as a Human Right, 2010, p. 10-15.

law. According to this, these international norms can be changed only with another legal norm with identical legal force. This means that for *ius cogens* employ the rule of submitting only with another multilateral international agreement, but not with a bilateral agreement. In the time were the Prespa Agreement was signed, the International law was suspended regarding the Macedonia-Greek dispute⁴⁷.

With the act of signing of this contract was violated Art. 2 of the Constitution who stipulates that “Sovereignty in the Republic of Macedonia derives from the citizens and belongs to the citizens”, and that “The citizens of the Republic of Macedonia exercise their authority through democratically elected Representatives, through referendum and other forms of direct expression”. The Prespa Agreement also violated will of the citizens expressed in the referendum on September 8, 1991, adopted Decision with whome the Republic of Macedonia was proclaimed as an independent and sovereign state. With the act of signing the Prespa Agreement, the constitutional provision stipulated in Art. 2, that regulates the way of materialization of the will expressed through a referendum, was also violated - when the implementation process was started and finished opposite of referendum Decision⁴⁸ from 1991.

Thirdly, the negotiation process for conclusion an international agreement from the power of the President on the State starts with the Proposal who must originate from him⁴⁹. Art. 8 of the Law for the Conclusion, Ratification, and Execution of the International Agreements appoints formal conditions that should contain each Proposal. Precisely, from the aspect of the structure of the Law for international agreements, in the time were Art. 8 was created lawmakers used imperative technic. According to the Law, this statutory provision has *conditio sine qua non* status. Practically, they are the formal conditions who must be possessed of each Proposal before the negotiation process begins. Presumption if from Proposal miss only one of the conditions stipulated in Art. 8 from international agreements Law’s, her legal validity will be seriously challenged. Thus, each Proposal must contain a constitutional ground for the taking negotiations; evaluation a condition with the state with which the international agreement needs to be concluded; the reasons for

⁴⁷ The analogy of *ius cogens* norms of international law with Macedonia’s constitutional law is intended to underline the importance of these legal norms in international and domestic level. As like *ius cogens* norms can be changed only by another norm with the same legal force, in such a way the provisions of the Constitution of Macedonia can be changed by provisions with identical legal force. At issue are the constitutional amendments. Art. 129 of the Constitution.

⁴⁸ The referendum for the Prespa Agreement was realized on September 30, 2018. Although the Prespa’s Agreement referendum was unsuccessful because according to the Law of Referendum, the Decision is adopted if the majority of voters in a referendum are voting for her adopting. Also, the referendum procedure for adopting a decision has one more condition, and that is the decision is considering as adopted if voted more than half of the total number of voters. Art. 30 of the Law on Referendum, People’s Initiative and other forms of direct votes. Official Gazette of the RM, no. 81/2005. The total turnout for the referendum was at 666,344 or 36.91%, which clearly indicates his failure. The failure of the referendum was also confirmed by a State Election Commission (SEC) report.

https://drive.google.com/file/d/11AGxUaJ15epNrQJm_57UHyRjR56-Aqj/view (19. 12. 2019)

⁴⁹ Art. 4 par. 1 of the Law for the Conclusion, Ratification, and Execution of International Agreements, Official Gazette of the RM, no. 5/1998.

proposing the conclusion of the international agreement; finance consequence for the execution of the international agreement, the proposal of the delegation who lead by the negotiations for the conclusion the international agreement, as well as the calculation of the delegations expenditure made in the negotiations process⁵⁰. Also, the Proposal must contain the essential elements of the international agreement which it's proposed to conclude. The Proposal for leading a negotiating process encloses and a draft version of the international agreement who should be committed after the negotiations have been ended⁵¹. Certainly, the formal conditions should contend in the Proposal for the begin of the negotiation process was completely disregarded, because Proposal doesn't exist. Omission a Proposal is a direct violation of the procedural provisions that precede the process of conclusion, ratification, and execution of the Prespa Agreement.

Fourthly, the position of the Minister of Foreign Affairs regarding signing the international agreement is completely subordinate to the position of the President of the State, according to Art. 9 of the Law for a Conclusion, Ratification, and Execution of International Agreements. Namely, the Law of international agreements regulates that the Minister of Foreign Affairs possesses only consultative authorization. The Minister gives his opinion for the Proposal for leading the negotiations process, and for the draft version of the agreement. Anyway, the Minister of Foreign Affairs cannot be the bearer of an authority to commit the Prespa Agreement because it's not allowed by the Law for an international agreement. More precisely, Art. 9 determines his status which it's reduced to an advisory authority.

Fifth, Art. 15 par. 1 of the Law for the Conclusion, Ratification, and Execution of International Agreements provides that international agreement which signing is President's jurisdiction can be committed by another authority. But from the structure of this provision, in an easy way can be established her prohibition nature. The lawmakers stated that another authority may have the authorization to sign an international agreement, but the supreme status of the President of the State in that field imposes that in that case is emphatical to exist specialize mandate. In the following provision, precisely in Art. 16 is prescribed that this specialize mandate obligate is assigned in warrant form not only for committing the agreement but and for the negotiating process before his conclusion. According to the Macedonian law, the mandate is to publish by the President.

Sixth, the Ministry of Foreign Affairs has a legal obligation to keep the originals of concluded international agreements, which means that the Law also assigns to him the archives authorization⁵².

⁵⁰ Art. 8 par. 1 of the Law for the Conclusion, Ratification, and Execution of International Agreements, Official Gazette of the RM, no. 5/1998.

⁵¹ Art. 8 par. 3 of the Law for the Conclusion, Ratification, and Execution of International agreements, Official Gazette of the RM, no. 5/1998. Vankovska says that not only the negotiations process was introduced without respectability for the formal rules of domestic law, but also the negotiations were conducted in secret, far away from the public, without debate and any official information. See standpoint of Vankovska in: Никодиковска-Крстевска А. *op. cit.* 126.

⁵² Art. 25 of the Law for the Conclusion, Ratification, and Execution of International Agreements, Official Gazette of the RM, no. 5/1998.

Seventh, the act of signing of the Prespa Agreement is also contrary to the Vienna Convention on the Law of Treaties, 1969. In theory, the Vienna Convention is defined as *ius cogens* norm of international law⁵³. The legality of the agreement's conclusion is determinate by two conditions. The first condition requires the whole process to be committing by an authorized official who has full jurisdictions to conclude an international agreement - that is the basic condition for the validity of the negotiation process and the act of signing⁵⁴. The second condition is determined by the negotiation subject. Namely, the issue for which the negotiation process was begun must be permissible, which means the subject of the agreement should not be contrary to international law provides that is determinate as *ius cogens*, including the right to self-determination⁵⁵. Following by Vienna Convention for signing the Prespa Agreement is need a special mandate, "which as a rule originates from the highest authority of the State"⁵⁶. Precisely, this international provision is under domestic law. Hence, according to the Vienna Convention, an international agreement gonna be legal less if it's signed by an official without an especially mandate. Namely, that agreement will stand without legal force, if the state which name is signed nearly don't confirm the unauthorized act of commitment⁵⁷. Following the statute, provisions establish that the Prespa Agreement 1) was signed by an unauthorized official in terms of Art. 7 of the Vienna Convention and 2) this international agreement additionally wasn't verified by the State's authority wherewith the signature of the Minister of Foreign Affairs will acquire legal validity, and the Prespa Agreement gonna create legal effects following the Vienna Convention and domestic law. Obviously, according to the Law of Conclusion, Ratification, and Execution of International Agreements, additionally, confirmation of the Prespa Agreement must be given by the President od the State. But the chapter of the Vienna Convention who refers to the confirmation of international agreements gives enough space for abuse. This undefined formulation was used during the ratification procedure. At issue is Art. 8. Namely, Art. 8 contains a general formulation that for the legal validity of the international agreement signed by an unauthorized official must be "confirmed" from the State which that international agreement was signed. Additionally, abandonment on domestic law of every state who is part of the Vienna Convention to regulate this issue. Thus, according to Macedonia's legal system, narrative "confirmation" can be interpreted extensively as ratification

⁵³ Nieto – Navia R., International Peremptory norms (*ius cogens*) and International Humanitarian Law. https://www.dphu.org/uploads/attachements/books/books_4008_0.pdf (19. 12. 2019)

Ulf Linderfalk. The Creation of Jus Cogens – Making Sense of Article 53 of the Vienna Convention https://www.zaoerv.de/71_2011/71_2011_2_a_359_378.pdf (19.12.2019) Under concept *ius cogens* are understood agreements and customs wich the state with the convention can be changed or inapplicable. The legal source of these norms is customs and multilateral international agreements. Фрчковски, Љ.; Тупурковски, В.; Ортаковски, В., *op. cit.* p. 206, 215, 216.

⁵⁴ At. 7 (a) Vienna Convention on the Law of Treaties, 1969. http://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf (19. 12. 2019)

⁵⁵ Фрчковски, Љ.; Тупурковски, В.; Ортаковски, В., *op. cit.* p. 216.

⁵⁶ *Ibid*, p. 214

⁵⁷ At. 8 Vienna Convention on the Law of Treaties, 1969; Никодиковска-Крстевска А., *op. cit.* p. 128, Фрчковски, Љ.; Тупурковски, В.; Ортаковски, В., *op. cit.* p. 215.

of international agreements, which was used regarding the Prespa Agreement, and the President was deftly circuitous. According to Art. 68 of the Constitution, confirmation of the international agreements in form of ratification process exerts the Assembly. But although in the confirmation phase of the ratification process of the Prespa Agreement the President of the State was precluded however narrative “confirmation” used in the Vienna Convention incorporates and this public authority. The President of the State has a really important constitutional role because he underwrites decree for notification of any legal action by a legislators – laws. Underwrites of a decree are accomplished before laws come into force. The decree is a crucial condition for the publishing of legal acts (laws) in “The Official Gazette of the Republic of Macedonia”. The President has constitutional jurisdiction to yield a final decision for confirmation before laws are promulgated. Precisely, following the Constitution, the President has exclusive authority for proclamation legal acts with unwrite decree⁵⁸. A decree is a legal instrument in which the President prevents a law to take legal force. According to the Constitution, the President has exclusive authority for legal acts proclamation with unwrite decree. The President’s decree is a *condition sine qua non* for laws before the publishing process in the Official Gazette. Constitutional provisions provide that laws are published in “The Official Gazette of the Republic of Macedonia” at most seven days after the day of their adoption. Laws come into force on the eighth day after the day of their publication at the earliest, or on the day of publication in exceptional cases determined by the Assembly. Period of a couple of days before one legal act comes into force is call *vocatio legis*. When this constitutional condition will be completed the promulgated law can produce an impact or legal effects in the legal system⁵⁹. Worthless is any law with whom has established the absence of a decree for promulgation unwrite by the President of the State (*null and void*)⁶⁰.

Eighth, the President use this authorization (decree) when it’s a question of international agreements, because it’s prescribed by the Constitution who regulates the legal status of ratified international treaties and because with this legal instrument the President protects the legal system from eventual come into force the international agreements who it’s contrary to domestic law - thats it’s her constitutional obligation. The Prespa Agreement was published in the Official Gazette without the President’s decree. It’s a fundamental violation of constitutional norms.

Nineth, The Republic of Macedonia is part of a group of states in which the relationship between domestic and international law is based on the rules of

⁵⁸ Art. 75 par. 1 and 2 f from the Constitution.

⁵⁹ Art. 52 par. 1 from the Constitution.

⁶⁰ In 1997 the President of the Assembly without President’s decree has an intent to publish the Law for minority flags which they have right to express their identity into Macedonian borders (Official Gazette of the Republic of Macedonia, no. 32/97). This Law and the decree of his promulgation was pronounced worthless by the Constitutional Court. Precisely, the President of the Assembly, with his signature, tried to replace the President’s decree. It was an act which by the Constitutional Court was interpreted as an attempt to transform the Assembly President’s signature into a decree for laws promulgation. The decision of the Constitutional Court of the Republic of Macedonia no. 141/1997 and no. 146/1997

monistic doctrine⁶¹. According to this doctrine, both legal regimes, domestic law, and international law are part of a universal legal system⁶². Thus, the discloses thesis for the system of incorporation of international treaties in domestic law it's regulated by constitutional provisions⁶³ who prescribe that the court's decisions in the Republic of Macedonia must be based on the Constitution, laws and ratified international agreements. This thesis is replenished and with Art. 8 par. 1 (k)⁶⁴, which is confirmed obligation to respect the generally accepted norms of international law and Art. 118, who provides that the international agreements ratified following the Constitution are part of the internal legal order and cannot be changed by law. These constitutional provisions are not only approval for affirmation for accepted doctrine for the implementation of international norms in domestic law but these constitutional provisions also determine the position of ratified international agreements in the hierarchy of internal legal norms. According to this, international treaties are positioned above the laws but under the Constitution⁶⁵. In consideration of this fact, we can conclude that international provisions who are part of the domestic legal order are redefining the existing three-level hierarchy of legal norms. Namely, in this way, every state that has the Macedonian's variation of the monistic doctrine for implementation the international agreements is redefined his internal three-level hierarchy of the legal system and officially introduces a four-level hierarchy of legal

⁶¹ The monistic doctrine is developed by Hans Kelsen, a theoretician who created the Constitutional Court. For the monistic doctrine see in: Boas G., *International public law*. 2012, p. 121.; Venice commission. Report on the implementation of international human rights treaties in domestic law and the role of the courts, 2014, p. 7-9.; Ђуровић Д., *Однос унутрашњег и међународног права у правном поретку Републике Србије*, *Анали Правног факултета у Београду*, година LVII, 2/2009, p. 340-342.; Gözler K., *The question of the rank of international treaties in the national hierarchy of norms – A theoretical and comparative study*, p. 23 <http://www.anayasa.gen.tr/rank-of-treaties.pdf> (20. 12. 2019)

⁶² Contrary to the monistic doctrine, the dualistic doctrine is established on a statement that international law and domestic laws are two independent and self-ruling legal systems. International law isn't part of domestic law. For dualism see: Tshosa O., *The status of international law in Namibian national law: A critical appraisal of the constitutional strategy*, *Namibia Law Journal*, Vol. 2, Is. 1, 2012, p. 4,5,6.; Boas G., *International public law*. 2012, p. 120; Venice commission. Report on the implementation of international human rights treaties in domestic law and the role of the courts, 2014, p. 9-10; Ђуровић Д., *Однос унутрашњег и међународног права у правном поретку Републике Србије*, *Анали Правног факултета у Београду*, година LVII, 2/2009, p. 339-340.; Gözler K., *The question of the rank of international treaties in the national hierarchy of norms – A theoretical and comparative study*, p. 23 <http://www.anayasa.gen.tr/rank-of-treaties.pdf> (20. 12. 2019)

⁶³ The amendment XXV from the Constitution.

⁶⁴ The basic values of the Constitution.

⁶⁵ The international agreements ratified in accordance with the Constitution are part of the internal legal order and cannot be changed by law. Силјановска – Давкова Г., *За Преспанскиот договор и пошироко*, p. 16.

<https://www.novamakedonija.com.mk/wp-content/uploads/2018/10/%D0%97%D0%90-%E2%80%9E%D0%9F%D0%A0%D0%95%D0%A1%D0%9F%D0%90%D0%9D%D0%A1%D0%9A%D0%98%D0%9E%D0%A2-%D0%94%D0%9E%D0%93%D0%9E%D0%92%D0%9E%D0%A0%E2%80%9C-%D0%98-%D0%9F%D0%9E%D0%A8%D0%98%D0%A0%D0%9E%D0%9A%D0%9E.pdf> (20. 12. 2019)

norms: the Constitution, international ratified treaties, laws and other regulations⁶⁶. From this appoint originate that “the eventual adoption of a law whose articles are contrary to the articles of a ratified international agreement should be sanctioned by the Constitutional Court as a violation of Art. 118 on the Constitution of the Republic of Macedonia”⁶⁷.

Tenth, for an international agreement to come into force, it’s necessary to be adopted in the form of law.⁶⁸ But following the monistic doctrine, the ratified international agreement it’s a part of that statute. Actually, with the act of ratification, the norms of an international agreement are not transposed into statute provisions, but in the Official Gazette are published in their original subject⁶⁹. In this case, the full name of the statute is “The Law for Implemementation the Final Agreement for the Settlement of the Differences as Described in the United Nation Security Council Resolutions 817 (1993) and 845 (1993), the Termination of the Interm Accord of 1995, and the Establishment of a Strategic Partnership Between the Parties”. The laws for ratification the international agreements have a role for their transmission into the domestic law. More precisely, any international agreement ratified under the Constitution is impressed in the Macedonian’s legal order. These are a legal instrument who allows an international agreement to make a position under the Constitution of the Republic of Macedonia but above the laws. The President of

⁶⁶ Comparatively, the states are divided into three groups from the aspect of the legal space that domestic law determined for international agreements states. The first group includes those domestic laws who prescribe absolute supremacy of international agreements over the internal law. The states who are part of the Benelux (the Netherlands, Belgium, and Luxembourg) decide to accept the model of the supremacy of international agreements over the domestic law. According to the Dutch Constitution of 1953,” the treaties are directly applicable by the courts and they are not only over the laws but also have primacy over the Dutch Constitution itself”. Георгиевски С., *Примена на меѓународното право во уставниот поредок на Република Македонија*, Зборник на Правниот факултет „Јустинијан Први“-Скопје, во чест на проф. д-р Евгени Димитров, 1999, р. 486. In France, a ratified treaties after the promulgation have a supreme position over the domestic law but above condition on reciprocity with the other State who is part of the agreement (Art. 55 of the 1958 Constitution). Георгиевски С., *op. cit.* 1999, р. 487. The second group includes countries that “recognize the superiority of international agreements over previous and future legislation (France, Spain, Switzerland, Portugal, Greece, Bulgaria, Cyprus, Croatia, Slovenia). These states prescribe certain conditions for the implementation of this model: confirmation of the international agreement by the lawmakers; the accomplishment of the reciprocity conclusion”. Цунов Т., *Уставно-судска контрола и заштита на меѓународните договори во Република Македонија*, Зборник на Правниот факултет „Јустинијан Први“-Скопје, во чест на проф. д-р Миле Хаџи Василев, 2004, р. 355. According to the constitutional provision for international agreements supreme position over the legal system, the second group is separated into three subgroups. The first subgroup comprises those states which for the primacy of international agreements prescribe a constitutional provision (ex. the Republic of Macedonia). The second subgroup contains constitutions “which allow the direct application of international agreements and/or of international law in the internal legal system without specifically stipulating their primacy over domestic law (ex. Ukraine)”. Само Георгиевски. *op cit.* р. 488. And finally, the third subgroup includes “constitutions who contain unclear references to the international law, in which this it’s proclaimed more as a statement of international politics, than incorporation into the domestic law” (ex. Uzbekistan). *Ibid.*

⁶⁷ Дескоска Р., *За уставот на Република Македонија-две децении подоцна*, Зборник на Правниот факултет „Јустинијан Први“-Скопје, во чест на проф. др. Тодор Пеливанов, 2012., р. 165.

⁶⁸ Art. 188 par. 1 on the Rule of Procedure of the Assembly of the Republic of Macedonia, Official Gazette of the RM, no. бр. 91/2008, 119/2010, 23/2013.

⁶⁹ The Prespa Agreement was published on the Official Gazette on January, 25, 2019.

the Assembly after vote procedure ended supplied adopted law to the President of the State for writing the decree for his notification⁷⁰. For reminding, the Prespa Agreement was published on the Official Gazette without the President's decree, which is the fundament for worthless the law for transmission of the agreement.

Eleventh, based on the time when the violation of Vienna Convention procedural provisions regarding the competence for concluding the international agreements held posited, exists a legal foundation the Prespa Agreement to be proclaimed as worthless. In theory, the term worthless is defined as the termination of legal effects on the international agreement when establishing imperfection who existed in the time where the agreement was confirmed. Violation of this condition is an essential fundament for pronouncing agreement's worthless⁷¹. With other words, worthless is any international treaty, who violates, the provisions of the constitutional law⁷². Anyway, the elements of the Prespa Agreement worthless are presence before signing. The negotiations process was accomplished by the Minister of Foreign Affairs without President's unwritten special mandate.

Twelfth, according to the theory of international public law, one of the basic requirements that any agreement must fill out to be considered an international agreement is an obligation to be governed by international law. Namely, each aspect ruled with an international agreement must be recognized from international law - this is a fundamental condition for the validity of an international agreement. If established, that at the time of the conclusion of the agreement between the parties, there isn't such intention, the concluded international agreement shall be considered as a non-obligated agreement (*nonbinding international agreement*)⁷³.

From described provisions remarked that was committed numerous legal violations in the first instance on norms who regulate the process of negotiation and conclusion of the international agreement who is under President's jurisdiction. According to the laws, the Minister implement appointed politics, proposes opinion for foreign policy and international relations, but he can't make a flagrant violation of the law through penetrating President's competition who also bearer executive authorization⁷⁴. For reminding, for the conclusion of international agreements in the name of the country, the President of the State has a supreme position (*Primus*) regarding the Government.

Publishing the referendum followed after committing the Prespa Agreement - as a transitional period on his ratification and publication in the Official Gazette. Exactly, for this reason, the procedural aspect of the referendum is comprised in a

⁷⁰ Art. 173 par. 1 on the Rule of Procedure.

⁷¹ Фрчковски, Љ.; Тупурковски, В.; Ортаковски, В., *op. cit.* p. 235.

⁷² Никодиковска-Крстевска А., *op. cit.* p. 128.

⁷³ Ђурић В., *Бриселски споразум – поново смишљене смутне*, Српска политичка мисао, Vol. 46, No. 21, 2014, p. 161, 163.

⁷⁴ Art. 9 of the Law for Foreign Affairs, Official Gazette of the RM, no. 103/2015.

separate section in the chapter called “negotiation and conclusion of the international agreements”. The referendum as a form of direct democracy is regulated by the Constitution⁷⁵ and with specialized law.⁷⁶

The Constitution provides only two types of referendums - obligatory and non-obligatory. Following the Constitution, the referendum must be published by the Assembly when at least 150,000 voters submitted a proposal⁷⁷. The Assembly doesn't possess the discretionary jurisdiction to declare the referendum when the matter is the obligatory type of referendum. The Assembly has a constitutional obligation to proclamation a referendum when, according to the Constitution, the proposal is submitted by enough voters.

As is mentioned, the second type of referendum prescribed with the constitutional provision is the non-obligatory referendum. Following the Constitution, for separate issues from the Assembly's jurisdictions, the legislators have the authorization to select to promulgate a referendum. The Assembly adopts the decision for the proclamation of a non-obligatory referendum with a majority votes, of the whole number of Representatives (61). The non-obligatory referendum is in area of discretion power of the Assembly. Concerning the legislative jurisdiction, the Constitution abandonment the Assembly unoccupied space, respectively fully independently to vote if referendum be or not to be proclaimed.⁷⁸

The referendum's fundament prescribed by the Constitution are elaborated in *lex specialis* named “The Law on Referendum, People's Initiative and Other Forms of Direct Votes”. Namely, this law not only regulates the components of the referendum but also upgrades the primary forms prescribed in the Constitution. Thus, besides obligatory and non-obligatory types of the referendum in Macedonian's legal system exists and previous, complementary⁷⁹, and consultative referendum⁸⁰. According to the law, the previous referendum can be proclaimed for the ratification of an international agreement and other matters of the Assembly's jurisdiction. The complementary referendum can be promulgated for another constitutional subject of whom the Assembly decides. And finally, The Assembly pronounces a consultative referendum when it's necessary consultation with the citizens. More precisely, the lawmakers use this type of referendum when it's indispensable consultation with the citizens before voting a broader significance issue. The consultative referendum can be promulgated only at the state level⁸¹.

⁷⁵ Art. 73 from the Constitution.

⁷⁶ The Law on Referendum, People's Initiative and Other Forms of Direct Votes. Official Gazette of the RM, no. 81/2005.

⁷⁷ Art. 73 par. 3 from the Constitution.

⁷⁸ Art. 73 par. 1 from the Constitution.

⁷⁹ Art. 24 from the Law. The cited article refers to the referendum on the state level. With this law are regulated previous and complementary referendum on the local level. Art. 39 from the Law.

⁸⁰ Art. 27 from the Law.

⁸¹ For types of referendums see on: Апасиев Д., *op. cit.* 12-15.; Климовски, С.; Каракамишева, Т.; Дескоска, Р., *op. cit.* p. 301-306.

If the referendum is announced due to the consultation with the voters for specific matters, the Assembly is not obligated to the referendum's decision. Contrary, when the referendum is pronounced on account of polling by voters, the Assembly is not bound to the referendum's decision. In other words, the Assembly has a constitutional⁸² and law obligation to consider the will of the voters expressed in a referendum, when at issue is a referendum for producing a decision⁸³.

In consideration of the essential information about the Macedonian forms of referendums, as well as the legal effect of the referendum's decision who depends on the type of the referendum, it's possible to be detected the primary procedural defaults of the Prespa's Agreement referendum.

Firstly, the Decision for announcing a referendum adopted by the Assembly outrages the basic constitutional principles. Namely, in the Prespa's referendum Decision, the lawmakers establish his legal nature proclaiming as a consultative referendum⁸⁴. 1) For pronouncing the consultative referendum, the Assembly refers to Art. 73 of the Constitution. As mention above in this paper, in the quoted constitution provision only is regulated the obligatory, and non-obligatory referendum but not, the consultative referendum. The Constitution contains provisions that the legal effects of the decision adopted in the referendum are obliged for the Assembly where are promulgated one of two types of referendum regulated with the constitutional norms⁸⁵. In this case, the legal effects of an adopted decision are equal. The Constitution doesn't draw a distinction, as a matter of fact, the obligatory or non-obligatory referendum. The Assembly is engaged with the referendum's decision following the Art. 73 of the Constitution.

Secondly, in the namesake article (Art. 73) is stated that the Assembly can promulgate non-obligated referendums only at issue who are in a frame on lawmakers jurisdictions. In this case, this constitutional norm indicated the Assembly in Art. 68 of the Constitution - a provision that, in detail regulates powers⁸⁶. According to the Constitution, an obligatory referendum can be proclaimed in three cases -

⁸² Art. 73 par. 4 from the Constitution.

⁸³ Art. 8 from the Law.

⁸⁴ For the Decision, see: the Decision of the Constitutional court, no. 100/2018, no 08 - 4666/1 – the Assembly archives.

⁸⁵ Art. 73 par. 4 from the Constitution.

⁸⁶ The Assembly of the Republic of Macedonia adopts and changes the Constitution; adopts laws and gives the authentic interpretation of laws; determines public taxes and fees; adopts the budget and the balance of payments of the Republic; adopts the spatial plan of the Republic; ratifies international agreements; decides on war and peace; makes decisions concerning any changes in the borders of the Republic; makes decisions on association in and disassociation from any form of union or community with other states; issues notice of a referendum; makes decisions concerning the reserves of the Republic; sets up councils; elects the Government of the Republic of Macedonia; elects judges to the Constitutional Court of the Republic of Macedonia; carries out elections and discharges judges; selects, appoints and dismisses other holders of public and other office determined by the Constitution and law; carries out political monitoring and supervision of the Government and other holders of public office responsible to the Assembly; proclaims amnesties; and performs other activities determined by the Constitution. In carrying out the duties within its sphere of competence, the Assembly adopts decisions, declarations, resolutions, recommendations and conclusions.

when the state approach to association in a union or community with other states or for dissociation from a union or community with other states, when is necessary to makes decisions on any change in the borders of the Republic by a two-thirds majority vote of the total number of Representatives and the Assembly is obliged to issue notice of a referendum if it's proposed by at least 150,000 voters⁸⁷. From the quoted provisions can conclude that the Assembly doesn't have any constitutional fundaments for publishing the Prespa's referendum. But considering that the Constitution is not regulated whole referendum's mattes accrue that the Decision for proclaiming the Prespa's referendum is unconstitutional - the consultative referendum isn't *materia constitutionis*.

Thirdly, according to a moment where the referendum was published, it is verifying disrupting principles which regulated the referendum process. The referendum, for absolving the Macedonia-Greek dispute could be only a previous *ante legem* referendum, because according to the law, when at issue an international agreements voters have a constitutional authority to decide whether necessary the ratification of a particular international agreement⁸⁸. According to the fact of the unconstitutionality of the Assembly for voting decisions regarding this issue, the referendum for confirmation on the Prespa Agreement was supposed to be promulgated before the time of signing. By the constitutional law, the referendum for Prespa Agreement should have been announced before the act of committing, because, for the Assembly, the Constitution, doesn't prescribe authorization on this legal field. Besides, the referendum on the name issue could be declared if it's recommended by at least 150,000 voters. The entire legal regime would be recognized if just the referendum for committing the Prespa Agreement obtained promulgated with voters' proposal before the act of signing.

The Assembly should refer the Art. 73 on the Constitution and Art. 24, on the Referendum's Law, if these two noted benchmarks remained, respected in the process of referendum's Decision announcement, and proclamation it would be before the Prespa Agreement held concluded. In that case, the referendum would have had a dual character, the prior (previous) referendum, and the obligatory referendum. The referendum's adopted decision it's obligated for the Assembly. The requirement for the interpretation of the norms who regulated timing of publicly of the referendum of the Prespa Agreement - before concluding, but in front of ratifying - accrue from the need to avoid an eventual legal vacuum. A concluded international agreement which will not be permitted by the voters, can't be ratified of the Assembly, wherewith the ratification process of this agreement remains suspended until a new referendum is not published. According to the Referendum's Law, a referendum on the identical subject cannot be presented since not past a minimum two years following the early referendum finished⁸⁹. Because the Referendum's Law doesn't contain a limit on the number of referendums, the situation with adopting the Prespa

⁸⁷ Art. 74 par. 2, Art. 120 par. 3, and Art. 73 from the Constitution.

⁸⁸ Апаснев Д., *op. cit.* p. 13.

⁸⁹ Art. 19 from the Law.

Agreement should last forever - in consideration where resolving of this issue is not the responsibility of the Assembly, the Prespa Agreement couldn't be ratified, until agreement provisions it's not be approved by voters through referendum.

Fourthly, with adopting the Decision to pronouncing the referendum, the Assembly made a precedent in the matter of question formulation. Namely, in Art. 1, of the Decision, was prescribed that "the referendum shall be announced on the entire territory of the Republic of Macedonia due to consultation with civilians". It's obvious, the Assembly, as a legislator, didn't have it in consideration the fact that the referendum's nature can't be appointed from the side of the legislators through prescribing the title at the proclaiming the referendum Decision's. The legal nature of the referendum is determinate by the constitutional provisions, the Referendums Law's provisions, and depends on the time of the proclamation of the referendum. Thus, the Prespa's referendum can't be consultative, but just prior (previous) referendum with obligate legal effects of the adopted decision.

Fifth, the paper already is posited that the referendum for Prespa Agreement despite having been implemented out if the prescribed rules, was unsuccessful⁹⁰. According to the Referendums' Law, the Assembly within 60 days after the release of the results of the referendum must regulate the referendum's matters under the referendum's results. But this legal requirement wasn't respected. The Assembly continues with the procedure for ratification of the Prespa Agreement.

Sixth, it's important to underline that the referendum's proclamations issue was regulated with the Prespa's Agreement provision⁹¹. Hence, the Prespa Agreement is not only a precedent in the international law for the subject which it's regulated but also regarding the referendum issue, respectively, the Agreement provides legal ground for implementing the referendum, which depends on the Assembly.

- 1) As already established, The Republic of Macedonia, the implementation of an international agreement provides according to the accepted variation of monistic doctrine, which means that any international agreement that pretends to be part of the internal legal system, must be under the Constitution.
- 2) Every State must be sure that the obligation deriving from an international agreement is in accordance with domestic law. T. Dzunov defines such an obligation as the compatibility of the international agreement with the legislation, and in particular with the Constitution⁹².
- 3) If there is any incompatibility and the State intends to be a part of an agreement, then at first must adapt its Constitution or legislation to eliminate any conflict with the provisions of the international agreement⁹³.

The Republic of Macedonia doesn't accept any of these legal measures to adapt it to the provisions of the Prespa agreement. Contrary to the accepted variation of the monistic doctrine, the Prespa Agreement produced *a posteriori* amendment to

⁹⁰ See reference 48.

⁹¹ Art. 1. par. 4 (c) from the Prespa Agreement.

⁹² Цунув Т., *op. cit.* p. 357.

⁹³ *Ibid.*

the Constitution. Again, according to accepted monistic doctrine, the Prespa Treaty is not on the same hierarchy level as the Constitution, and consequently, he cannot initiate any constitutional modification. For any international treaty to produce an obligation to mold the Constitution, at first, must adjust the constitutional norms in an appropriate procedure under the provisions governing the position of an international agreement in domestic law. In other words, international treaties must change their constitutional position, for the legal validity of the legal actions that originate from the Prespa Treaty. In place of the current position of the international agreements in the domestic legal system - above the laws, but under the Constitution - for the validity of the Prespa Agreement, the Republic of Macedonia should accept the model for implementing the international agreements which are adopted by the Benelux states. Concretely, in the Netherlands, international agreements are above the Constitution.⁹⁴

The described procedure had to be conducted before the Republic of Macedonia to accept the obligation from the Prespa Agreement. But of course, it was not done. The Prespa Agreement produce obligations which are not allowed, following the current expressed situation on the position on the international agreements in contemporary domestic law.

The Assembly illegal, out of the Law for the international agreement's permitted area, with avoidance on legal provisions and the Statement of the State Election Commission⁹⁵, implemented the final phase, the ratification phase.

b) The procedure of ratification of the Prespa Agreement

The phase of ratification of any international treaty by the Assembly of the Republic of Macedonia, not only the Prespa Agreement, is the final step before signing the President's decree for its promulgation in the Official Gazette.

The procedure for ratification of an international agreement is regulated with the Rules of Procedure of the Assembly⁹⁶. The procedure for adopting laws anticipates that any law before its promulgation must be considered on the Assembly's working body through a relevant procedure, according to the legal area governed by that law⁹⁷. Namely, the law for the incorporation of an international agreement is delivered for consideration to the proper working body or several working bodies - if that an international treaty regulates certain different legal areas. Among the other

⁹⁴ See reference 66.

⁹⁵ See reference 48.

⁹⁶ Art. 188-190 from the Rules of Procedure.

⁹⁷ For executing the jurisdictions, the Assembly establish the permanent and temporal working body. Шкарик, Ц.: Силјановска – Давкова, Г, *Уставно право*, Скопје, 2009, p. 621.

working bodies⁹⁸, this paper needs to name only five of them: the Committee on Constitutional Issues, the Committee on Foreign Policy, the Committee on European Affairs, the Committee on Finance and Budget, and the Legislative Committee.

As a rule, adopting of each law is organized in a three-reading system⁹⁹, an exception to the rule some laws can be voted in the reduced procedure¹⁰⁰ or urgently

⁹⁸ Legislative committee, committee on defense and security, committee of political system and interethnic relations, committee of election and appointment issues, standing inquiry committee for protection of civil rights, committee for supervising the work of the national security agency and the intelligence agency, committee on oversight of the implementation of measures for interception of communications, committee for economy, committee for agriculture, forestry and water resources management, committee for transport, communications, and environment, committee for education, science and sport, committee for culture, committee for health care, committee for labor and social policy, committee for local self-government, committee for equal opportunities for woman and man, committee for rule procedure and mandatory-immunity issues.

⁹⁹ **The first reading** shall start with a review of the Draft - law by the working bodies, during which, the Competent Working Body and the Legislative Committee shall hold a general debate on the Draft - law. Before the discussion on the Draft - law at the Plenary Session, the Competent Working Body, and the Legislative Committee shall review the Law. The Committees shall evaluate whether the Draft -law is acceptable and should be proceeded in further reading. During the first reading and following the general debate, the Assembly shall decide if the Draft -law is acceptable and can be proceeded to further read.

If the Assembly decides that the Law is acceptable and should be proceeded to further read the legislative procedure shall continue in the second reading.

The second reading begins in the relevant working body and the Legislative Committee within seven (7) working days after the session of the Assembly, or after the expiration of the period for submitting a request for a general debate. During this reading, amendments are submitted. Every Member of Parliament, parliamentary group and working body can submit an amendment. The amendments are submitted to the President of the Assembly at least two (2) workdays before the day scheduled for the session of the relevant working body or of the Legislative Committee. The amendments are reviewed and voted separately. The relevant working body and the Legislative Committee, after the end of the debate, and within five (5) days at the latest, prepare the text of the law proposal in which they will insert the adopted amendments (amended proposal) and submit it to the President of the Assembly.

At the second reading at a session of the Assembly, a debate is held only to those articles of a law proposal that have been altered with amendments. An amendment can be proposed by a parliamentary group, every Member of Parliament and the initiator of the law proposal. If during the second reading at the session the Assembly adopts amendments of less than one-third of the articles, the Assembly may decide to hold a third reading on the same session. If the Assembly during the second reading does not adopt any amendments to the amended law proposal, the vote on the law proposal takes place at the same session. If the Assembly adopts more than one-third of the articles to the amended law proposal, after the termination of the second reading the text is revised and legally and technically prepared for third reading.

The third reading of the law proposal, as a rule, is held in the first session after the session of the Assembly for the second reading. Amendments can be submitted only to the articles to which amendments have been adopted during the second reading, and the amendment can be submitted by the initiator and the MPs within 2 working days before the day determined for the session. During this reading, the working bodies do not hold a debate. The Assembly debates and decides only on the articles for which of the amended law proposal to which amendments have been submitted for the third reading, and decides on the proposal as a whole. Art. 139-165 from Rules of Procedure <https://www.sobranie.mk/legislative-procedure.nsp?cid=27.12.2019>

¹⁰⁰ The proposer of the Draft-law to the Assembly can propose to organize the debate in the **shortened procedure** if: isn't at issue a complex and extensive law; the termination of the application of law or isn't at issue a complex and large extension adjustment of domestic law with the European Union's legislation. In the shortened procedure, the second and third readings held in the same session. Art. 170 and 171 from the Rules of Procedure.

procedure¹⁰¹. The law for ratification of international agreements is necessarily adopted in an urgent procedure because it's upward from the presumption that these types of legal acts can't be managed within the same way as each other law. International treaties already have established content, so consequently, these legal acts, precisely the laws for ratification of international treaties, can't be simplicity changed by one party to a contract through raising amendments.

In the procedure of ratification of the Prespa Agreement, were violated provisions of the Law on international agreements, and the Rules of Procedure of the Assembly.

Firstly, the proposal for beginning the ratification procedure should be delivered to the Assembly by the public authority authorized for signing the international agreement. In this case that is the President of the State. According to the international agreement's Law, the ratification procedure is to unwind the following order: 1) The President of the State, after the signing the Agreement, along with the proposal for start of the ratification procedure, deliver signed Agreement to the Ministry of Foreign Affairs, within 30 days from the day of signing the Agreement¹⁰². 2) The Ministry of Foreign Affairs has the mandate to elaborate Draft-law for ratification of the agreement. 3) The Ministry of Foreign Affairs, after work out of the Draft-law, deliver him to the Government¹⁰³. And finally, after the Government adopts the Draft-law at a session, it submitting to the Assembly for the beginning of the legislative procedure for ratification of the international agreement following the Rules of Procedure¹⁰⁴. The phases of the ratification procedure, which includes the President of the State, were completely disregarded.

Secondly, any Draft-law for ratification of an concluded international agreement must include 1) The argumentation of necessary of the Proposal for ratification of the international agreement, 2) A constitution fundament for submitting the Draft-law, 3) The reasons for recommending ratification of the international agreement, 4) Appreciation whether the international agreement requires the adoption of a new law or mold the laws which are in force, and 5) Appreciation of needing to undertaking finance to implementation the international agreement¹⁰⁵. Namely, this Draft-law wasn't contained the constitutional fundament, which is understandable, because there isn't the constitutional fundament for concluding of this type of international agreement.

¹⁰¹ Exceptionally, a law can be adopted with an **emergency procedure**. A law can be adopted with an emergency procedure when this is necessary to prevent and avoid major disturbances in the economy or when this is in the interest of the security and defense of the Republic, or in cases of greater natural disasters, epidemics or other extraordinary and urgent needs. If the Assembly decides to debate on the proposal for the law should be adopted reducing the timeframes, it appoints the relevant working body and the Legislative to debate on the proposal. When the law proposal is reviewed with the emergency procedure, there is no general debate on it. The second and third reading is held in the same session. In that case, the second reading starts with a review of the law proposal under the provisions of these Rules of Procedure for second reading. <https://www.sobranie.mk/legislative-procedure.nspix> (27. 12. 2019)

¹⁰² Art. 19 from the Conclusion, Ratification, and Execution of International Agreements, Official Gazette of the RM, no. 5/1998.

¹⁰³ Art. 20 from the Law; Art. 188 par. 2 from the Rules of Procedure.

¹⁰⁴ Art. 21 from the Law.

¹⁰⁵ Art. 188 par. 3 of the Rule of Procedure.

Thirdly, under the Rules of Procedure¹⁰⁶, the Assembly's President, submitting the Draft-law to the relevant working body - in this case, was supposed to be the Committee of Constitutional Issues and the Committee of Foreign Policy. The Draft-law was supposed to be submitted to the Committee on Constitutional Issues because this agreement produces an obligation for changing the Constitution, which means it's contained in constitutional matters¹⁰⁷. The Foreign Affairs Committee also treated as a complementary working body because it's about an international agreement¹⁰⁸. For any Draft-law the Legislative Committee is obligated to declare¹⁰⁹. On the other hand, this Draft-law was supposed to be submitted to the Finance and Budget Committee, because the implementation of the Prespa Agreement has serious financial implications. It didn't happen. The Finance Committee did not view the financial implication of the implementation of the Prespa Agreement. But in place of the Constitutional Issues Committee and the Committee of Foreign Policy, the Draft-law for ratification the Prespa Agreement was submitted to the Committee on European Affairs, which is a couple of times were violated the Rules of Procedure of the Assembly. Namely, this agreement was treated as an adjustment with the EU legislation and held adopted with a European flag.

Fourth, in Art. 189 the Rules of Procedure it's prescribed that the ratification of international treaties administering urgently procedure. In contrast to this provision, the Prespa's Agreement Draft-law provides Art. 170 as a ground for guiding shorted

¹⁰⁶ Art. 137 from the Rules of Procedure.

¹⁰⁷ The Constitutional Issues working body has jurisdiction for: implementation of the Constitution; proposals for amending the Constitution; principal constitutional issues concerning the adoption and enforcement of laws and other regulations and acts; establishment of international cooperation on constitutional issues and other constitutional issues. The Committee on Constitutional Issues has a Chairperson, sixteen members and their deputies. https://www.sobranie.mk/working-bodies-2016-2020-en-ns_article-committee-on-constitutional-issues-16-20-en.nspix (28. 12. 2019)

¹⁰⁸ The Foreign Policy Committee working body has jurisdiction for: the foreign policy of the Republic of Macedonia and its relations with other states and international organizations; policy which provides care for the situation and the rights of the Macedonian population in the neighboring countries and the Macedonian expatriates, as well as for the cultural, economic and social rights of its citizens abroad; joining or resigning from alliances or communities with other states; joining or resigning from membership in international organizations; need for starting negotiations for reaching bilateral and multilateral international agreements of the Republic of Macedonia, i.e. for platforms of these negotiations; ratification of international agreements; international regulation concerning human and civil rights and freedoms and documents of the international organizations and associations; establishment of parliamentary cooperation of the State with other states and international organizations; establishment of cooperation with the respective foreign policy committees of the parliaments of other states; initiatives and proposals for defining the foreign policy strategy of the Republic of Macedonia, and other questions regarding the foreign policy of the Republic of Macedonia. https://www.sobranie.mk/working-bodies-2016-2020-en-ns_article-foreign-policy-committee-16-20-en.nspix (28. 12. 2019)

¹⁰⁹ The Legislative Committee working body has jurisdiction for: alignment of laws and other acts with the Constitution and the legal system, as well as their legal and technical drafting; requests for authentic interpretation and preparation of proposals for authentic interpretation of laws; determination of the final text of the laws and other acts, if authorized by law or other act; corrigenda to published texts of laws or other acts, based on the authentic text of the adopted law or other act of the Assembly and corrigenda to final text of the laws and other acts; establishment of international cooperation on issues referring to legislative activity and legal system, and other issues referring to the legislative activity and the building of the legal system in the country. https://www.sobranie.mk/working-bodies-2016-2020-en-ns_article-legislative-committee-16-20-en.nspix (28. 12. 2019)

procedure for the ratification process¹¹⁰. Again it's a violating of the provisions of the Rules of Procedure.

Fifth, the attachment of the European flag to this Draft-law in correlation with the previous constatation was the core for a series of violations of the Rules of Procedure. 1) To adopt a Draft-law in a shorted procedure must fill out one of the conditions prescribed in Art. 170 of the Rules of Procedure. Namely, at the provisions of the Rules of Procedure is clearly noted that the law proposer, in this case, it's the Government, to the Assembly may propose to accomplish hearing following the provisions of the shorted procedure, if the Draft-law isn't a complex and extensive law; if with the Draft-law is establish the discontinue of law or only particular provisions, and when at issue process of harmonizing of the domestic legislative with the EU law. At a rule, it's about laws which by their structure are not inclusive or complex¹¹¹. It's evident that this Draft-law unsatisfactory any of the above-mentioned conditions particularly not a requirement for harmonization with the EU law. 2) Considering that the Prespa's Agreement Draft-law was submitted to the Assembly with a European flag, was supposed to contain the condition prescribed in Art. 135 of the Rules of Procedure - this provision regulates the subject that every Draft-law must contain. When at issue the Draft-laws for harmonizing the domestic law with EU legislative¹¹², the Rules of Procedure provided that at the introduction of the Draft-law stated the original EU law - its full title, number, and date of its adoption. Further on, along with Draft-law with which harmonize domestic law, constant an obligation for submitting a statement for the adjustment, and signature by the competent minister and a clear suggestion of the EU law which harmonization is done. 3) The following article of the Rules of Procedure¹¹³ prescribes the obligation of the Assembly's President when a certain Draft-law won't fill up conditions specified in Art. 135 of the Rule of the Procedure. If the Draft-law is not prepared following the provisions of the Rules of Procedure, the Assembly's President is obliged to request its harmonizing with the provisions of the Rules of Procedure. The harmonizing process conducts the proposer. The Draft-law proposer has only 15 days for complementing and harmonizing the proposed law with the Rules of Procedure's provisions. The proposer needs to compensate for these deficiencies within 15 days. This deadline starts to run from the moment where the President of the Assembly has sent the Draft-law for harmonization to the proposer. In case the proposer not to treat according to the Assembly's President indications, such a Draft-law will be treated as a non-proposed law. The ratification procedure of the international agreement to change the constitutional name must be stoped at this phase - according to the Rules of procedure's norms, the Assembly's President is obliged to ensure that the rules for the adoption of any law are respected.

¹¹⁰ <https://vlada.mk/sednica/74?ln=mk> (28. 12. 2019)

¹¹¹ See reference 100.

¹¹² Art. 135 par. 4 and 5 from the Rules of Procedure.

¹¹³ Art. 136.

From presented omissions on each phase, which precedes the publications phase of an international agreement at the Official Gazette concluded by the President of the State, it's clear that the Prespa's Agreement adoption is a source of serious violations of the constitutional law, laws provision (Law on the Conclusion, Ratification, and Execution of International Agreement and Law on Foreign Affairs), the International law (Vienna Convention on the Law of Treaties, 1969), and the Rules of Procedure of the Assembly. This final opinion includes not only the legal omissions in the legislative procedure but and precedes procedure, precisely, negotiation and concluding process. From that reason is mentioned international law violation.

And if all the omissions and violations of the legal articles undertaken by other public authorities, preceding the ratification process were ignored, the Assembly's President was obliged not to allow the ending of the ratification procedure. But in place, of that, the Assembly's President supported the ratification of the Prespa Agreement, respectively the whole process was led by him.

3. UNDERWRITE THE DECREE FOR NOTIFICATION THE PRESPA AGREEMENT

The decree underwriting stipulated in Art. 75. The full text of Art. 75 on the Constitution is:

- *Laws are declared by promulgation. (par. 1)*
- *The promulgation declaring a law is signed by the President of the Republic and the President of the Assembly. (par. 2)*
- *The President of the Republic may decide not to sign the promulgation declaring a law. The Assembly reconsiders the law and the President of the Republic then is obliged to sign the promulgation in so far as it is adopted by a majority vote of the total number of Representatives. (par. 3)*
- *The President is obliged to sign a promulgation if the law has been adopted by a two-thirds majority vote of the total number of Representatives in accordance with the Constitution. (par. 4)*

According to the systematization of the constitutional provision, the article which regulates the final phase before promulgating the adopted law in the Official Gazette is in the appropriate site – Chapter III, Public Authority Organisation. Precisely, the established legal norm, paragraph 4, didn't allow manipulation in the interpretation process of the question of whether the President is obligated to sign the proclamation of the law when the Assembly votes by a two-thirds majority. The dilemmas arise for paragraph 3.

In the Constitution, there is another norm that can be “connected” with the Art. 75, because the constitutional-makers in the time of creating the Constitution had on mind that must contain other constitutional norms regulating obligation for

publicizing of the laws. But these constitutional norms are in an inappropriate place in which connecting norms is blocked. The following of this paper will address these constitutional matters. For that reason exist some constitutional issues.

The normative problems accumulate because of two basic reasons: 1) the unaccomplished systematization of the constitutional provision regulating the publishing of the laws, and their imperfection, and 2) confusing way of norms relations, because of its misplaced which allowed and as yet allow a different type of interpretation of constitutional provisions.

Before getting into force, any legal regulation with general legal effects must 1) go through the appropriate legal procedure, 2) be signed by the President of the State, and 3) be published in the Official Gazette. However, one legal act - not just law, but an international treaty ratified by the Assembly, to reach the third phase - publication in the Official Gazette - must be signed by the President. That underwrite, a requirement that would allow the law to create legal consequences in the legal system is called a decree. The paper in a several occasions underline that the Prespa Agreement was published in the Official Gazette without the President's decree, wherewith was committed another flagrant violation of procedural legal norms - in this case, it's the norm stipulated in the Constitution that prescribes authorization of the President of the State to underwrite the regulates with general legal effects come into force¹¹⁴.

The Constitution of the Republic of Macedonia has numerous normative omissions, and one of those is established in the provisions that regulate the jurisdiction on the President of the State to underwrite the laws before their promulgation. Regarding the Prespa Agreement, the actions unfold in the following order: 1) Although contrary to the internal law Assembly's voted the Prespa's Agreement Law ratification "following" the legislative procedure, and the adopted law was sent to the President of the State for the underwriting of the decree. 2) The President of the State exploits the legal gap in the constitutional provision, announced that he wouldn't sign the decree for the promulgation of the Law for ratification of the Prespa Agreement. With that legal action, the adopted law was returned to the Assembly due to the second time voting. After it was again confirmed by the Assembly, the President again refuse to underwrite the decree, wherewith it's officially pronounced veto on Prespa's Agreement Law. Although it's not for justification the President's decision not to sign the decree on the Prespa's Agreement ratification Law, however, it didn't violate the Constitution - which otherwise would be a core for impeachment proceedings before the Constitutional Court¹¹⁵.

As above was mentioned, the Constitution is abounding with understatements and legal gaps. One of those understatements refers to the underwriting of laws before publishing in the Official Gazette. Art. 75 par. 3 of the Constitution prescribed that the President of the State has the authority to decide don't sign a decree for promulgating a law. In continuance of this provision provided that the President

¹¹⁴ Art. 75 par. 1 from the Constitution.

¹¹⁵ Art. 59 from the Rules of Procedure of the Constitutional Court.

should underwrite the decree for the promulgation the law if Assembly vote on the second time unsigned law with a majority vote of the total Representatives number¹¹⁶. In other words, the constitutional-makers in one provision stipulated the President's discretionary authority not to sign a decree, and the obligation for signing a law voted in the second time.

At first look, this constitutional provision doesn't contain incoherence that would lead to particular problems in practice. The constitutional-makers regulate the procedure for a second-time overview of the law which decree for its coming into force isn't underwritten from the President of the State - according to the Macedonian Constitution, the presidential veto, can be outvoted with the lower majority regarding most of the countries (2/3)¹¹⁷. According to this, seems that the President's veto can be outvoted with majority votes of the total number of Representatives (61).

But, legal dilemmas, accrue therefore the constitutional-makers haven't completely regulated the President's obligation, about the procedure for a second-time overview of the law. As mentioned, at first appearance, there is no dispute that the Constitution does contain unequivocally a constitutional obligation for signing second-time voted law. But if we interpret the constitutional law, then increase some constitutional issues. In other words, constitutional-makers didn't prescribe Art. 75 to the end. The Art. 75 doesn't predict legal sanction for President's decision to refused to sign the decree of the again voted law. This provision doesn't offer an alternative to outrun the President's silence.

Is obviously missing provision for regulating the promulgation process. The Constitution allows manipulation with the promulgation process of ratified law on the permissible way because in the actual constitutional regulation miss some normes for overall prescribing of promulgation phase. Namely, the Constitution misses provisions that would clearly instruct the President to underwrite a decree promulgating the again voted law by the Assembly with legal sanction threat for a decision don't to sign the decree. In other words, according to the prescribed regulative the discretionary authority of the President don't to underwrite the decree for the promulgation of the law for ratification of the Prespa Agreement can last forever. The absence of an imperative provisions that regulated the President's obligation for compulsorily underwrite the decree or provision that can provides an alternative promulgation procedure with the President's of the Assembly signature, allows concluding that the President's veto produces legal force with powerful effects, even from the President's veto where a two-thirds majority can to outvote decision not to sign the decree for proclamation the law - following the Constitution,

¹¹⁶ At the second vote, the Prespa Agreement was approved by 69 deputies. On the President refused to sign Prespa's decree see: Assembly adopts Law for ratification of the Prespa Agreement for the Second Time. <https://a1on.mk/macedonia/sobraniето-po-vtor-pat-go-izglasa-zakonot-za-ratifikacija-na-dogovorot-grcija/> (30. 12. 2019)

¹¹⁷ Дескоска Р., *За Уставот на Република Македонија – две децении подоцна*, Зборник на Правниот факултет „Јустинијан Први“ – Скопје, во чест на проф. д-р. Тодор Пеливанов, 2012, р. 159.

the President is obliged to sign the decree, but question is until when!? Exactly the time limitless on the act of the signing of the second-time voted law decree, in theory, interpreted as a space for “postponement because it missed stipulating a deadline for a presidential veto”¹¹⁸.

Hence originated the opinion that the constitutional omission of constitutional-makers unintentionally allocated the President’s veto authority with intangibility status - only on his will depends whether and when he signs any law, not just the Prespa’s Agreement ratification law. There is no legal instrument that can force the President to sign the second-time voted law by the Assembly. Namely, it’s irrespective of what produces the Art. 75, because of its understatement.

The President’s underwriting refusing of the Prespa Agreement ratification law is not the first case who has used the constitutional gap in the Constitution in Macedonian independence short legal history. Namely, in 1998, the President, Kiro Gligorov, refused to sign the decree for promulgating the Law on the Conclusion, Ratification, and Execution of International Agreements. The law was adopted, and the silence for underwriting the decree lasted several months. For several months, the President refused to declare: nor signed the decree nor vetoed. Then established the practice that the President has unlimited right to sign a second-time Assembly voted law¹¹⁹. The disclose thesis for the President’s unlimited right underwriting Assembly’s adopted law promoted by the domestic theory in the Kiro Glogorov mandate several years dominated as a scientific standpoint for interpreting the constitutional norms for promulgation the law. Namely, these scientific standards for the interpretation of the constitutional law have been used and in the mandate of President Boris Trajkovski, “who almost a month considered whether to sign the promulgating decree of the Law establishing the State University in Tetovo. After one month, he decides to sign the decree, and the law been announced in the Official Gazette”¹²⁰.

The underdeveloped of the Art. 75 par. 3 was the first dilemma. The second one refers to Art. 52 on the Constitution.

As mentioned, maybe besides Art. 75, in the Constitution, exists another constitutional provision that indirectly may answered the promulgation’s Prespa’s law dilemma. Does the constitutional-makers an inappropriate place in the Constitution for the President of the State prescribed the obligation for underwriting the decree? Does through the interpretation of the Constitution, respectively, Art. 52, emanate a conclusion that the President has an obligation for signing the decrees, including the promulgation of the Prespa’s Agreement law? Namely, the provision provides that laws and other regulations are published before they come into force. Laws and other regulations are published in “The Official Gazette of the Republic of Macedonia” at most seven days after the day of their adoption. Laws come into

¹¹⁸ Дескопка Р., За Уставот... *op. cit.* p. 160. The Law for founding the Tetovo State University, Official Gazette of RM, no. 8/2004, 81/2008, 226/2015, 120/2016.

¹¹⁹ *Ibid.*, p. 159.

¹²⁰ *Ibid.*, p. 160.

force on the eighth day after the day of their publication at the earliest, or on the day of publication in exceptional cases determined by the Assembly¹²¹.

In consideration of the systematization of the constitution provisions, accrue that the Art. 52 of the Constitution has an inappropriate position, stipulated in the constitutional chapter that regulates fundamental rights¹²². In this provision is accentuates that there is no doubt that the obligation to promulgate laws before their entry into force, is for the citizen's rights protection through the introduction of their subjects.

In the domestic theory, especially is noted, the incorrect positioning of this constitutional provision.

Namely, in place of the provisions that regulate the public authorities' organization¹²³, the continuance of the President's unwriting the decree obligation is positioned in an inappropriate part of the Constitution, wherewith it was impossible to make a connection on this constitutional provision and Art. 75 par. 3¹²⁴. Even if we want to develop an institutional relationship between Art. 75 par. 3 and Art. 52 we can't do that, because of Art. 52 is stipulated as a human right but not as a public authority's obligation. That type of relationship is not allowed in the Macedonian constitutional regime. That is first problem. The second one includes provision structure. In the structure of this inappropriate provision (Art. 52) missing a provision that appointed a President's legal punishment in a case of refusing to sign the decree for law promulgations. And then show up same problem, the constitutional-makers don't prescribe to the end the obligation for underwriting the decree, despite the incorrect place in the Constitution. Anyway, if we connected these two constitution provisions, unprescribed allowed underwriting the decree is fully depends by the President of the State. It's his discretionary decision.

The Macedonian method for the organization of the public authority, regarding German example, not allow connection of constitutional provision stipulated in different constitutional chapters, because of the highest legal authority is "Constitution", which means that the codification process of the constitutional provision finished in the time of establishing the Constitution. The highest legal act in Germany is not called "the Constitution", but "Basic Law"¹²⁵. The whole subject of the German Basic Law is a combination of provisions with legal and constitutional nature. Is not uncommon for the German practicing the connection between a constitutional provision to answer some constitutional issue in the constitutional

¹²¹ For publishing the law, See: The procedure of negotiation, conclusion, ratification, and execution of the international agreement - a) The phase of negotiation and conclusion of the Prespa Agreement, article seven.

¹²² Chapter II – Basic freedom and rights of the individuals and citizens.

¹²³ Chapter III – The public authority organization.

¹²⁴ Десковска Р., За Уставот... *op. cit.* p. 160.

¹²⁵ The term Basic Law who has a different connotation for sovereignty than the constitution in Germany been accepted after World War II within the political realities for German separation. Neumann G. R., *European and Comparative Government*. McGraw-Hill Book, Company, Inc., New York, Toronto, London, citate on: Siniša Rorin S., *Evropska unija I njemački Ustavni sud*, Politički misao, Vol. XXXIII, br. 4, 1996., p. 244.

system. For example, the competences of the Constitutional Court aren't codified and systematized in one chapter who regulates the work of the Constitutional Court. In its work, the Federal Constitutional Court refers to several provisions that can be found through the text of the Basic Law¹²⁶.

However, precisely because the Constitution has numerous imperfections, it has enough space for the President for manipulating with constitutional authority. Constitutional omissions determine the legal nature of the President's jurisdiction for signing decrees. The role of the President additionally is strengthened because the legal system of the Republic of Macedonia doesn't recognize authorization for interpretation of the constitutional norms. In the comparative constitutional law, the Constitutional court has authorization for interpretation of the constitutional provisions. But that is not a case in the Macedonian legal system. Namely, nor the Constitutional Court¹²⁷ nor any other public authority hasn't jurisdiction for interpretation of the constitutional norms. This information brings us to the previous constatation that the interpretation of the Constitution, regarding the provisions for the promulgation of laws, depends on the will of the President of the State. In other words, whether a decree will be signed depends only on the will of the President - promoted at the level of discretion right, using of this President's authorization doesn't depend on any other public authority.

Contrary to this standpoint, the process of publishing the Prespa's Agreement law in the Official Gazette only with the signature of the President of the Assembly is contrary to the Constitution¹²⁸. Precisely, proclaiming of any law without a President's decree, is not allowed, besides the obvious normative inconsistency ascertains of the Constitution.

Anyway, the promulgation of the Prespa's Agreement law without a President's decree should be subject to constitutional review accomplished by the Constitutional Court. This public authority so far in his practice already sanctioned the attempt on the President of the Assembly to disregard the President's decree¹²⁹.

Lastly, from a legal point of view, whether is a disputed matter the President's decision not to sign the law for ratification the Prespa Agreement? Was legally valid the President's decision not to sign the decree for publishing the Prespa Agreement

¹²⁶ Art. 18 par. 1, Art. 21 par. 2 and 4, Art. 92, Art. 93 par. 1 and 2, Art. 94, par. 1, Art. 100 par 2 and 3.

¹²⁷ At. 110 from Constitution - the Constitutional Court of the Republic of Macedonia decides on the conformity of laws with the Constitution; decides on the conformity of collective agreements and other regulations with the Constitution and laws; protects the freedoms and rights of the individual and citizen relating to the freedom of conviction, conscience, thought and public expression of thought, political association and activity as well as to the prohibition of discrimination among citizens on the ground of sex, race, religion or national, social or political affiliation; decides on conflicts of competency among holders of legislative, executive and judicial offices; decides on conflicts of competency among Republic bodies and units of local self-government; decides on the answerability of the President of the Republic; decides on the constitutionality of the programmes and statutes of political parties and associations of citizens; and decides on other issues determined by the Constitution.

¹²⁸ At 75 from the Constitution - The promulgation declaring a law is signed by the President of the Republic and the President of the Assembly.

¹²⁹ See reference 60.

if consider the fact of the legal gap of the Constitution and the silence practice established by previous presidents? The answer to the first question is, no, because can't be violated a legal gap and the constitution omission. The answer would be positive if the valid of the entire preceding legal activity of the ratification process was under the legal order with appropriate alternative promulgation of the law procedure. The answer to the second question is, yes, because its constitutional obligation is to protect the established constitutional regime from any Assembly's activities to violate the rule of law principle. According to the Constitution, the President is the last defender of the Constitution. The act of not signing the Prespa's Agreement decree in the first instance was a moral, and consequently, a legal decision that not was contrary to the law.

4. CONCLUSION

The coming into force of the Prespa Agreement was followed by a series of violations of domestic law. Precisely, in the whole precede procedure before its getting into force were violated a series of provisions with different legal natures - some of them are constitutional provisions, some is statutory provisions, but also was violated the Rules of Procedure of the Assembly. Besides the violations of domestic law, the legal acts that preceded the ratification process of the Agreement also were violated provisions of international law, precisely, the Vienna Convention on the Law of Treaties, 1969.

From the beginning of the negotiation process for the conclusion of the Prespa Agreement, the President of the State was disregarded, although, under the Constitution and the Law for international agreements, he has sovereign position concerning of act of signing the international treaties. But following the Constitution, the President is the only public authority with derives legitimacy directly from the residents, in the field of concluding international contracts. On the contrary, the legal authority of the Government about international agreements is considerably limited. Namely, through the *numerus clausus* principle, the Law for international agreements on a clear way defines the frames of the Government in the field of concluding international agreements. The law prescribed the Government competent in only 16 areas but is not among those areas isn't predicted the specializes authorization for concluding an international agreement with effects for the constitutional name. Practically, for resolving this issue don't exist a constitutional or legal ground, because the name of the state is an identity component that derives from the right of self-determination and only the people which determinate the name of the country through their will expressed in a referendum, can accomplish any intervention in the title of the state. Anyway, the intervention in the constitutional name can't be a political action undertaken by the political authorities. Particularly, regulating this issue, in any case, can't be a matter of a bilateral agreement imposing obligations on the third country that aren't parties to the agreement.

PROCEDURALNA NEUSTAVNOST I NEZAKONITOST PRESPANSKOG SPORAZUMA

Prespanski sporazum potpisan 17. lipnja 2018., kojim se promijenio ustavni naziv Republike Makedonije, presedan je međunarodnog prava. U postupku njegovog zaključenja, ratifikacije i izvršenja počinjena su ozbiljna kršenja proceduralnih pravila. Iako su povrede koje ovaj sporazum proizvodi brojne i različite prirode, fokus ovog rada je na proceduralnim povredama. Prespanski sporazum je i u sukobu s Ustavom i međunarodnim pravom, jer njegove odredbe derogiraju i neka temeljna prava kao pravo na samoodređenje. Ali ovaj je rad usredotočen samo na kršenja temeljnih pravnih normi koje propisuju postupak proglašenja Prespanskog sporazuma - postupak pregovaranja, sklapanja, ratifikacije i objavljivanja. Postupak pregovaranja, potpisivanja i ratifikacije Prespanskog sporazuma prati flagrantno kršenje ustavnih normi, statuta i normi Bečke konvencije o ugovornom pravu u dijelu koji uređuje pitanje osoba koje su bile nadležne za usvajanje autentičnost teksta ugovora. Osim uvodnog dijela i povijesnog uvoda u genezu problema, u fokusu ovog rada je postupak pregovaranja, sklapanja i ratifikacije Prespanskog sporazuma. Proceduralni aspekti referenduma o Prespanskom sporazumu bit će obrađeni u dijelu koji se naziva "pregovaranje i zaključivanje međunarodnog sporazuma", jer je do sada ovaj referendum bio objavljen nakon faze zaključenja i prije ratifikacije.

Ključne riječi: *Prespanski sporazum, predsjednik, uredba, Ustav, zakon, ratifikacija*