

Prof. Tanja Karakamisheva-Jovanovska, PhD¹
Dejan Saveski, PhD²

MACEDONIAN CONSTITUTIONAL COURT AND RATIFIED INTERNATIONAL AGREEMENTS – CAN THE CONCLUDED INTERNATIONAL AGREEMENT BE A SUBJECT OF CONSTITUTIONAL REVIEW?

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In every domestic law that is part of the continental legal tradition, the Constitutional court has the central role of keeping the normative balances between the national and international legal order. The formulation “internal, national legal order” involves all pronounced acts, which means the Constitution, statutes, by-laws, and ratified international agreements. Every provision of the national law must be in normative harmony with the Constitution – as a domestic regulation with the highest legal power. Hence, with the act of ratification, the international agreements can be subject to the constitutionality review - besides the statutes and the by-laws. The constitutional makers can decide the constitutionality review of the international agreements to be prescribed by constitutional norms. If the constitutional makers omitted to regulate specialized authorization, the Constitutional court, through its own practice, can create a model for reviewing the constitutionality of the international agreements. Having in mind that the Macedonian constitutional system has not provide the constitutionality control of the international agreements, the Macedonian Constitutional court has a fully independent role in defining the method for implementing the principle constitutionality over the international agreements – a specialized model for “interpretation” (complement) of the constitutional law. More precisely, the Macedonian Constitutional court has already accepted this approach for constitutional law interpretation.

Key words: *Constitutional court, international agreements, ratification, constitutional review, decision.*

¹ Tanja Karakamisheva - Jovanovska, PhD., Full Professor for Constitutional Law and Political System at the “Ss. Cyril and Methodius” University, Faculty of Law “Iustinianus Primus”, Skopje and former Macedonian Member of the Venice Commission.

² Dejan Saveski, PhD, Doctor of Law, University “Sc. Cyril and Methodius”, Faculty of Law “Iustinianus Primus”, Skopje.

1. INTRODUCTION

The Macedonian Constitutional Court, as established with the 1991 Constitution of Macedonia, was not positioned as a public authority in the organization of separated state power, like the Assembly, the Government and the President of the State, and the judiciary system.³

The constitutional-makers of the first Macedonian Constitution promulgated shortly after the dissolution of the former Yugoslavia determined the Constitutional Court a special position, not as an authority within the triple organization of the legislative, executive and judiciary system, nor as a fourth power,⁴ or an inter-governmental authority⁵, **but as a separate (autonomous and independent) public authority with a *sui generis* constitutional position.**⁶

The Constitutional Court is not a new institution in the Macedonian legal system coming only with the 1991 Constitution. This Constitution continued the tradition of constitutional regulation and legal existence of the Constitutional Court in the Macedonian legal system. The Constitutional Court was introduced into the Yugoslav legal system with the 1963 Constitution of the Socialist Federal Republic of Yugoslavia (SFRY). In consideration of the federal organization of public authorities, with the 1963 Socialistic Republic of Macedonia Constitution (SRM), the Constitutional court was built into the Macedonian legal system. The legal being of the Constitutional court was also defined in the next Socialist Constitution of Yugoslavia adopted in 1974. According to the logic of the federal theory, the Constitutional court continues to participate as a public authority in

³ Constitution of the Republic of Macedonia (Official Gazette of the RM, no. 52/1991). Amendment I и II from the Constitution of Republic of Macedonia (Official Gazette of the RM, no. 1/1992), Amendment III from the 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 the Constitution of Republic of Macedonia (Official Gazette of the RM, no. 91/2001), Amendment XIX from the Constitution of Republic of Macedonia Official Gazette of the RM, no. 84/2003), Amendment XX, XXI, XXII, XXIII, XXIV, XXV, XXVI, XXVII, XXVIII, XXIX и XXX from the Constitution of Republic of Macedonia (Official Gazette of the RM, no. 107/2005), Amendment XXXI from the 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), Amendment XXXII from the Constitution of Republic of Macedonia (Official Gazette of the RM, no. 49/2011), Amendment XXXIII, XXXIV, XXXV and XXXVI from the Constitution (Official Gazette of the RM, no. 6/2019).

⁴ Вучић, О.; Стојановић, Д., Уставно судство на пресеку права и политике, *Анали Правног факултета у Београду*, година LVII, 2/2009., p. 96, Petrov, V., *Novi Ustavni sud Srbije (2006-2012) - reforma ustavnog sudstva nastranputici?*, *Sveske za javno pravo*, br. 9, 2012., p. 30; Томић, З., Уставно судство-између жреца и ствараоца, *Уставни суд Србије у суочет новом Устава*, 2004., p. 66-67.

⁵ Crnić, J., *Ustavni sud Republike Hrvatske: iskustvai perspective*, *Političk imisao*, Vol. XXXVIII, br. 4, 2001., p. 129; Šarin, D., *Ustavni sud Republike Hrvatske kao institucionalni zaštitnik ljudskih prava I temeljnih sloboda*, *Zbornik radova Pravnog fakulteta u Splitu*, god. 52, 3/2015., p. 757.

⁶ Chapter IV, Art.108-113 from the Constitution.

the law of Socialist Republic of Macedonia, adopted in the same year as a federal Constitution (1974).⁷

The Constitutional Court of the former Yugoslavia has a relatively long legal tradition. Namely, Yugoslavia was the first socialist state which presented the Constitutional Court in its legal system as an institutional authority for the administration of constitutional review at the federal and republic level.⁸

It was a new institutional model that replaced the previous system of constitutional review of constitutionality and legality of the law, of individual acts, and other regulations.⁹

The Constitutional court in this historical period is not seen as a respectable institution in the field of constitutionality protection. In the time of the socialist constitutionality, the Constitutional court was recognized as a part of the assembly's political system. According to the basic principles of this political system, the Communist political party had supremacy over other public authorities. Therefore, the Constitutional court activity in this period cannot compare with different valuable Constitutional courts, considering that the court was not dealt with important constitutional issues.

The fundamental obligation of every Constitutional Court, not only for the Constitutional Court of the Republic of Macedonia, is through cassation of the unconstitutional and illegal acts to maintain the normative stability in the legal system. To achieve this general objective, the Macedonian Constitution stipulates the primary competences of the Constitutional Court.

More precisely, the authorizations of the Constitutional Court are regulated with Art. 110 of the Constitution. Essentially, the authorizations regulated in the Constitution are a fundamental presumption for the Constitutional Court activity, which through implementing in practice the institute of constitutional control and legality, intends to provide general protection of the constitutional legal regime.

⁷ Chapter XIII, Art. 241-257, 1963 Constitution of SFRY; Chapter X, Art. 213-240, 1963 Constitution of SR Macedonia. Besides the Constitutional courts in the federation republics, with the amendment XX-XLII, adopted in 1971, the Constitutional court was implemented in the legal system of the two provinces Kosovo and Vojvodina. Before adopting these constitutional amendments, the constitutional review of province legal acts was conducted by the separate juridical body, established in the province Supreme court.

See: Kulić, D., *Ustavno sudstvo u svetu – treće dopunjeno izdanje*, Beograd – Zaječar, 1982., p. 215-216. Not only in 1971, but the 1963 and 1974 Constitution of Yugoslavia was also amended several times, 1967, 1968, mentioned 1971, 1981 and 1989.

Marković, Đ., *Procedures, and Conditions for the Selection of the Constitutional Court Judges in the Post-Yugoslav States*, Anali Pravnog fakulteta, Vol. 67, No. 3, 2019, p. 257-258.

⁸ Besides, in Macedonia, the Constitutional court was introduced and in the legal system, in other republics who also were equal members of the Yugoslavia – Slovenia, Bosna and Hercegovina, Montenegro, Croatia, and Serbia.

⁹ Before adopting of 1963 Constitution of SFRY, the ordinary courts don't have authorization for pursuing the constitutional review of the legal acts. The Supreme courts only have indirect jurisdiction for control of the legality of the other regulations in administration procedure. Kulić, D., *op. cit.* p. 179. In was a specialize authorization of Assembly.

This jurisdiction includes the authorizations that the Constitutional Court can use when making an effort to inhibit existing illegal normative actions of the public authorities in the constitutional regime.

According to the Constitution, the Constitutional Court authorizations can be divided into five groups:

- authorization for normative control¹⁰,
- authorization for resolving disputes between public authorities¹¹,
- authorization which gives the Constitutional court an opportunity in special procedure to decide for the President of the State accountability¹²,
- authorization for constitutional review of programs and activities, as well as on the statutes of the political parties and civil associations¹³, and finally,
- Constitutional Court has the power to protect the human rights of the residents and other person under Macedonian jurisdiction without citizenship when the

¹⁰ Decides on the conformity of laws with the Constitution; decides on the conformity of collective agreements and other regulation with the Constitution and laws, Art. 110, par. 1 (a, b).

¹¹ From the 1991 Constitution, the practice of the Constitutional Court of the Republic of Macedonia, notes several cases where with it was established a competence conflict between the public authorities, and where the Constitutional court pronounce a decision. The first case was about an actual conflict of authorizations between the President of the Republic of Macedonia and the Ministry of Defense. The competence conflict, in this case, was arisen about the issue which public authority has the right to command the Army of the Republic of Macedonia, in consideration of the constitutional provision that regulates that the Commander in Chief of Armed Forces is President of the State, on the one hand, and the statute provision of the previous Army's Law in which was stipulated that the commanding with the Army is specialized power of the Ministry of Defense, on the other hand. The competence dispute began as a result of the positive conflict of competencies that was resolved in favor of the President of the State. As a result of this conflict provision of the previous 1992 Army's Law, it was repeal. Therefore, with this Constitutional Court decision, the competition dispute between the President of the State and Ministry of Defense regarding the Army was finished. Constitutional Court decision was null and void Art. 17 (I). With this statutory provision was prescribed that Commander in Chief of Armed Forces is the Ministry of Defense. Decision, U. no. 123/1993-0-0.<http://ustavensud.mk/?p=6283>(8.4. 2020); Art. 110, par. 1 (d), Constitution of Republic of Macedonia.

¹² According to the Rules of Procedure of the Court, the legal action against the President of the Republic responsibility is taken with Assembly decision that is adopted with two-thirds Assembly Members majority. The Constitutional Court brought the decision with two-thirds judge majority. If the Constitutional Court appointed that the President of the State has violated the constitutional or statutory provisions, the function "President of the State" quit immediately according to the law. Art. 110, par. 1 (f) of the Constitution.

¹³ The procedure for constitutional review of the civil association political party statutes has been initiated only once, against the Association of Citizens "RADKO" - Ohrid. In its decision, the Constitutional Court evaluates that RADKO civil association is oriented to the violent destruction of the legal system and national animosity through the negative of the Macedonian nation's existence. The Constitutional court in this decision also noted that RADKO association creates religious intolerance. Art. 110, par. 1 (g), Constitution of Republic of Macedonia.

The content of the decision of the Constitutional Court of Republic of Macedonia U. no. 168/2000-0-0 <http://ustavensud.mk/?p=7836>(14.1. 2020)

individual constitutional rights are violated with public authority legal act or legal action.¹⁴

The Article 110 par. 1 (h) foresees that this constitutional institution also has the power to “decide on other matters determined by the Constitution”. It is a question of an exclusive power without a specific mandate and sphere of action. This constitutional provision overlay the entire Constitution. More precisely, this constitutional norm allows the Constitutional Court to decide on matters of a different legal nature, but only if that type of judging is invoked by a specific constitutional provision.

For example, according to Art. 82 of the Constitution, the Constitutional Court has the authority to confirm the existence of one of the named constitutional conditions in which becomes termination the function of President of the State. Following the par. 1 of the Art. 82, the function “President of the State” is terminated in case of death, resignation, when the President is permanently obstructed to fulfill the function or when he quits his obligation in accordance with the Constitution. Besides this constitutional provision, in the frame of this formulation “other competencies”, the Constitutional Court also decides on the immunity of the President of the State and of the Constitutional Court judges.¹⁵

With regard to the Constitutional Court competence, we can note that from the structure of the constitutional provisions which explicitly regulate the court’s authority, the constitutional-makers have omitted to standardize the authority for constitutional review on the international agreements.

The normative omission detected in the constitutional provision was the basic motive for the authors to try to answer the following question: whether, despite this insufficiency, the Constitutional Court has the authority to accomplish a constitutional review on the international agreements, not just over the laws and other regulations?

A particular motive for this is the Prespa Agreement signed between Macedonia and Greece. This agreement and its legal effect is a precedent in the international law, for the Republic of Macedonia, acquires a legal obligation to intervene in the

¹⁴ Art. 110, par. 1 (c), of the Constitution of Republic of Macedonia. From the time where Constitutional court was introduced in Macedonian legal system with the 1963 Constitution up to 2020, this institution brought three decisions:

Decision of Constitutional Court of Republic of Macedonia, U. no. 84/2009

<http://ustavensud.mk/?p=10134> (9. 4. 2020)

Decision of Constitutional Court of Republic of Macedonia, U. no. 116/2017

<http://ustavensud.mk/?p=16567> (9. 4. 2020)

Decision of Constitutional Court of Republic of Macedonia, U. no. 57/2019

<http://ustavensud.mk/?p=18219> (9. 4. 2020)

¹⁵ Art. 58-61, 67, Rules of Procedure of the Constitutional court, Official Gazette of RM, no. 70/92.

Constitution and to change the constitutional name “Republic of Macedonia” into “Republic of North Macedonia”.¹⁶

The Prespa Agreement contains legal norms which are contrary with the constitutional provisions so hence come the dilemma: whether this international agreement can be subject of constitutional review, not only on its substantive (material) side, but also on its procedural (formal) side, i.e. the procedure for its adoption.

Purposely, to find the answer to this dilemma, but also and on some other important questions, it is of particular importance to define the status of the international agreements in the Macedonian legal (constitutional) system, the model of introduction of the international law in the national law. This paper also includes a comparative overview of models of constitutional review of international agreements. This comparative overview will help us to resolve the dilemma, whether developing of this form of constitutional court practice is crucial to standardize this type of authorization in a constitutional norm.

The basic hypothesis of the paper is:

Despite the constitutional-makers omission to prescribe the Constitutional court authorization for international agreements constitutional review, the sense of constitutional provision allows the Court to accomplish this individual authority and to establish on its practice as a legal standard.

The theme of this paper, which refers to the constitutional review of the international agreements in the Macedonian constitutional law, is a matter that is relatively vaguely analyzed by the national constitutional experts and theoreticians.

2. THE POSITION OF THE MACEDONIAN CONSTITUTIONAL SYSTEM IN THE MATTER OF CONSTITUTIONAL REVIEW OF THE RATIFIED INTERNATIONAL TREATIES

In general, by analyzing the contemporary European constitutional orders, we may conclude that the legal systems are divided into three global groups.

The first group encompasses the Constitutions with the constitutional provisions which have accepted preventive or repressive model of control concerning the ratified international treaties. These countries allowed the institutions of power to initiate before the Constitutional courts an abstract procedure for reviewing constitutionality over international agreements.¹⁷

¹⁶ The Prespa Agreement was signed in Nivitsi, on the Macedonian side, on June 17, 2018, on the Macedonian-Greek border. The original name of Prespa Agreement is “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 Interim Accord of 1995, and the Establishment of a Strategic Partnership Between the Parties”.

¹⁷ Austria, France, Serbia, etc.

The second group contains those constitutions which prescribe provisions that unequivocally prohibit ruling the review of constitutionality of the international treaties.¹⁸

In the third group are the states whose Constitutions did not specify the Constitutional courts' authorization of the constitutional review above the international treaties.¹⁹ The Macedonian constitutional system is part of this group.

2.1. The Macedonian case

2.1.1. Constitutional review of the international agreements realized by the Macedonian Constitutional court - practice so far

The 1991 constitutional omission gives the Constitutional court enough space for inconsistent application of the Constitution. As a curiosity, the identical structure, i.e. the same constitutional judges proclaiming different legal standpoint about the authority for judging the constitutional compatibility of the international treaties.

The Constitutional court's inconstancy comes from the unconventional admittance for interpretation of the Art. 110 in the part that stipulate the abstract control of constitutionality. Irrespective of this omission, the Macedonian Constitutional court has faced with the question of constitutionality of international treaties on several occasions in the past.

In 1994 the Constitutional court, for the first time announced a statement regarding the international agreement constitutional control. Namely, the Constitutional court decided not to begin a procedure for reviewing the constitutionality of the Law for ratification of the agreement between the Government of the Republic of Macedonia, and the International Bank for Reconstruction and Development, and the Law for ratification of the international agreement between the Government of the Republic of Macedonia and the International association for development.

In the decision for non-initiating a procedure for constitutional review, the Constitutional court did not declare itself as an incompetent authority for Constitutional observation of the international agreements. **In this case, the**

¹⁸ Art. 90 par. 5 from the Constitution of Turkey - International agreements duly put into effect have the force of law. No appeal to the Constitutional Court shall be made concerning these agreements because they are unconstitutional. In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail. https://www.constituteproject.org/constitution/Turkey_2017.pdf?lang=en (6.5.2020). Also and Luxemburg, Art. 95 par. 2 from the Constitution-2) The Constitutional Court may be referred to [a matter], under title of preliminary opinion.

https://www.constituteproject.org/constitution/Luxembourg_2009.pdf?lang=en (6.5.2020)

The Netherland Constitution, Art. 120- The constitutionality of Acts of Parliament and treaties shall not be reviewed by the courts.

https://www.constituteproject.org/constitution/Netherlands_2008.pdf?lang=en (6.5.2020)

¹⁹ E.g. Germany, Croatia and etc.

Constitutional court ruled that individual rights stipulated in the Constitution are not violated.²⁰

In 1996, the Constitutional court, for a second time, decided that it will not initiate procedure for constitutional control of the international law, but this time regarding the Law for the 1995 Interim Accord, signed between Macedonia and Greece.²¹ The initiator of the procedure disputed the act of signing the Interim Accord. According to the application, the accent is the signing of the unauthorized public authority. Namely, instead of the President of the State or the Government, this international agreement was undersigned by the Minister of Foreign Affairs. The Constitutional court claimed that the decision for non-initiation of the constitutional review was based on the relevant legal norms. Until 1998, when the Assembly approved the Law for Conclusion, Ratification, and Execution of International Agreements²² in the same field, the statute from the previous state was still in force (SFRY).²³

Following the provisions of the federal law (Art. 11), the Government decided which public authority (delegation) will be accountable for the process of negotiation and signing of this international agreement.

According to the Art. 11 of this law, Government can empower the head of the delegation to sign the treaty that is subject to the negotiation process, which means the Minister of Foreign Affairs. In consideration of these legal facts, the Constitutional court claims that the Assembly has the constitutional core to ratify the Interim Accord through the Law of its ratification. Therefore, the Constitutional court recognizes the Interim Accord as an international agreement, respectively, verified its legal character.

In the second case, the Constitutional court observed the constitutionality of the law for ratification of the international agreement, but not for the treaty itself - as part of the international order.

The third procedure was also initiated in the same year, 1996. The Constitutional court decided not to begin with the decision making process because, according to the court, the initiator did not have an appropriate constitutional and statutory grounds. Also, the Constitutional court found that for this issue there is an opinion in its previous decision. In this decision, the Constitutional court broadens its early legal meaning with the standpoint that the constitutionality of the international agreement verifies the Assembly in the process of its ratification. The subject of the initiative was the Interim Accord.²⁴

In 1999, the Constitutional court refused to review the legality of Art. 14, Chapter IV, from Protocol 2 of the Law for ratification of the 1997 Cooperation Agreement, signed between the Republic of Macedonia and the European Community.²⁵

²⁰ Decision U. no. 46/1994-0-0 <http://ustavensud.mk/?p=6253> (12.10.2020)

²¹ Decision U. no. 341/1995-0-0 <http://ustavensud.mk/?p=6599> (23.10.2020)

²² Official Gazette of the RM, no. 5/1998.

²³ Official Gazette of the SFRY, no. 55/1978.

²⁴ Decision U. no. 230/1996-0-0 <http://ustavensud.mk/?p=6823> (5.11.2020)

²⁵ https://ec.europa.eu/commission/presscorner/detail/en/PRES_97_133 (10.11.2020)

In its explanation, the Constitutional court presented numerous arguments to justify its legal position. Among its reasoning, especially striking is the following notice: according to Art. 110 of the Constitution, the Constitutional court has the authorization to decide for the compliance of laws with the Constitution, and compliance of the collective (labor) agreements and other regulations (by-laws) with the statutes and the Constitution, resolving other constitutional disputes, but this did not involve laws of mutual compatibility - the Constitutional court did not review the legal acts which are in the same hierarchy level within the domestic law, be that statutes or by-laws.

Further, in 2001, the Constitutional court, with reference to Art. 28 par. 1 of its Rule of Procedure, for the first time proclaimed itself as an unauthorized public authority for reviewing the constitutionality of international treaties and rejected the initiative. In this case, the question that was raised concerned **the constitutionality of two laws for ratification of international treaties connected with the North-Atlantic military organization.**²⁶

Finally, in 2002 for the first time in its practice, the Constitutional court declared itself authorized to estimate the constitutionality of ratified international treaties. With the decision, the Constitutional court repeals the law for ratification of the bilateral agreement signed between Macedonia and Greece, referring to building and managing of an oil pipeline.²⁷

Besides the fact that the Constitutional court in its previous cases refused to deduce and introduce into the Macedonian legal system the competence for controlling the compatibility of ratified international agreements with the internal legal order, especially their harmony with the Constitution, in this case, the Constitutional court demonstrated a different legal behavior. Surprisingly, by finding competency in this case, the Constitutional court justified with an argument that it used in the previously initiated cases to reject the deciding process about the ratified international treaties.

Namely, the Constitutional court, in this case, claimed that according to Art. 108 of the Constitution, dedicated to the principles of constitutionality and legality, and Art. 110, which regulate the competence in general, the ratified international agreement on its formal (procedural) and material (substantial) aspect, in an appropriate procedure, can be subject to review of its constitutionality.

In the further elaboration of its standpoint, the Constitutional court confirmed that with the act of ratification, any international agreement can become part of the internal legal system so therefore they have hierarchy status above the laws (statutes) but below the Constitution. **In consideration of this conventionally accepted legal standard in monistic doctrine for introducing international law into domestic law, they (allude to ratified international agreements) must be in accordance with the constitutional provisions.**

²⁶ Decision U. no. 178/2000-0-0<http://ustavensud.mk/?p=7798> (11.10.2020)

²⁷ Decision U. no. 140/2001-1 <http://ustavensud.mk/?p=8233>(11.10.2020)

Besides the basic constitutional provisions, Art. 108 and 110, the Constitutional court for decision also used and the fundamental value, Art. 8, par. 1 (c) - rule of law.

Unfortunately, the Constitutional court did not have enough courage to establish independent authorization for reviewing the ratified international treaty. On the contrary, the court used the prescribed competence and current constitutional question for an overviewing the international treaty through a constitutional perspective. Namely, in the decision, the court explained the constitutional requirement for obligatory adjustment of the inferior legal norms with the constitutional norms. In other words, in this case, the Constitutional court did not realize review directly to the Macedonian-Greece bilateral agreement itself but reviewed the law for introducing the ratified international treaty into the domestic legal order.

The Constitutional court's positive reflection over the international agreements' constitutional control was of short duration. In the Macedonian case, the question of international treaties constitutionality was last reviewed in 2005. More precisely, in this case, come to the force the above mentioned inconstancy. The same judges that proclaimed the unconstitutionality of the Macedonian-Greece oil pipeline bilateral agreement, in the case from 2005, again returned on the previous position for refusing responsibility for controlling the ratified international treaties provisions. More concretely, with the declared initiative, the initiator asks for an overview of the constitutionality of the Law for ratification of bilateral agreement. This international agreement, signed between the Republic of Macedonia and the U.S., was dedicated to prisoners' delivery to the International Criminal Court. In the decision for refusing the initiative, the Constitutional court repeats the previously established rule, the compatibility of the international treaties with the constitutional order to accomplish the Assembly in the ratification procedure.²⁸

Based on the practice so far, we can conclude that despite the constitutional makers' decision not to regulate the authorization for international agreements constitutional review, the **Macedonian Constitutional court can deduce itself the new type of competence and, in that way, permanent updating irremovable procedures.** In other words, the constitutional-makers omission to stipulate the interpretation of the constitutional law from the Constitutional court can be used as a reason **for promotion of a new model of intervention in the legal system, with regard to international agreements.**

However, the interpretation of the constitutional law in a sense of the Macedonian constitutional law, does not involve the conventionally established method for understanding the constitutional provisions through announcing the individual acts (decisions). The Constitutional court ordinarily uses this model of analysis of the constitutional law as a tool for understanding the legal system in general in a frame of public authorities' obligation for interpretation and application of constitutional provisions.

²⁸ Decision U. no. 128/2004, <http://ustavensud.mk/?p=8845> (15.11.2020)

The authority derived through the Constitutional court activism is not an unknown practice in the comparative law and also understanding the constitutional law was used from the Macedonian Constitutional court jurisprudence.²⁹ This behavior of the court is not an unknown legal category of its relatively short practice, accounted from the time of proclaiming the 1991 Constitution until today. **In other words, the Constitutional court has already established the standards for constitutionality control of the international agreements ratified according to the domestic law.**

²⁹ The German Basic Law, in its provision, does not include the Constitutional court power to observe the abstract constitutional review of the international treaties. Not just the Constitution, also the lawmakers do not prescribe the authorization for treaties review in the specialized Law for Organization and Procedure of the Constitutional court. See: Nastić, M., *Constitutional Review of International Agreements: Comparative Law Perspective*, Law and Politics, Vol. 13, No. 1, 2015, p. 67. See: Rupp, H., *Judicial Review of International Agreements: Federal Republic of Germany*, The American Journal of Comparative Law Vol. 25, No. 2, 1977, p. 288-289. Following the German constitutional law, the international treaties have the rank of the ordinary federal legislation, which means, in any case, these instruments of international law are below the highest legal act in the Federation. Art. 59 par. 2 from the Basic Law.

https://www.constituteproject.org/constitution/German_Federal_Republic_2014.pdf?lang=en
(27.5.2020)

It is essential to be mentioned that the Constitutional court limits the power for an overview of the international treaties only on the executive agreements, those who are enough applicability, without additional statuses specifies. Rupp, H., *op. cit.*, p. 298, such jurisdiction of the Constitutional court is a result of interpretation of the constitutional law in a part that regulates the review of the compatibility of the entire legislature with the Constitution, using the cited constitutional provisions. The first decision about competence for constitutionality review of international agreements, the Constitutional court announced in 1954, when the subject of the abstract control of the internal legal act was the Agreement between German and France, "on the Statute of the Saar, a German region which has been occupied by France after the war". *Ibid.*, p. 292.

The Constitutional court in 1973 and 1975 repeat the standpoint that although in the German law are not predict the substantive provisions that ruled international agreements review, the Constitutional court has the right to control not just provision adopted in the regular legislative procedure, but also the treaties that are self-executive. Also, the Constitutional court pronounces that the public authorities do not have an obligation to administer the unconstitutional international treaties provisions. *Ibid.*, p. 290.

See: Mendez, M., *Constitutional review of treaties: Lesson for comparative constitutional design and practice*, International Journal of Constitutional Law, Vol. 15, 1, 2017, p. 96.

Unlike the German Constitutional court, the other Constitutional courts, which Constitutions do not contain prescribed authorization for international treaty constitutionality review, for example, the Constitutional court of Croatia do not accept this type of procedure and authorization for material constitutionality control of international agreements. This standpoint the Croatian Constitutional court repeated several times. Decision USRH U – I – 825/2001, Decision USRH U – I – 469/2011.

3. THE LEGAL ARGUMENT FOR THE CONSTITUTIONAL COURT'S DEDUCING, ACCEPTING, AND ESTABLISHING THE AUTHORIZATION FOR CONSTITUTIONAL REVIEW OF INTERNATIONAL TREATIES AS A REGULAR LEGAL PRINCIPLE

3.1. The accepted model for the implementation of international agreements in the Macedonian legal system

Whether a concluded international agreement can be subject to the constitutional review procedure depends on the status of the international agreements in the national law, as well on which legal principles the relationship between the national law and the international law are developing.

In other words, according to which established model international agreements are included in the national law is a matter of accepted monistic or dualistic doctrine. The research administered for this paper allows concluding that it is not of determining influence whether the law-makers in the legal system appoint provisions that will allow the Constitutional Court to evaluate the constitutionality of an international agreement concluded following the norms of the national law (e.g. Germany).

The international public law science as part of the legal science elaborates in detail the relationship among the international and the national law through monistic and dualistic doctrine prism³⁰.

Besides the elaboration of doctrine for incorporation of the international law, when statutes of the international agreements in the concrete constitutional law are a subject in question, according to the title of this paper that is the Macedonian legal system, through analysis of the relevant provision, it is always necessary to answer the following two questions: 1) accepted model of incorporating the international law in the Macedonian constitutional law, 2) the rank of the international law in the Macedonian constitutional law.

³⁰ Krivokapić, B., *Primat međunarodnog prava*, Strani pravni život, no. 3/2013., p.60. In light of the growing impact of international law on both domestic and international affairs, the search for an understanding of the relationship between international and national legal systems becomes essential in order to address many legal and political questions.

Korenica, F., Doll, D., *The Relationship Between International Treaties and Domestic Law: A View from Albanian Constitutional Law and Practice*, Pace International Law Review, Vol. 24, Iss. 1, Art. 3, 2012., p. 93.

3.1.1. *The monistic model for the implementation of international agreements – fundamental characteristics*

The relationship between the national law and the international law is one of the essential characteristics of the contemporary constitutionalism in Europe.³¹

As we have mentioned, in theory, there are two dominant systems for implementation of the international agreements - dualistic and monistic system (doctrine).³²

The dualistic system is based on the standpoint that the institutional communication among the international law and the national law should be developed based on the perception that in the legal reality administered two legal systems, international law, and the national law. Following principles of this theory, both legal systems function independently and irrespective, but also, dualism not exclude mutually impact.³³

Opposite to the dualistic, the *monistic* theory is grounded on fundamentally different legal beliefs. Namely, if the dualism presumption is that in a law exist two separate and autonomous legal systems, then the monistic doctrine favors the idea that the law is a uniform legal system.³⁴

Irrespective which monistic model variation for implementation of international agreements is in question, the common attribute is that those international agreements which are ratified under the domestic law continue to be a part of the international law, although they are an independent national legal source³⁵ without to realize any form of legal (material) transformation - statutory norms or norms of other regulations (by-laws). In other words, those international agreements which are a

³¹ See: Spirovski, I., *The Competence of the Constitutional Court to Control the Conformity of Laws with International Treaties: New Trends in Constitutional Justice*, Venice Commission for Democracy Through Law, 2009, p. 2. According to international law as it stands today, states are free to choose the ways and means of implementing their international legal obligations, provided that the result is in conformity with those obligations. See: Van Dujk, P., *The Implementation of International Human Rights Treaties in Domestic Law and the Role of the Courts*, Venice Commission for Democracy through Law, 2014, p. 2.

³² Besides these two dominant theories for incorporating international law, in the international public law theory exist the third model-pluralism. The pluralism theory departure from the statement that every provision stipulated in an international agreement compulsorily should be established in national law through internal statutory provision. This model of international law implementation is flexible. That means that the implementation process of international law into domestic law is realizing through constitutional norms that authorize direct applicability of international provisions. See: Krivokapić, B., *Odnos međunarodnog i unutrašnjeg prava*, Strani pravni život, no.2/2013., p. 72.

³³ Krivokapić, B., *op. cit.*(a) p. 80.

³⁴ Kreca, M., *Odnos međunarodnog i unutrašnjeg prava*, p. 16.

[http://www.ius.bg.ac.rs/Naucni/Razvoj%20pravnog%20sistema%202006/01%20-%20Projekat%202006-3.pdf\(7.4.2020\)](http://www.ius.bg.ac.rs/Naucni/Razvoj%20pravnog%20sistema%202006/01%20-%20Projekat%202006-3.pdf(7.4.2020))

³⁵ In science, there is constant dilemma which conducts on the monistic doctrine. Namely, if the monistic theory is established of the standpoint for a unique legal system, then the question is raised, which legal system has supremacy, whether domestic law or international law system. See: Milenković, S., *Razvoj doctrine međunarodnog javnog prava u Jugoslaviji*, Zbornik Pravnog fakulteta u Nišu, 1983, p. 119.

part of a national legal regime have legal force for direct applicability in all legal proceedings.³⁶

According to the fundamental principles of the monistic doctrine, in case of incompatibility between a ratified international agreement and a national law, a provision of the ratified international agreement will be used.³⁷ This rule, which is only one segment of the basic rules for regulating a conflict regarding the relationship between the international and national law, is administered also in the Macedonian constitutional system.

But applicability is conditioned with two constitutional requirements. This part of the domestic law will be elaborated on below in this paper.

Founder of the monistic doctrine is the Austrian theoretician Hans Kelsen, founder of the so-called the Vienna school.³⁸ Among constitutional systems in comparative law, dominates the position that international agreements have an inferior position vis-à-vis the national law.

The inferiority of international agreements in the domestic coherent legal systems is explained with the theory that international law, by itself, does not have legal capacity to repeal internal legal provision, not only in the harmonizing process with international law, but also if the ratified international agreement is established in the domestic law.

Krivokapich states that the international law will have supremacy over the domestic law only when there is a legal system that can pronounce an effective legal sanction identical as the legal sanction that domestic law can express.³⁹

Accordingly, the monistic doctrine for international law implementation has frequently implemented method in the countries which are part of the continental law tradition.

3.1.2. The constitutional provisions in the Macedonian legal system regarding international treaties

With the first democratic Constitution of Macedonia, adopted on November 17, 1991, the Assembly clearly and unequivocally proclaimed that this Constitution establishes an independent and sovereign country⁴⁰ based on accepted universal legal

³⁶ 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> (7. 4. 2020)

³⁷ Gözler K., *op. cit.* p. 24.

³⁸ Borchard, E., *The Relationship Between International Law and Municipal Law*, Virginia Law Review, Vol. 27, No. 2, 1940., p. 139. See: Ђуровић, Д., Однос унутрашњег и међународног права у правном поретку Републике, Србије, Анали Правног факултета у Београду, година LVII, 2009., p. 338.

³⁹ Krivokapić, B., *op. cit.*(a) p. 52.

⁴⁰ Z. Sulejmanov and D. Sulejmanov declares that with the 1991 Constitution, Macedonia possesses all attributes to be recognized as a country: 1) sovereignty, 2) territory, 3) population, 4) international sovereignty. Сулејманов, З.; Сулејманов, Д., *op. cit.* p. 627.

values⁴¹ concerning the organization of public authority as well as on human rights protection.

According to the fundamentals characteristic and mode of practicing the law, Macedonian legal system is a part of the group of legal systems that are based on the continental law traditional principles. Regarding the rules which regulate the relationship between the domestic law and the international law, following the constitutional provisions, the adoption of international law into the Macedonian legal order is organized under the monistic doctrine.

However, the monistic doctrine for accepting international agreements is not a legal model which is established in Macedonian constitutional system for the first time, with the 1991 Constitution. On the contrary, the sub-ordinary position of the international agreements over the Constitution has accepted this doctrine on the basis of established relationship between the domestic law and the international law during the socialism. This model has a relatively long tradition. The 1991 Constitution continues the normative continuity of regulating this type of monistic doctrine introduced in 1970.

Namely, on May 6, 1970, the Vienna Convention on the Law of Treaties, adopted in 1969, with the Federal Executive Council ordinance, was ratified and incorporated in the SFRY legal system. According to the federal postulate of the system of public authorities, the Vienna Convention was administered in the SR Macedonia legal order. Hence, the Vienna Convention in a structure of legal norms has a status that was determined for other international agreements, respectively orderly legal effects concerning the statutes and other regulations (by-laws).⁴²

Art. 74 par.9 of the 1946 Constitution of the Federal People's Republic of Yugoslavia (FPRY) prescribes the Assembly's Presidium competence for ratification of international treaties, but the constitutional provisions do not allow recognition of the model for agreements implementation, whether it is monistic or dualistic doctrine.

Additionally, the structure of this regulation is stipulated in the obligation to all federal and republic's authorities for respecting the Constitution, statutes, and other by-laws adopted on the national or republic level. For that reason, as an official document that regulates the model for accepting the international agreements, is announced in the Executive Council ordinance.

The 1991 Macedonian Constitution contains some provisions which are directly linked to the international law, and several provisions that are focused on the international order according to the effective rules for domestic implementation of the international provisions.

⁴¹ Institutionalization of universal legal values at the Macedonian constitutional law, actually, symbolically was denoted the dissolution of the socialism regime. See: Sinani, B.; Mehmeti, S., *International Legal Norms in Macedonia's Domestic Law*, Juridica, Vol. 10, No. 3, 2014, p. 57.

⁴² See: Ђурић, В., *Контрола уставности међународних уговора у Републици Србији*, Улога и значај Уставног суда у очувању владавине права, 2013, p. 138.

The constitutional provisions which directly regulate the international law are stipulated in Art. 8, Art.68, Art.98 (amendment XXV), and Art. 118, while those which indirectly regulate the international law sphere, especially international agreements, are present in Art. 51, Art.108, Art.110 of the Constitution.

These constitutional provisions are the legal norms with different character prescribed as a part of the fundamental values of the constitutional order, then as civil rights, the Assembly authorization, the Constitutional court basic work principles, the Constitutional court enumerate authorizations, and finally, as rules for regulating the international relationship.

As a reflection, these constitutional provisions are essential for detecting the Macedonian legal system's position amongst other legal systems in the matter of the ranking of international agreements in the domestic statutory order. Based on this, the position of the Macedonian legal system can be precisely identified as a variation of the national monistic doctrine.

In 1999 the Venice Commission produced a questionnaire covering thirty countries⁴³, regarding the position of international agreements within the national laws. According to the results, the countries can be separated into four groups:

1) In the first group are those states which provide the highest legal rank to international agreements vis-à-vis the national legislative, including the Constitution.⁴⁴

2) The second group accumulates the countries in which the international agreements are positioned below the Constitution, but above the rest of the national legislation.⁴⁵

3) In the third and largest group are those countries in which, as a rule, international agreements have the legal effects as any ordinary law⁴⁶.

4) And finally, in the fourth group are the countries in which the international agreements are in inferior position even to the laws.⁴⁷

With regard to the Venice Commission's analysis, and also from the structure of the national constitutions which will be elaborated in the next chapter, the legal system of Macedonia is in the second group of states - the international agreements are above the national laws. The international agreements in the Macedonian legal system are incorporated with a law. The confirmed international treaties are in a secondary position concerning the Constitution. In other words, an international treaty, ratified under the Assembly's Rule of Procedure, for the state does not produce an obligation for constitutional intervention through a constitutional amendment.

⁴³ Economidis, C., *The Relationship Between International and Domestic Law*, Venice Commission for Democracy Through Law, 1999.

⁴⁴ Netherlands, Belgium, Luxemburg. Economidis, C., *op. cit.*, (ref. 38), p. 9.

⁴⁵ France, Spain, Switzerland, Portugal, Greece, Bulgaria, Cyprus, Croatia, Slovenia. *Ibid*, p. 10.

⁴⁶ Germany, Austria, Denmark, Finland, Hungary, Ireland, Italy, etc. *Ibid*.

⁴⁷ See: 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, p. 356.

These international agreements are in a subordinate position, and before their signing, the state usually beware for their compatibility with the constitutional norms. In addition, this paper will summarize the legal aspects of the named constitutional provisions.

4. CONSTITUTIONAL PROVISIONS FOR IMMEDIATE REGULATION

When it is a matter of the primary group of constitutional provisions, we should mention that besides Art. 118, the constitutional-makers for international law, there are a few more provisions. Contrary to the Art. 118 these provisions doesnot regulate the status of international agreements in domestic law, and also the model of their implementation in the international law cannot be identified. According to their legal nature, these are constitutional provisions which regulate other aspects of the international relations field, but not the status of international agreements in domestic law.⁴⁸

4.1. Article 8

The first provision that regulates the international law is specified at the beginning of the Constitution, in Art. 8. This constitutional provision disintegrated in several separate principles is extremely important because it regulates the fundamental values of the constitutional legal order. For that reason, the constitutional makers titled Art. 8, “the fundamental (basic) values” regulating provision, respectively, set the foundation of the values system of the new constitutional order.

These fundamental values are stipulated in separate essential constitutional provisions (paragraphs). They are called “fundamental” because of their application (interpretation) of other normative parts (provisions) of the Constitution.

⁴⁸ Art. 119 par. 1 and 2 – International agreements are concluded in the name of the Republic of Macedonia by the President of the Republic of Macedonia. International agreements may also be concluded by the Government of the Republic of Macedonia when it is so determined by law.

https://www.constituteproject.org/constitution/Macedonia_2011.pdf?lang=en (20. 4. 2020)

Art. 120 par. 1, 2 and 3 – A proposal for association in a union or community with other states or dissociation from a union or community with other states may be submitted by the President of the Republic, the Government or by at least 40 Representatives. The proposal for association in or dissociation from a union or community with other states is accepted by the Assembly by a two-thirds majority vote of the total number of Representatives. The decision of association in or dissociation from a union or community is adopted if it is upheld in a referendum by the majority of the total number of voters in the Republic.

https://www.constituteproject.org/constitution/Macedonia_2011.pdf?lang=en (20. 4. 2020)

Art. 121 - A decision of association or dissociation concerning membership in international organizations is adopted by the Assembly by a majority vote of the total number of Representatives of the Assembly and proposed by the President of the Republic, the Government or at least 40 Representatives of the Assembly.

https://www.constituteproject.org/constitution/Macedonia_2011.pdf?lang=en (20. 4. 2020)

Art. 8 contain 11 fundamental values upon which principles have based the functioning of the constitutional order established with the 1991 Constitution.⁴⁹ Particularly important for our paper is the value no. 11.⁵⁰

This constitutional provision contains obligations that every public authority, the legislator, executive power, and judiciary, then the administrative authorities, self-government, and other authorities and organizations with authorization delegated by the law, must respect the generally accepted norms of the international law. In theory, under formulation, “generally accepted norms of the international law” are involved, every general and special international agreements, which define the rules for resolving the state disputes, international costumes as an expression of generally accepted practice, and principles recognized by the civilized world.⁵¹

4.2. Article 68

The 1991 Constitution defines the Assembly as a single-chamber legislative body⁵², then as a representative public authority⁵³, and finally as a bearer of the constitutive and legislative competences.⁵⁴ The Constitution regulates these issues with Art. 61-78.

⁴⁹ The fundamental values of the constitutional order of the Republic of Macedonia are: 1) the basic freedoms and rights of the individual and citizen, recognized in international law and set down in the Constitution; 2) the free expression of national identity; 3) the rule of law; 4) the division of state powers into legislative, executive and judicial; 5) political pluralism and free, direct and democratic elections; 6) the legal protection of property; 7) the freedom of the market and entrepreneurship; 8) humanism, social justice, and solidarity; 9) local self-government; 10) proper urban and rural planning to promote a congenial human environment, as well as ecological protection and development; 11) and respect for the generally accepted norms of international law. The second fundamental value in 2001 was amended with the new constitutional provision - Equitable representation of persons belonging to all communities in public bodies at all levels and in other areas of public life. Amendment VI, (Official Gazette of the Republic of Macedonia), no. 91/01.

⁵⁰ Art. 8 from the Constitution, besides fundamental value no. 11, contain one more provision addressed to international law. In fundamental values no. 1 is stated that the basic values of the Macedonian constitutional order are also and individual rights recognized in international law and the Constitution. But, individual rights respectability is not a subject of this paper, and for that reason will not be elaborated.

⁵¹ B. Sinani and S. Mehmeti, under this common constitutional notion, presuppose: 1) international treaties, 2) international costumes, 3) the general principles of the law recognized by civilized nations, 4) judicial decisions, 5) the legal doctrines of the highly qualified scholars. Sinani, B.; Mehmeti, S., *op. cit.* p. 40.

⁵² Art. 62 and 63 from the Constitution.

⁵³ Art. 61 from the Constitution.

⁵⁴ Art. 68 and 131 from the Constitution.

The individual authorizations are ordered with the Art. 68.⁵⁵ Among different authorizations; Art. 68, par. 1 (f) stipulates the Assembly's competence for confirmation of the international agreements. According to the Constitution, the Assembly is a unique public authority that has a right to make ratification on signed international agreements.

4.3. Article 118

The third provision is Art. 118 from the Constitution.⁵⁶ More precisely, this is a significant constitutional provision that contains the answer concerning two critical questions - the model of implementation of international treaties, and the status of international agreements in the hierarchy of the legal sources according to the constitutional governance. On several occasions in this paper we highlighted that with the 1991 Constitution Macedonia has accepted the monistic doctrine.

This conclusion is contained in Art. 118 from the Constitution, which prescribes that the international agreements ratified in accordance with the Constitution are the elements of the internal legal order and cannot be amended with a law (statute).

Art. 118 from the Constitution concludes that monistic doctrine is an effective method for international agreements implementation, as well that domestic law of these international law instruments imputes legal force with enough capacity for its independent application into the legal system. In other words, international agreements are an independent source of domestic law, and they are directly applicable. Therefore these agreements can be referenced as a legitimate ground for initiating a judicial or administrative hearing (legal process).

For example, any person who initiates an administrative or judicial process can refer to the protected individual rights defined in the ECHR. These provisions can also be used as an independent legal source before the Constitutional court

⁵⁵ Art. 68 par.1 - 1) adopts and changes the Constitution; 2) adopts laws and gives the authentic interpretation of laws; 3) determines public taxes and fees; 4) adopts the budget and the balance of payments of the Republic; 5) adopts the spatial plan of the Republic; 6) **ratifies international agreements**; 7) decides on war and peace; 8) makes decisions concerning any changes in the borders of the Republic; 9) makes decisions on association in and disassociation from any form of union or community with other states; 10) issues notice of a referendum; 11) makes decisions concerning the reserves of the Republic; 12) sets up councils; 13) elects the Government of the Republic of Macedonia; 14) elects judges to the Constitutional Court of the Republic of Macedonia; 15) carries out elections and discharges judges; 16) selects, appoints and dismisses other holders of public and other office determined by the Constitution and law; 17) carries out political monitoring and supervision of the Government and other holders of the public office responsible to the Assembly; 18) proclaims amnesties, and performs other activities determined by the Constitution.

Art. 68 par. 2 - In carrying out the duties within its sphere of competence, the Assembly adopts decisions, declarations, resolutions, recommendations, and conclusions.

https://www.constituteproject.org/constitution/Macedonia_2011?lang=en (8.4.2020)

⁵⁶ The international agreements ratified in accordance with the Constitution are part of the internal legal order and cannot be changed by law. https://www.constituteproject.org/constitution/Macedonia_2011?lang=en (8.4.2020)

in a procedure for protection of human rights. The Constitutional court is not an exception to this rule. It is a part of the legal system as whole.

In 1998, private company “Makpetrol” submitted before the Constitutional court a request by which this public authority was to call out to use of the international law for human rights as a legal ground for the promulgation of the judgment.

The initiator on the request mentioned some agreements of a different international field that guaranteed some of the violated rights.⁵⁷ Specifically, the provisions of ratified international agreements can be a legal basis for establishing civil rights and responsibilities.⁵⁸

That is imperative of monistic tradition, the same characteristic that was mentioned previously in this paper. However, the application of this principle of the monistic doctrine with common legal values foresees the internal law of every country, as a rule.

The countries possess a so-called margin of discretion within which they have jurisdiction to specify the practicing of monistic doctrine. In that way, a particular characteristic of every legal system comes forward. Generally, the precision of the monistic doctrine, irrespective of the constitutional provisions which are implementing the model for admitting the international agreements, is coordinated with other constitutional provisions of law or with a statute. According to this standpoint, the legal system of Macedonia falls among the countries with specialized regulative (law), concerning the international law.

Using an international agreement as a proper legal provision that in the national legal order can generate legal consequences, faces fulfillment of three essential requirements. Conditionality also derives from the constitutional provisions. Therefore, as defined in the Constitution, the constitutional makers determined a highly important standing for these requirements.

1) The first requirement is not explicitly regulated with Art. 118, but its presence resulted when this constitutional provision was transferred in Art. 119 of the Constitution.⁵⁹

2) The confirmation of the international treaties approved in the procedure regulated with the Constitution is a very crucial phase. Namely, each established international agreement that will not get through the ratification process guided in the Assembly’s Rule of Procedure cannot produce immediate legal consequences as other legitimate sources verified with the Constitution. The Assembly accomplishes the ratification of international agreements.

⁵⁷ Георгиевски, С., Примена на меѓународното право во уставниот поредок на Република Македонија, Зборник на Правниот факултет во чест на проф. д-р Евгени Димитров, 1999, р. 497.

⁵⁸ *Ibid.*, p. 490.

⁵⁹ Art. 119 par. 1- International agreements are concluded in the name of the Republic of Macedonia by the President of the Republic of Macedonia.

Art. 119, par. 2 - International agreements may also be concluded by the Government of the Republic of Macedonia when it is so determined by law.

Art. 68 par. 1 (f) of the Constitution defines this authorization. The legal system of Macedonia makes a distinction between ratified international agreements and international agreements which were not subject to the process of ratification.⁶⁰

These agreements are not in hierarchical position as agreements ratified by the Assembly. The norm of these international agreements is publishing in a separate law (statute) in its original form.⁶¹ Essentially, concerning the international agreements, the regulations (statutes) are transitional statutory mechanisms which go beyond the laws (statutes), but below the Constitution.⁶²

This rule derives from the standpoint that ratified international agreements have more powerful legal effects than the laws they are immediately applicable and cannot be amended with a law. For the meaning of the ratification process on the international agreements, prof. T. Dzunov writes the following opinion: “Without Assembly’s approval, the agreement is worthless, and cannot produce legal effect in the domestic legal system. The Assembly confirms the agreements in their entirety. The Assembly cannot approve agreements particular or conditioned, or to supplement the agreements with new provisions”.⁶³

According to this statement, the hierarchy of legal norms is established in the following order in the Macedonian legal system: 1. Constitution, 2. Ratified international agreements, 3. Laws (statutes), and 4. Other regulations (by-laws).⁶⁴

Following the hierarchy position of the international agreements in internal legal order, eventual normative conflict is managed with principle *lex superior derogate legi inferiori*.

3) The last condition refers to the validity of international agreements. **Hence, all ratified international treaties must be in accordance with the Constitution.**

Actually, as a quasi, *a priori* procedure of constitutional control is the decision of the Assembly for retiring of the legislative procedure of consideration and adopting the Draft-law for ratified international agreements. The behavior of the Assembly

⁶⁰ Immediate applicable is only ratified international agreements by the legislator, the Assembly. But, the President of the State or the Government can conclude international treaties, which additionally included responsibilities for the state - part of the agreements. These international treaties are concluded conventionally, with signing the treaty, or their confirmation can be achieved in another simplify way, an act from which unequivocally increase an obligation for the state. In international law terminology this type of international agreement defines as “agreements - conventions” in simplified form (for example, agreements concluded through change the diplomatic note/letter, coordinate report, memorandum, and so on. Spirovski, I., *op. cit.* p. 6.

⁶¹ The laws for ratification of the international treaties and the original provisions of the ratified international agreements are publishing in the separate section of the “Official Gazette” - part for an international agreement. Силјановска – Давкова, Г.; Каракамишева – Јовановска, Т.; Спасеновски, А., *Парламентарно право*, Скопје, 2019, p. 305. Art. 188 from Rule of Procedure for the Assembly, Official Gazette, no. 91/2008, 119/2010, 23/2013.

⁶² The procedure of consideration on Draft-law for confirmation of an international treaty is unfolding according to the provisions which regulate the reduced method for consideration and approval of a regular Draft-law for adopting the internal legal (statute) norms. Art. 188-192 from the Rules of Procedure.

⁶³ Џунов, Т., *op.cit.* p. 354.

⁶⁴ Симовић, М., *О хиерархија правних норми*, Зборник радова Правног факултета у Нишу, бр. 38-39, 1998-1999., p. 149-151.

when in a current legislative procedure is found that the international agreement is not in accordance with the Constitution is a unique solution. **With its acting, the Assembly endeavors to obstruct its power because the legislator does not have the authority to adopt the decision to repeal the law as the Constitutional court does.**

In the sense of the third condition of the Constitution, prof. T.Dzunov states: “Before accepting the obligation of some international agreement, any country must be certain that it is in accordance with the domestic legislative, especially with the Constitution. In case of incompatibility, the country should be part of the agreement then first it must accommodate its own Constitution or legislative to the international agreement provisions in order to eliminate whatsoever conflict with the international law ruling”.⁶⁵

But, the country does not have this solution only when, in a *quasi-procedure* of constitutional review administered by the Assembly, it will find that the international agreement as unconstitutional. Its competence does not include only legal intervention in the internal law, in particular in the Constitution. The country can attempt legal actions that are related to a contentious international agreement. According to this statement, after Assembly’s declared the agreement unconstitutional, the country can withdraw from the ratification process for implementation of the international agreement.

Then the next legal instrument that is in its hands is to start negotiations to intervene into the international agreement. **In concern to the protection of the domestic legal system, the country can declare a clause or submit an interpretative declaration.**⁶⁶

4.4. Article 98 (Amendment XXV)

And lastly, but surely not less important provision, is Art. 98 from the Constitution.⁶⁷As mentioned before, this constitutional provision that in 2005 was amended with the XXV amendment determinates the international agreement position in the hierarchy of legal norms in the internal legal system.⁶⁸

⁶⁵ Цунгов, Т.,*op. cit.* p. 357.

⁶⁶ Bakmaz, J., *O nadzor uustavnosti međunarodnih ugovora: treba li ustavni sud promjeniti praksu?*, Zbornik radova Pravnog fakulteta u Splitu, god. 56, 3/2019, p. 650.

⁶⁷ Art. 98 par. 1 - Judiciary power is exercised by courts.

Art. 98 par.2 - Courts are autonomous and independent. Courts judge on the basis of the Constitution and laws and international agreements ratified in accordance with the Constitution.

Art. 98 par. 3 - There is one form of organization for the judiciary.

Art. 98 par. 4 - Emergency courts are prohibited.

Art. 98 par. 5 - The types of courts, their spheres of competence, their establishment, abrogation, organization, and composition, as well as the procedure they follow, are regulated by a law adopted by a majority vote of two-thirds of the total number of Representatives.

⁶⁸ Official Gazzete, no. 107/05. This constitutional amendment has removed the par. 3, from Art. 98.

Amendment XXV directly verified the legal status of the ratified international agreements as several norms that are part of the domestic legal system. Besides this constitutional provision, the courts' duty for the respectability of the established hierarchy of legal acts is contained also in the law for the court order, the Law on the Judiciary. Above in this paper, it was mentioned that in a case of international agreements provisions collision with the concrete law, provisions of the international agreement will be enforced.

We also underlined that each international agreement ratified appropriately as an independent legal norm that has legal effect for immediate application in front of a competent court. Therefore, the Judiciary system law affirmed the commitment of the Constitution for supremacy of the international agreements above the laws. For the applicability of the international agreements ratified under these rules, the Law on the Judiciary indicates two conditions which are harmonized with the constitutional norms and the basic principles for resolving the conflicts among the legal acts. So therefore, 1) the application of the law in a concrete case should be contrary to the provisions of the international agreement, and 2) the international treaty will produce legal effects in the court's hearing if its provisions have a statutory potential for direct application.⁶⁹

As a conclusion, it manifests the standpoint of prof. Georgievski, who underlines that, the status of international agreements depends to a great extent on court access. The constitutional provisions for the position of the international agreements will be inapplicable if the courts take a standpoint that does not accept the provisions of these legal acts as a norm with immediate applicability. The causality of the international agreements ratified following the internal regulation can be justiciable with actions that precede the ratification process.

5. CONSTITUTIONAL PROVISIONS FOR INDIRECT REGULATION

The provisions of Art. 51, 108, and 110 that indirectly regulate the international agreements from the constitutional aspect are not positioned in Art. 51, but they are stipulated in Chapter II - The human rights, Guarantees of basic rights and freedoms.

Articles 108 and 110 are part of Chapter IV, the normative entirety that institutionalizes the fundamental principles connected to the Constitutional court and its authorizations. Although not systematized in a single chapter of the Constitution, these norms are mutually related - they are with the essential meaning to prevail the integrity of the legal system.

⁶⁹ Art. 18 par. 4 of the Law on Judiciary.

5.1. Article 51

Art. 51 of the Constitution, defines the principle of constitutionality as a basic constitutional standard which defines the governing of all public authorities, especially the Assembly.⁷⁰ Actually, the Constitution, with this provision, establishes the principle of constitutionality of laws, and constitutionality and legality of other regulation (by-laws) as a crucial element of the rule of law.

Paragraph 1 ordering the obligation that any adopted laws must be under the Constitution, guarantees its sacredness in the system of legal norms, as a legal act with the highest legal force. Essentially, par. 1 is setting the principle supremacy of the Constitution regarding the entire domestic legal system. In this segment, the constitutional-makers were short-sighted and inconstant with the provisions of the international agreements.

On the one hand, they confirmed the superior position of the international agreement over the laws, and on the other hand, in the time where the constitutional-makers outline of the normative relationship between legal norms based on the principles, the supremacy in the hierarchy and subordination, omitted to regulate the international agreements.

Art. 51 have not mentioning the international agreements as a regular source of a constitutional obligation for public authorities in the legal system. The absence of the absolute provision leaves room for manipulation and misappropriation while guiding the Constitutional Court constitutionality control - that in a couple of times has occurred in the constitutional judgment jurisprudence. The mentioned constitutional provision together with Art.108 and Art. 110 are especially important for the Constitutional court functioning.

5.2. Article 108 and Article 110

Art. 108 is in correlation with Art. 51 par. 1. If par. 1 of Art. 51, the principle of constitutionality rises on a level of the constitutional principle, then Art. 108 foresees that the protection of constitutionality and legality is the accountability of the Constitutional court.

The supervision of the constitutionality of the laws, and constitutionality and legality of the other regulations, is most notably the acquisition of the contemporary democratic state. As such, they are essential of its being, based on the requirements for formal constitutionality and legality and material constitutionality and legality.⁷¹

In broader sense, the principle of constitutionality involves being of legal rules codified and systematized in the highest-ranked legal act in the state. Additionally,

⁷⁰ Art. 51 par. 1 and 2 - In the Republic of Macedonia, laws shall be under the Constitution and all other regulations under the Constitution and law. Everyone is obliged to respect the Constitution and the laws.

⁷¹ See: Лукић, Р., Уставност и законитост. Београд 1966, стр. 44, cited from: Сулејманов, З, Сулејманов, Д., op. cit. p. 648-649.

the constitutionality also includes the responsibility that organization of the state government should be a guiding principle according to the codified norms, wherewith in the same time involves the obligation any public authority that is part of the state government, obligatory in the time of realizing its powers to respect the legal system. Strictly speaking, the principle of constitutionality involves not only the internal normative harmony of the general legal acts (eg. laws, ordinance, decisions) in the system of legal norms, but also the compatibility of the individual legal acts (eg. administrative decision, court judgment) with the Constitution.

Strictly speaking of the principle of constitutionality, it includes the conceptualization that the activity of each body within the state power must conform and respect the Constitution, as well as the complete legislation adopted following the Constitution. Prof. B. Smerdel and Prof. S. Sokol, speaking of the principles of constitutionality imply the following: “the laws must be adopted under the authority of the Constitution, separate with the constitutional provision, and the law-makers in the time of decision-making in a strict way to respect the prescribed procedure, as well compatibility of the legal provisions with the constitutional provisions. Any legal act adopted by the regulatory authority, according to the prescribed procedure, and following the Constitution, accommodates the formal and material requirements”.⁷²

With this standpoint, the authors do not make a distinction with the legal act voted by the legislator as a bearer of the legislative power. On the contrary, the cited authors use general view for the legislator’s constitutional obligation, which means the requirements for formal and material compatibility with the Constitution of all legal actions involves the formal and material (substantial) characters of the international treaties, respectively. According to the Macedonian legal system, the regulation the obligation for statutory consistency refers to the statute for confirmation the international agreement as a legal mechanism for introducing the international law into the domestic law, or the international treaty by itself.

The last one depends on the character and nature of the violation of the legal acts, whether issue at stake is withdrawal of the provisions that regulate the internal procedure for adopting the law, or violation of the law that regulates the matter of international law or other material and formal provision of the Constitution – constitutional norms or norms of Law for Conclusion, Ratification, and Execution of International Agreements.⁷³

The formal aspects regulated with the International Agreements Law are appointed to a public authority competent for concluding the international treaty. For that reason, this Law is very important regarding the international agreement and serves as a tool in the effort for determining the constitutionality of the international treaty.

⁷² For standpoint of B. Smerdel and S. Sokol see: Orlović, M., *Ocjena ustavnosti I zakonitosti drugih propisa*, Pravni vjesnik, god. 30 br. 3-4, 2014, p. 10.

⁷³ Official Gazette of the RM, no. 5/1998.

The requirements of the constitutionality prescribed in concrete constitutional provision (Art. 108) involve the international agreements.

Finally, Art. 110 stipulate the essential authorizations of the Constitutional court. In par. 1 (a) is underlined the primary duty of the Constitutional court - to introduce constitutional review over the laws. The respectability of the principle of constitutionality has an essential meaning for consistency of the legal order, as well as the applicability of the principle of legal security, respectively, as well as the certainty of legal norms. On the assumption that in the legal system there is no principle of constitutionality, the principle of hierarchy of provisions will lose the reason for its existence.⁷⁴

In that case, the existence of the Constitution as the inviolable (unique) legal norm is an illusion, because it is no longer a legal act with the highest legal effect from which originates all other laws. Although the Constitution of Macedonia mentions the international agreements, still the constitutional-makers did not seriously attempt to determinate its notion, i.e. they did not try to define them. In that sense, this applies the definition for international agreements as defined in the Vienna Convention on the Law of Treaties, adopted in 1969. Art. 2 par. 1 (a) of the Convention ruled that: "treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation".⁷⁵

6. FINAL ELABORATION FOR IMPLEMENTATION OF CONSTITUTIONAL REVIEW OF AN INTERNATIONAL TREATY IN MACEDONIAN CONSTITUTIONAL SYSTEM

Before accepting the power for controlling the constitutionality of ratified international treaties, the Constitutional court must answer one delicate question - does the treaty that is being reviewed requires a political act (instrument) or not? In case of a positive answer, the Constitutional court can use the same conclusion as the constitutional ground to proclaim its incompetence.

In this context, particularly significant are two more issues: What is a political act? Which international treaties are treated as a political act?

These acts are in their entirety dependent on the final announcement with which they can be exempt of the procedure for control of the constitutionality and legality. In other words, it is possible for the Constitutional court, for some political acts not to have a position for reviewing its formal and material constitutionality and

⁷⁴ ...In accordance with the Constitution, the only authorized state body in charge of control of the constitutionality of the laws and the constitutionality and legality of the bylaws and the other regulations is the Constitutional Court of the Republic of Macedonia. Karakamisheva – Jovanovska, T., *op. cit.* p. 9.

⁷⁵ Vienna Convention on the Law of Treaties, 1969. http://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf (8.4.2020)

legality. But, this opinion does not exclude the possibility of analyzing the political purposes of political acts.

In that case, the sanction for eventually falsely appointed political purpose is always against those who perform the political actions, which implies pure political sanction without side effects to the subjects in the legal system. With the implementation of the political acts, the Government achieves its primary function, to take on activities for materialization of the internal and foreign policy, hence for that reason the legal sanction has only political implications.

The Macedonian law, as most of the legal systems, does not make a normative (with the statutory norm) distinction between the formulation “legal” and “political” act. This different point of view is more with the theoretical character for identifying the essential elements, due to recognition as a form of public authorities’ activities, not just as Government activities.

For example, the form of political action has the decision for Assembly dismissal. This decision is a pure manifestation of political will. Then the decision for dismissal of the Assembly’s is in fact a law based on political will. These two decisions can be governed by examination of the constitutionality and legality of the procedure for Assembly’s dismissal, which means only the formal aspect, but does not involve the material (substantial) structure of the decision - the subject of the decision is not a matter of argument.

Also, the political act has free space for regulating essential matters, therefore must be in a sub-ordinary position to the superior law. These acts do not have enough legal power to undermine the constitutional legal ground. In other words, the political acts unequivocally must be under the superior legal norms because they are not independent acts.

It is important to mention that the formulation of the political act, among other meanings, does not refer to the international treaties undersigned by two or more countries, which means bilateral or multilateral treaties. The dominant standpoint originates from the fact that the process of negotiating, signing, and ratifying the international treaties must comply with the internal legal system, especially with the Constitution because, as we mentioned, according to the Macedonian constitutional order, the international treaties are above the statutory law, but below the Constitution. After ending the ratification process, the international treaties become part of the domestic legal system, and they can be used as an independent legal source for taking legal action.

The specialized status of international treaties in the domestic hierarchy, as an independent regulation of internal legal sources, could be justified with the explanation that other legal factors are connected with the process of negotiation and signing of international agreements. They are negotiated and signed by the individual countries, which are entities in the international law. Then, the adoption of international treaties always is in a written form. Signed international agreements unequivocally are obligatory by the law. The provisions of international treaties must be composed as instructed by the Constitution. And finally, but not less

important, is the obligation to respect the international law, which means the object of negotiations and of signing, i.e. the agreement, except the domestic law, must be in accordance and with the international law.⁷⁶

Further on, the international treaties do not constitute political acts because, unlike the political acts, for implementation of the international treaties it is not necessary to produce new laws. For example, the applicability of the Prespa Agreement's provisions is not emphatically adopting the separate regulation. The accepted statutes of this international treaty are immediately applicable.

In the introduction, we mentioned that the constitutional makers failed to foresee authorization for the Constitutional Court for constitutional review for the international treaties. But this conclusion is not a unique legal (constitutional) omission. The constitution also fails to regulate the constitutional review of the laws adopted at a referendum, authentic interpretation of the law, the constitutional amendments, and the legal (constitutional) statute for the implementation of the Constitution.⁷⁷

The constitutional review of the ratified international agreements by the Macedonian Constitutional court can be explained with three main motives.

The inconclusiveness of the constitutional provision allows the Constitutional court to decide independently which of these legal acts could be subject to constitutional review. However, these constitutional circumstances leave room for misappropriation. Under the assumption that the Constitutional court initiates procedure for constitutional review of some of the legal aspects, this does not rule out the possibility of inconstant practice - the administered mode for constitutional control (for example, authentic understanding of the rule) which does not imply that in the future the Constitutional court will admit this reduced authorization, because the Constitutional court jurisprudence doesn't have the power of judiciary precedent, the standard recognized by the courts of Anglo-Saxons legal systems.

The Constitutional court cannot create a law, unlike the highest courts in Anglo-Saxons legal systems (common law).⁷⁸ The precedent holds the status of law, but as opposed to the conventional legislative procedure, the creator is not the Parliament but the court. This accepted precedent can be substituted only when the Supreme Court adopts different judgment in a particular case, wherewith the earlier precedent fails its lawful force. Unlike the precedent, the Constitutional court jurisprudence does not have the same status and power in the legal system. On the contrary, the Constitutional court's practice as a legal standard does not include the obligation for an established rule to be replaced with other standards stipulated in the next decision. This does not indicate that the Constitutional court is exempted from respecting the basic legal principles, as a principle legal security (due process of law), and the principle of legal judgment predictable. For example, besides the fact

⁷⁶ Ђурић, В., Контрола уставности међународних уговора у Републици Србији, Улога и значај Уставног суда у очувању владавине права. 2013, р. 270.

⁷⁷ Krčinski, B., *op. cit.* p. 88,

⁷⁸ US, Canada, UK, New Zeland, etc.

that precedents do not recon among national legal sources, due to acting unification, the Supreme court of Macedonia creates fundamental opinions and standpoints that are compulsorily for the below courts (basic and appeal courts). The same legal logic must be used also by the Constitutional court, when deciding in two same (separate) cases connected to the constitutional omission, initiated in a different period, under the presumption that for that legal issue the court already has an institute of its own (internal practice, standards).

The distinction of the legal system on the Continental and Anglo-Saxon system is a theoretical approach for detecting the elementary characteristics between the countries who accept the judiciary system judgment as a usual source in the national law. But, in reality, every legal system, irrespective is part of the Continental or Anglo-Saxon system, has some adopted elements from the opposite orderliness.

In the Macedonian example, the Anglo-Saxon influence is seen in the Supreme courts legal acts. In the matter of the relationship between continental law and common law systems, R. H. Graveson explains the essential distinction. Namely, the cited author noted that in the common law system, the main law-making process (precedent) is recognized and enforced as a domestic legal source. But on the other hand, in the countries which are under the influence of the continental legal tradition, implementation of the precedent is acceptable only when at issue gap in the announced law.⁷⁹

That is the first reason, and the second one is connected to the character and legal nature of its decisions. According to the Constitution⁸⁰ and the Rule of Procedure of the Constitutional court⁸¹, the final judgments are definite and executable, which means that against the Court's decision there can be no appeal – the procedures versus legal acts initiated before Constitutional court are always organized as a one-degree procedure.

Neither the Constitutional court itself, nor other public authority is competent to consider the Court's decisions. The decisions immediately get into force. For that reason, the Macedonian Constitutional Court is entirely independent in reviewing the constitutionality of its own decisions. The court has absolute freedom for creating its practices, establishing new legal standards to contribute to the lawful security and the predictability in the system, an element which reminds of the Anglo-Saxon model of subordination of the below courts to the "will" of the Supreme Court.

The stated conclusion also involves the review of constitutionality of the international treaties, not just the constitutionality of the statutory law, or constitutionality and legality of the by-laws.

Above in this paper, it was mentioned that the Assembly plays the role of Constitutional court because the legislator has the chance to evaluate the

⁷⁹ R. H. Graveson, *Common law u savremenom svijetu*, Anali Pravnog fakulteta, god. vol. 11, no. 1-2, 1963, p. 139.

⁸⁰ Art. 112 par. 3.

⁸¹ Art. 79, Official Gazette of RM, no. 70/92.

constitutionality of any international agreement before the ratification process in form of prior legislative procedure (the form of a quasi-procedure for constitutional review).

In the context of the paper title, this conclusion indicates the procedure for Prespa Agreement ratification, but also and on other side, the signed international agreements, which will produce the same legal effects in the national legal system. But that is the first solution that the Assembly can use intentionally to manage with the protection of the legal system, and the second one is related to the Constitution. Namely, besides the fact of identified unconstitutionality, the Assembly can allow completion of the ratification process, and after the treaty confirmation, to begin with, the process of so-called opening of the Constitution and intervention with constitutional amendments in its provisions in order to accomplish normative harmony between the ratified international agreement with unconstitutional elements, and the Constitution.

In that way, the legislator following the legal norms takes up the procedure of constitutional review of the international treaty immanent to the Constitutional court, and positions itself above this public authority, but only under one condition – if the Constitutional court initiated procedure for review the international agreement, the Assembly's process for amending the Constitution must be finished before decisions against the ratified international treaty.

This conditionally refers to the Constitutional court's legal regulations. The Constitutional court in the Rule of Procedure defines itself as authority to initiate normative procedure for constitutional review on general legal acts⁸², including the ratified international agreements.

The Macedonian legal system is one of the rare systems that stipulate the authorization of the Constitutional court to inaugurate the procedure for normative control for beginning the general control legal process. For that reason, the Constitutional court decision-making in the procedure of international agreements constitutionality review, regarding other comparative regulations, does not depend on the initiating of the decision-process from other competent authorities.

Customary the procedure for international treaties constitutional control can be initiated only by public authorities.⁸³ But, in the Macedonian legal system, that is not a case. On the assumption, if the Assembly realizes the ratification process of the non-constitutional international treaty, before opening the Constitution amending process, the Constitutional court can begin with the procedure for an overview of the treaty's constitutionality, but only after the ratification process ending.

⁸² Art. 14, Official Gazette, 70/92.

⁸³ For Example, Slovenia, Art. 160 par. 2 from the Constitution - In the process of ratifying a treaty, the Constitutional Court, on the proposal of the President of the Republic, the Government or 1/3 of the deputies of the National Assembly, issues an opinion on the conformity of such treaty with the Constitution. The National Assembly is bound by the Constitutional Court opinion.

https://www.constituteproject.org/constitution/Slovenia_2016.pdf?lang=en (17.5.2020)

The solution for changing the Constitution can be activated only if the Assembly decides to harmonize internal and international law, which means amending the process depends only on the legislator (the constitutional-makers). This means that in no case regarding the international treaties, the process for amending the Constitution, can arise from the treaty provisions, stipulated in the form of obligation for the country that ratifying the agreement, as it is prescribed in the Prespa Agreement. For that reason, the responsibility for accepting the unconstitutional international agreement is separated between several internal public authorities with legislative and executive authorizations, which leads to the conclusion that following process of the international agreements, constitutionality review as a model of constitutional control bring in high degree incertitude to the contracting parties, not only in a period of negotiating but in a period of international agreement concluding.

Besides the fact of separated responsibility, the final accountability for the violation of the Constitution is on the side of the Assembly, because the legislator has several options to protect the legal system, especially the Constitution. As we mentioned above of the paper, the Assembly may decide to stop the ratification process in a phase of Draft-law, and also the legislator can require from the political authority that signs the treaty with political instruments to remove the matter of argument.

And the final reason refers to the fundamentals of legal principles.

The sense of procedure for reviewing the inferior law is a revision of the compatibility of the deductive norm. The normative compatibility is always an expression of respecting the principle of hierarchy of the law. This principle have in view the supremacy of the regulation ranked above-controlled norm, and if the Constitutional court identifies unconstitutional elements of subordinate provision to sanction the form of illegal activities with declaring the decision. Only in that way will it be applied, based on the principle of *lex superiori derogate legi inferiori*. The use of the two principles does not exclude bilateral international treaties. International treaties with the act of ratification become part of the internal legal order, which means they are over ordinary law, but do not have the capacity to extort amending of the Constitution.

The provisions of the Macedonian constitutional law led to conclusion that the international treaties are individual law, which could not repeal the domestic law or create an obligation for the legal intervention of supreme law. The exception of the inferior law is a consequence of the accepted principle *lex superiori derogate legi inferiori*. Besides the fact of non-regulation of the power for reviewing the international treaties, the Constitutional court can still use the method to respect the principle of constitutionality and inhibit getting into force of treaties witch are contrary to the constitutional provisions, or with reference to the same constitutional source to examine the constitutionality of the law for ratification the international treaty – which is already decided.

7. CONCLUSION

1) The Macedonian constitutional system is part of systems whose Constitutions did not specify the Constitutional courts' authorization of the constitutional review above the international treaties. Namely, the constitutional-makers does not prescribe the special authorization for the Constitutional Court to control the constitutionality of international agreements.

2) The science for constitutional law notice that in comparative constitutional law exists an example that demonstrates us deducing the competence for reviewing of international treaties constitutionality. At issue the German Constitutional court. Namely, the Constitutional Court of Germany, despite the legal gap in the constitutional norms, established this type of jurisdiction through its activism.

3) The Macedonian constitutional law regarding the system for international law implementation has accepted the monistic doctrine. The monistic method is established on the principles of subordinating the sources of national law. Basically, regarding the constitutional norms, the monistic doctrine insists on estimation the principle of hierarchy of legal provisions, which about Art. 118 of the Macedonian Constitution, international treaties that are ratified following the Constitution are part of the domestic legal system. Thus, any international provision incorporated in the domestic legal system through an appropriate procedure creates legal consequences in an identical way as any domestic law. Their status in the Macedonian Constitution is below the Constitution but above the statutes and by-laws.

4) Despite the imperfection of authorization, the Constitutional Court, in its practice, already established a precedent for international treaties constitutionality reviewing.

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MAKEDONSKI USTAVNI SUD I RATIFICIRANI MEĐUNARODNI UGOVORI – MOŽE LI SKLOPLJENI MEĐUNARODNI UGOVOR BITI PREDMET USTAVNOSUDSKE OCJENE?

U svakom nacionalnom pravu koje je dio kontinentalne pravne tradicije, Ustavni sud ima središnju ulogu u održavanju normativne ravnoteže između nacionalnog i međunarodnog pravnog poretka. Formulacija “unutarnji, nacionalni pravni poredak” podrazumijeva sve izglasane akte, što znači Ustav, zakone, podzakonske akte i ratificirane međunarodne ugovore. Svaka odredba nacionalnog prava mora biti normativno uskladena s Ustavom – kao domaćim propisom s najvećom zakonskom snagom. Dakle, osim zakona i podzakonskih akata činom ratifikacije i međunarodni ugovori mogu biti predmet ocjene ustavnosti. Ustavotvorci mogu ustavnim normama predvidjeti ocjenu ustavnosti međunarodnih ugovora. Ako su ustavotvorci propustili regulirati posebna ovlaštenja, Ustavni sud svojom praksom može stvoriti model za ocjenu ustavnosti međunarodnih ugovora. Imajući u vidu da makedonski ustavni sustav nije omogućio kontrolu ustavnosti međunarodnih ugovora, Ustavni sud Makedonije ima potpuno samostalnu ulogu u definiranju načina provođenja načela ustavnosti nad međunarodnim ugovorima – specijaliziranog modela za „tumačenje“ (dopunu) ustavne odredbe. Točnije, Ustavni sud Makedonije je već prihvatio ovakav pristup tumačenju ustavnog prava.

Ključne riječi: *Ustavni sud, međunarodni ugovori, ratifikacija, ocjena ustavnosti, odluka.*