

Good afternoon ladies, and gentlemen

I am very happy to join the debate about the most important constitutional developments in the world and present the most important Constitutional developments in North Macedonia for the year 2019, which are all connected.

1. The Name change

2019 was an important year for North Macedonia. The parliamentarians voted for the change of the name (On January 12, 2019, constitutional amendments, requiring two-thirds support in parliament, changed the name of the state to the Republic of North Macedonia), into North Macedonia for external, but also for internal use. The name of the country from the Republic of Macedonia was changed following the so called Prespa agreement with its neighbor Greece in order to unblock the Macedonian bids for NATO and EU. (France blocked the integration process and fresh elections were held on 15 July. Now Bulgaria is blocking the EU integration process and requires “a history revision”).

The Government wanted to share the responsibility for the name change and \organised a referendum. However, the referendum did not achieve the needed threshold for the name change.

Decisions U Nos 115/2018 and 96/2018: Referendum relating to the change of the name of the state

The Constitutional Court rejected two initiatives on the examination of the constitutionality and legality of a number of secondary legislative acts adopted by the State Electoral Commission.

The applicant (SEmakedonski kongres) complained that the above secondary legislation was not published in the Official Gazette, which was one of the requirements for the secondary legislation to enter into force. The Constitutional Court considered the initiative lodged belatedly, as it was lodged after the referendum took place, it established that the referendum was anyway failed and that the impugned secondary legislation was published on the SEC’s website. However, the Constitutional Court did not tackle at all the question why it considered

that the impugned secondary legislation (for a very controversial topic) could enter into force without being promulgated in the Official Gazette.

It did not provide any legal basis in this regard. The Constitutional Court also failed to examine when the impugned secondary legislation was placed on the SEC website in order to offer more arguments in support of its reasoning that publication of the secondary legislation on such a website was sufficient. Such a decision may, hypothetically speaking, offer an excuse for other state bodies seeking to avoid posting secondary legislation in the Official Gazette, and instead allowing them to post it on its web site at any time they choose. Such a practice would be incompatible with the principle of public access to legislation and democratic lawmaking.

1. Special Prosecutors' Office 2015 entered into force

As a result of the wiretapping scandal, a Special Prosecutor's Office was created to combat high-level corruption pursuant to 2015 Law, not subordinated to the State Public Prosecutor. But the law had 5 year sunset provision . In 2019, the government chose to close this office due to the indictment of this office's top prosecutor. The Special Prosecutor's pending cases were transferred to the Basic Prosecutor's Office for Corruption and Organized Crime, which is located beneath the State Prosecutor's Office.

Constitutional controversy regarding Special prosecution

At the time of creating the Special Prosecutor's Office, prosecutors raised concerns that this autonomous office was in contravention of the Constitution of North Macedonia. The nation's Constitution envisages a single organization of the Prosecutors' Office. According to the former Minister of Justice, although the constitutionality of the law was challenged four years ago, the Constitutional Court of North Macedonia has not yet examined the initiative. Anyway, it may be moot, as the Law and the Special Prosecutor's Office are no longer there.

The Special Prosecutor is in prison for illegal trading in influence and abuse of official position. Following the indictment, high-level corruption cases under her jurisdiction were transferred to the Public Prosecutor's Office leaving the Special Prosecutor's Office with nothing to do. Some

of the prosecutors from this office were transferred and some have remained without a pay.

Due to the wiretapping revelations, the major political parties agreed to adopt the Law on the Special Prosecutors' Office to fight high-level corruption among politicians, judges, civil servants, and businessmen.

The first named Special Prosecutor was Katica Janeva, whose position was not subordinate to that of the State Public Prosecutor. The above law regulating special prosecution contains a five-year sunset clause.

Article 22 stipulates that the indictments must be submitted within eighteen months from the day the cases and materials were remitted to the Special Prosecutor. On January 30, 2019, the Supreme Court issued a general legal opinion stating that after the expiration of the eighteen-month deadline, which occurred on June 30, 2017, the Special Prosecutor no longer had jurisdiction to submit indictments, conduct investigations, or undertake pre-investigative measures. This opinion raised public concern that a number of perpetrators of high-level corruption and abuse of their official position might escape justice.

1 In 2018, Gruevski was sentenced to two years in prison for receiving a reward for unlawful influence pursuant to art. 359(2) of the Criminal Code but fled to Hungary, where he received asylum.

2 Ivanov provided amnesty to two former prime ministers as well as the current prime minister, Zoran Zaev, the former Minister of Interior, the former Director of the secret police, and three prosecutors from the Special Prosecutor's Office in 2016.

3 After Gruevski resigned, VMRO-DPMNE had the most seats held by a single party in parliament and, for this reason, Ivanov provided this political group with the mandate to govern. However, this party was unable to gather the needed majority to elect a government.

2. Unlawful wire tapping on a massive scale

Following a wire-tapping scandal, where the secret police, conducted an unlawful wire-tapping on a massive scale, former president Ivanov, pardoned top officials involved in the wiretapping scandal. The Constitutional court received a request to examine the constitutionality of Article 11-a

of the Law on Pardon adopted 2016. This article represents the legal basis for the president's retracted pardons in 2016, mentioned in the introduction. The Constitutional Court declared the initiative admissible and adjourned to await an authentic interpretation by the Parliament. In a meanwhile the Parliament denied its request. The Constitutional court has not yet decided on the request. The session set for 6.11 was adjourned.

If abrogated the above article, the presidential pardons will become valid again, meaning that top former officials may escape criminal liability for the alleged cases of corruption and abuse of power. Such a ruling would undoubtedly shrink what is left of public confidence in the country's institutions. (There is almost a practice in North Macedonia the presidents to pardon top officials and absolve them from criminal responsibility for different crimes, including electoral fraud.)

Ultimately, Zaev formed a coalition government, supported by a coalition of Albanian political parties, in May 2017.

3.4. Decision U No. 83/2018: Challenge to the Wiretapping Law **The applicant challenged the constitutionality of Article 17 of e Wiretapping**

Law of 2018 alleging that it enabled the procurement and use of special technologies, which made access to wiretapping via a telecommunication service provider needless, meaning it could be easily done without a court warrant. The decision not to examine the potential broad violations of the right to privacy on the merits was based on the analysis of the entire law, which did not infringe upon the Constitution. The Constitutional Court failed to seize this opportunity to contribute to a greater protection of the constitutional right to privacy, especially following a continuous flow of public release of the conversations secretly recorded without a court warrant.

The applicant complained that the secret police had to request a telecommunication service provider to enable the wiretapping based on a court warrant, which would specify the exact person and the duration of the wiretapping.. The procured equipment made the wiretapping much easier and made a court warrant practically unnecessary. The complainant alleged that

such technology had already been procured, which posed a risk to the individual right to privacy.

The Constitutional Court rejected the initiative to examine the constitutionality of Article 17 of the above law. It held that the Law on Wiretapping, when read in its entirety, was based on the Constitution, relevant international instruments, and required a court warrant for the wiretapping. The use of special wiretapping/surveillance equipment did not infringe upon the Constitution. The relevant laws specified that only a suspect of a serious crime, named in the court warrant, can be wiretapped. The suspect's conversations unrelated to the criminal offense for which the wiretapping was ordered, were inadmissible in the criminal procedure. The Constitutional Court connected the examination of the above initiative solely with the admissibility of the evidence in the criminal procedure, while failing to examine the possible violations of individuals' right to privacy on a broader scale. According to the Constitution, the individuals (who are not suspected of serious criminal offenses) have the right to speak on the phone without their conversations being listened to and recorded by unauthorized and unknown persons, which opens up a possibility for their abuse.

3. Language rights

Also in 2019, the country passed new laws providing additional language rights for the Albanian minority. The new 2019 law implies that Albanian is one of the official languages of North Macedonia, as the Albanian party in the Government considered this piece of legislation essential to fulfill the country's obligations under the 2001 Ohrid Framework Agreement.

The new law requires that Albanian be used in all official documents and communications by national and local governments. The initiative to examine the constitutionality of this law has been pending before the Constitutional Court. In the meantime, the Venice Commission of the Council of Europe provided its opinion about this law. The Venice Commission, inter alia, criticized this law for its ambiguity, highlighting the lack of an explicit constitutional basis for the use of non-majority languages in court proceedings and warning about difficulties in the law's implementation which may affect the right to a fair trial. The

Venice Commission was critical of the country's failure to allow for a broad and comprehensive public debate with all linguistic groups.

3.1. Decision U No. 100/2019: Amnesty for 2017 Parliament storming

On April 27, 2017, protestors stormed the Parliament of North Macedonia in an attempt to prevent the election of the Parliamentary Speaker, Talat Xhaferi from the Albanian Party Democratic Union for Integration (DUI). The reason behind the storming was to stop the adoption and publication of the Law on the Use of Languages. A number of MPs were assaulted and badly injured. In 2018, the Parliament passed the Amnesty Law, which granted amnesty to those involved in the parliamentary storming. Among those amnestied were MPs from the opposition who later voted for the constitutional amendments to change the name of the state.

The former Minister of Internal Affairs and Director of Public Safety, who was convicted of terrorist endangerment of the constitutional order and security of the country and sentenced to eighteen years' imprisonment, was not granted amnesty. His complaint that the impugned Amnesty Law was discriminatory, infringed upon his constitutional rights and freedoms, and violated the rule of law. The Constitutional Court declared his Request to Examine the Constitutionality of the Law on Amnesty inadmissible, inter alia, on the ground that it had been the parliament's prerogative to decide who will be amnestied and under what conditions. The impugned Amnesty Law had precisely determined the scope and the limits of the amnesty.

Had the Constitutional Court decided otherwise and nullified the impugned law, the investigative and criminal proceedings against all amnestied persons would have continued.

3.2. Decision U No. 57/2019: Lawyers of the accused for the Parliament storming fined for contempt of court

Thirty-three persons were accused of terrorist endangering of the constitutional order and security of the country in relation to the 2017 storming of Parliamentary. In the course of the trial, when a protected witness had to be cross-examined, the lawyers of the accused protested, complaining that they did not have adequate working conditions. The court fined the lawyers €1000 each for contempt of court. On appeal it was reduced to €500. Two of the fined lawyers complained to the Constitutional Court that the fines interfered with their constitutional freedom of expression. Relying on a decision of the European Court of Human Rights, the Constitutional Court found a violation of the lawyers' freedom of expression. In particular, the Constitutional Court held that although the interference with the freedom of expression of the lawyers was according to the law and for a legitimate aim—to conduct a criminal trial within a reasonable time—it was disproportionate and not necessary in a democratic society. In a dissenting opinion, two judges stated that no one had the right to complain about a constitutional violation when the very reason for the complaint came from one's illegal activities or a failure to observe the law. It remains to be seen whether this Decision creates some type of precedent for attorneys fined for contempt of court in the course of court proceedings, allowing them to successfully make claims for violations of their freedom of expression. Alternatively, it may remain a single decision in the context of a complex criminal case, which symbolizes social polarization along party lines and the difficulties of democracy *a la Macedoine*.

The Law on Use of Languages was never signed by the former President Ivanov, as a precondition for its publication in the Official Gazette. The Law was published upon the approval of the Parliamentary Speaker Xhaferi.

Conclusions

The Constitutional Court, heard few cases on the merits, but did not resolve important cases arising from the 2017 storming of parliament, wiretapping, and urban planning.

on the merits, the high number of inadmissible cases may indicate a need for increasing the effectiveness of the Constitutional Court.

However, when looking at the small percentage of cases that

the Constitutional Court finds admissible, the delays in the examination of important cases, and the impact of the Constitutional Court's decisions, one cannot escape the impression that the Constitutional Court will first have to undergo a comprehensive reform before being able to effectively and adequately protect citizens' constitutional, civil, and political rights.

Need for proper procedure for the selection of Constitutional court judges.

4. Looking ahead

Looking ahead, North Macedonia should expect a Constitutional Court decision regarding the Law on the Use of Languages, early elections in 2020, and the adoption of a new Law on Public Prosecution. The latter draft law is in a deadlock, despite the push from EU countries for its final adoption and implementation in order to end the endemic impunity for those suspected of high-level corruption and abuse of position.

There is also a debate about introducing a process for citizens to file a constitutional complaint before the Constitutional Court for protection of all fundamental rights set out in the Constitution.