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**THE CONSTITUTIONAL CHALLENGES OF THE FINANCIAL CRISIS
IN THE REPUBLIC OF MACEDONIA**

1. Introduction

In the globalized world, the global tendencies came as waves and spread through the countries. Similarly as Huntington's democratic waves, the wave of financial crisis came and hit the world. Countries reacted differently to cope with this unexpected event that has created uncertainty and posed a direct or perceived threat to the goals and norms of the society.

The reaction depended on the specific conditions in each country, economic, as well as political ones. Also, the crisis has influenced the political and constitutional system in different manners. What happens in the constitutional order in the time of crisis depends on the constitutional design, as well as on many external factors. Constitutional issues that were raised during the financial crisis are: sovereignty issues, fundamental right protection, institutional and regulatory reforms, changes in party system etc.

Crisis can influence institutional setting in the political system and result in creation of agencies that deal with the crisis. There are authors who point that the crisis leads to increases in the size of government, because the citizens demand that government "do something and to do it immediately".¹ Demands of the citizens directed toward government are accompanied with the willingness of the citizens to grant the government expanded discretionary powers to cope with the crises. Some of these discretionary powers are kept even after the crisis. "The ultimate threat of increases in the scope of state powers is the 'constitutional anarchy' that Buchanan identified in the U.S. following the Great Depression."²

¹ Robert Higgs, "Crisis and Leviathan: Critical Episodes in the Growth of American Government", New York: Oxford University Press, 1987, pp. 64 and 67.

² James M. Buchanan, "The Limits of Liberty: Between Anarchy and Leviathan", Indianapolis: Liberty Fund, Inc., 1975. Quoted in Christopher J. Coyne, "Constitution and Crisis", p. 13, www.ccoyne.com/Constitutions_and_Crisis.pdf

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Because of that the crisis can have effect of serious reform of institutions after its end.

But also, the crisis can affect the performance of the competencies of the state bodies, in opposite direction, with limitations imposed over certain policies in order to react on crisis. Having in mind the role of the international community and competencies of the international bodies, the crisis can affect the performance of the competencies of the state bodies, with limitations that are derived from the arrangements with certain international monetary institutions, as are International Monetary Fund. Monitoring and control of national budgetary imbalances by international bodies, or within EU, European institutions, in fact means limiting of the budgetary powers of the national parliaments. As it is already stated, in the past "the greatest threat to the banks was the sovereign. Today, perhaps the biggest risk to the sovereign comes from the banks."³

During last financial crisis, different actions can be noticed in different countries. Some countries are characterized by: groundbreaking court decisions, constitutional reforms, changes in government or diminishing constitutional normativity.⁴

So, the crisis can lead to formal constitutional changes, but also can involve "new and expanded interpretation of the scope of government powers as defined by the political constitution."⁵ For example, "in 1930s U.S. Supreme Court shifted its interpretation of the U.S. Constitution from one centered on protecting property rights and free enterprise, to one condoning the expansion of state power over private property and markets. This new interpretation of state powers changed the political constitution within which legislators acted and granted them expanded power to make rules governing private actions."⁶

Some authors detect four types of constitutional reactions toward the financial crisis:⁷

- Adjustment – constitutions confronted with the crisis adjusted to the new circumstances through combination of formal and informal change. This is a slow process marked with pragmatism, where a constitution is used as a tool to tackle the crisis.

³ Stated by Andrew Haldane, a Deputy Governor of the Bank of England. Quoted in Julia Black, "Managing the Financial Crisis – The Constitutional Dimension", LSE Law, Society and Economy Working Papers 12/2010, London School of Economics and Political Science, Law Department, p. 3. www.researchgate.net/.../5046351e70f5ea0e0b.pdf

⁴ Xenophon Contiades, "Introduction: The Global Financial Crisis and the Constitution", in Xenophon Contiades (ed.), "Constitutions in the Global Financial Crisis: A Comparative Analysis", Ashgate, 2013, p. 2.

⁵ Christopher J. Coyne, "Constitution and Crisis", p. 3, www.ccoyne.com/Constitutions_and_Crisis.pdf

⁶ Bernard H. Siegan, "Economic Liberties and the Constitution", New Jersey: Transaction Publishers, 2006. Quoted in Christopher J. Coyne, "Constitution and Crisis", p. 11, www.ccoyne.com/Constitutions_and_Crisis.pdf

⁷ Xenophon Contiades, "Introduction: The Global Financial Crisis and the Constitution", in Xenophon Contiades (ed.), "Constitutions in the Global Financial Crisis: A Comparative Analysis", Ashgate, 2013, p. 5.

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- Submission - constitutions confronted with the crisis became submissive but still went living. The absence of formal change, combined with informal changes, undermines the constitutional normativity.
- Breakdown - constitutions confronted with the crisis, suffered breakdown under the strain, which corresponds to the major reversals in its functions. Financial crisis may provide the context of constitutional replacement or revision of constitutional order.
- Stamina - constitutions confronted with the crisis managed to remain intact. That means that constitution does not change and the relationship between state bodies remains the same.⁸

The issue that was also raised and debated after the shock of financial crisis and in the need for urgent actions of the government was the issue whether financial crisis could be a ground for state of emergency.

2. Can financial crisis be a reason for state of emergency?

All legal systems provide for special means to cope with emergency situations. Events in the twentieth century lead modern constitution-framers to devote much more anxious attention to the problem.⁹ But, even when constitution is silent, many scholars think that emergency regime can be initiated and they deduce the emergency powers “from the state’s overarching responsibility to ensure its own survival and to protect the safety of its citizens”.¹⁰

On the other side, in some countries, people have been and still are careful about giving an emergency regime constitutional legitimacy. In most of the countries, making constitutional provisions for emergency situations is considered a necessity for democracy itself. Today, many people think, “it is over optimistic to believe that democracy can be maintained without provision being made for emergency regimes.”¹¹

⁸ Alkmene Fotiadou, “How the financial crisis has affected constitutions”, Int’l J. Const. L. Blog, July 22, 2013 available at: <http://www.iconnectblog.com/2013/07/how-the-financial-crisis-has-affected-constitutions/>

⁹ States of emergency are present throughout the world. For example, in the period between 1985 and 1992, 80 countries proclaimed a state of emergency. This figure is from the “Summing-up” of the deliberations by the President of the Inter-Parliamentary symposium on “Parliament: Guardian of Human Rights”, Budapest, 19-22 May 1993, Geneva: Inter-Parliamentary Union, p. 91.

¹⁰ See: Ergun Özbudun, “Emergency powers and judicial review” in “Human Rights and the functioning of the democratic institutions in emergency situations”, Strasbourg: Council of Europe Publishing, 1997, pp. 15, 16. See also: Giuseppe Cataldi, “Some thoughts on the suspension of fundamental rights in emergency situations within the Italian legal system”, in “Human Rights and the functioning of the democratic institutions in emergency situations”, Strasbourg: Council of Europe Publishing, 1997, p. 97

¹¹ See: Ergun Özbudun, “Emergency powers and judicial review” in “Human Rights and the functioning of the democratic institutions in emergency situations”, Strasbourg: Council of Europe Publishing, 1997, pp. 8-9 and Yoichi Higushi “A Few Basic Ideas on the Preconditions for Instituting

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When emergency situation is proclaimed, the balance of the relationship between human rights and the state powers is altered and as consequence of that, human rights come under pressure. For that reasons it is very important that constitutions regulate the state of emergency precisely, as much as it is possible. Especially, it is important that the following issued are strictly regulated: the conditions for use of emergency powers; the bodies empowered to declare emergency rule; the time range of execution of emergency powers; the organ which can exercise emergency powers; emergency measures, especially the extent to which these powers can contravene human rights, and control of the execution of emergency powers.

Many constitutions do not address the state of emergency due to the economic crisis, but only on the basis of state of siege. States of emergency are not only military, but also they can be attributed to natural catastrophes as well financial problems.¹²

Most generally speaking, the threats, which can justify the declaration of emergency rule, can be classified as:

- 1) Political (emergence of widespread acts of violence, serious deterioration of public order, rebellion, coup d'état, war)
- 2) Economic (economic crises)
- 3) Natural catastrophes (natural disasters, dangerous epidemic diseases).

Most narrow definition of the emergency situations is included in the Constitution of Macedonia. Apart from Article 124 of the Constitution which regulates a state of war as a direct danger of military attack on the Republic is impending, or when the Republic is attacked, or war is declared on it", the Article 125 of the Constitution regulates that "a state of emergency exists when major disasters or epidemics take place". As it could be seen economic problems as well as internal tensions as are the emergence of widespread acts of violence, terrorism, serious deterioration of public order cannot be reasons for declaring emergency rule.

In the countries, which constitutions do not recognize economic emergency, economic crisis should be addressed through legislative and executive measures and established constitutional procedures. These measures would become problematic if they infringe with constitutional rights, for example, right to property or social and economic rights. Infringements of constitutional rights would mean violation of the constitution and should be declared as unconstitutional.

Holders of executive power use the term economic emergency in order to justify and legitimize unpopular austerity measures. But, "in constitutional terms, the invocation of a state of economic emergency, in the absence of positive, clear constitutional provisions on how to address it, creates a volatile and uncertain legal

an Emergency Regime in a Democracy" in "Human Rights and the functioning of the democratic institutions in emergency situations", Strasbourg: Council of Europe Publishing, 1997, p.37.

¹² Bernadette Meyier, "Economic Emergency and the Rule of Law", DePaul Law Review, 56/2006, p. 539.

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context for the actions of the executive and legislature. This uncertainty is damaging for the rule of law."¹³

So, nothing eliminates the possibility of financial crisis falling within the scope of emergency powers. But more than financial interest must be at stake.

The international community has also built some principles in regard to the emergency situations. They are: principle of proclamation (the emergency rule should be announced publicly); principle of temporality (the emergency rule should have limited duration); principle of exceptional threat (the crisis should represent a real, current or at least imminent danger to the community); principle of proportionality (the measures should be proportional to the threat); principle of non-derogability of some rights (some human rights can not be derogated or restricted in these situations); principle of non-discrimination and principle of communication (state in which emergency rule is declared is obliged to inform the international community for that).

3. Financial crisis in Macedonia

Xenophon Contiades wrote that "much is expected from constitutions" in the times of financial crisis.¹⁴ This does not happened in Macedonia. Nobody expected anything from the Constitution, maybe because economic and financial crisis are nothing new in Macedonia.

"In Republic of Macedonia, after two years when "developed countries" have turned on their alarms for the coming of the biggest crisis after the Great Economic Depression from the thirties, competent institutions wanted to show this situation as "a comparative advantage" and "chance" for attracting all investments that would run from the developed and will be directed to the less developed and "unavailable" markets for crisis, among which is the Republic of Macedonia. Several months later it was seen that this naivety and illusion would not last because the first consequences of the crisis were evident at the end of 2008."¹⁵

The Government in Macedonia several times adopted "packages of anti-crisis measures", including Budget rebalances of R. Macedonia, measures for support of enterprises; temporary bans on new employments in public administration and public sector; postpones of wage increase of employees in public administration and public sector, which was previously predicted; reduction rate for current

¹³ Andreas Dimopoulos, "PIGS and Pearls: State of Economic Emergency, Right to resistance and Constitutional Review in the Context of the Eurozone Crisis", ICL Journal, 4/2013, p. 502.

¹⁴ Xenophon Contiades, "Introduction: The Global Financial Crisis and the Constitution", in Xenophon Contiades (ed.), "Constitutions in the Global Financial Crisis: A Comparative Analysis", Ashgate, 2013, p. 1.

¹⁵ Abdulmenaf Bexheti, "Anti-Crisis Measures In The Republic Of Macedonia And Their Effects – Are They Sufficient?", Working Paper No. 70 March 2010, Bamberg Economic Research Group on Government and Growth, Bamberg University , p. 7. http://www.uni-bamberg.de/fileadmin/uni/fakultaeten/sowi_Lehrstuehle/vwl_finanzwissenschaft/Forschung/BERG/BERG70_Bexheti.pdf

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expenditures in all budget users; control of employments through employment agencies for temporary employment etc.

In some countries financial crisis led to adoption of constitutional amendment introducing "balanced budget". In Macedonia the policy of Government was opposite of what is called "balanced budget", because beside the measures from "anti-crisis packages", the Government in the period of economic crisis came into very expensive project called "Skopje 2014" which consisted of building many baroque buildings, erecting many new monuments and "face-lifting" of the center of the capital city. That consumed big money and demanded loans from commercial capital market. In order not to be restrained in its expenditures the Government adopted policy "against the engagement with IMF". With that policy Government avoided the danger its actions to become problematic vis-à-vis state's international obligations.

Beside the fact that the consequences of the economic crisis were felt in Macedonia and beyond the fact that the recession was afterwards announced, there was not enough "critical mass" of the interested parties (like business community and media through professional and academic debates) that would influence the economic policy makers.¹⁶ There are also political, together with economic grounds for the economic crisis in Macedonia. In that period of biggest economic crisis, opposition in the Macedonian Parliament was weak to control the government. Many factors contributed Macedonia to move from law to governmental and executive managerialism. Transparency of the government performance has been weak. Government directly and indirectly controls the media and with that the flow of information toward the citizens. With that citizens have not been able to monitor the work of the Government.

Also, the control over the Government by the Parliament has been missing. Usually in crisis, "Parliament's role is largely confined to post-hoc scrutineer rather than active, 'real time' participant."¹⁷ In Macedonia the Parliament has not played even that role of "post-hoc scrutinizer".

The events around the adoption of the 2013 Budget were the most extreme example of that. During these events the financial crisis in Macedonia translated into a political and constitutional crisis.

¹⁶ For more information on the economic crisis in Macedonia in the period 2009 see: Abdulmenaf Bexheti, "Anti-Crisis Measures In The Republic Of Macedonia And Their Effects – Are They Sufficient?", Working Paper No. 70 March 2010, Bamberg Economic Research Group on Government and Growth, Bamberg University, p. 22. http://www.uni-bamberg.de/fileadmin/uni/fakultaeten/sowi_lehrstuehle/vwl_finanzwissenschaft/Forschung/BERG/BERG70_Bexheti.pdf

¹⁷ Julia Black, "Managing the Financial Crisis – The Constitutional Dimension", LSE Law, Society and Economy Working Papers 12/2010, London School of Economics and Political Science, Law Department, p. 30. www.researchgate.net/.../5046351e70f5ea0e0b.pdf

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4. Adoption of the 2013 Budget in Macedonia

The procedure for adoption of the 2013 Budget was contrary to the Constitution of the Republic of Macedonia, Rules of Procedure of the Parliament as well as to the Law on the Parliament. The most shocking event in this procedure was the one that happened on December 24, 2012. That was the day when all MPs of the leading oppositional coalition were thrown out of the Parliament and were not allowed to participate in the procedure for adoption of the Budget of the Republic of Macedonia for 2013. Prior to their removal from the Plenary Session Hall, the representatives from the media were also removed from the Gallery in the Hall in order not to be witnesses of the brutal police action. The events that preceded this situation of violation of the Constitution, Law of the Parliament and Rule of Procedure were the following:

The Government of the Republic of Macedonia submitted the Proposal of the 2013 Budget on November 3, 2012. The Rules of Procedure prescribe special procedure for adoption of the Budget. According to its norms, the proposal of the budget is preceded directly in the phase of second reading, which should be done in the Parliamentary Commission for Budget and Financing, and in the Legislative Commission. The reading of the Proposal of the Budget started on November 19, 2012 in the Parliamentary Commission for Budget and Financing and on December 13, 2012 in the Legislative Commission.

The opposition submitted 1225 amendments to the Proposal of the Budget for 2013. Those amendments should have been discussed on the meetings of the competent Parliamentary commissions. The discussion of the MPs on the parliamentary bodies is not time limited and the MPs used that opportunity to have long speeches. Therefore, the Parliamentary Commission of Budget and Financing debated and decided only on 161 amendments (from 1225) and the Legislative Commission debated and decided only on 137 amendments.

The ruling majority did not want to accept that "filibuster" has not been prevented in the Rules of Procedure and, with violation of norms, it wanted to cut the debate in the parliamentary bodies. Therefore, the President of the Legislative Commission (who is from the ruling party) submitted a report to the Government only on the debate on 137 amendments, and for the others it was written that they were not accepted by the Government. Since the President of the Commission on Budget and Financing was from the oppositional party, the MPs from the ruling party that are members of this parliamentary body signed a report on the unfinished work of this body. Those two reports that were sent before the ending of the debate were the first violation of the Rules of Procedure.

On the basis of these reports, on December 24, 2012, the Government submitted Supplemented Proposal of the Budget of the Republic of Macedonia for 2013, which was put on the Agenda of the Parliamentary session the same day. The 39 MPs of the opposition stood up in front of the desk of the President of the

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Assembly aiming to prevent the beginning of the debate that was contrary to the Rules of Procedure. Three MPs of the same oppositional coalition sat down in their parliamentary seats. The special police forces came into the Parliament and threw out first the journalist from the public gallery in the Parliament and after that all 42 MPs from the leading oppositional coalitions, therefore violating many rules of the Constitution, Law on Parliament and Rules of Procedure.

During that action, the procedure for maintaining public order in the Parliament was not respected. The most obvious cases of violation of legal norms were the cases of the 3 MPs who were sitting on their places in the parliamentary seats, but were thrown out by the police only because they were members of the oppositional coalition.

That action, which happened on December 24, 2012 led towards a political crisis in the country, because 42 MPs from the oppositional coalition who were thrown out of the Parliamentary session, did not come back in to the Parliament and boycotted its work.

The ruling majority adopted the Budget and continued to adopt many laws following short procedure ("fast fingers"), even when there was no legal justification for use of this procedure.

This event was most shocking example of the marginalization of the Parliament in Macedonia, which is not still institutionalized parliaments in the meaning of Hague, Harro and Breslin (meaning that it does not efficiently perform legislative function; has not well- established internal organization; does not abide to its own rules and has not reached the accepted place in the political system).¹⁸ The theory speaks about "sunset" of the legislatures or rubber-stamps legislatures. This problem is even bigger in the Republic of Macedonia, where the submission of the Macedonian legislature to the Government is accompanied by violation of the Constitution and Rules of Procedure by the Parliament itself. The Parliament in Macedonia formally has competence for lawmaking, but in practice, it violates the norms that it has adopted. Also, non-performance of the oversight competence of the Parliament and non-existence of a personal feeling for political responsibility among the holders of public offices produces irresponsible policies. And that has far-reaching consequences in the period of financial crisis.

The political crisis that was created with these events in the Parliament of the Republic of Macedonia led to creation of Ad Hoc Commission for Investigation of the Events on December 24, 2012. This Commission was created out of the Parliament and was consisted of two members proposed by the ruling coalition, two experts proposed by the opposition and a President elected with consensus. This Commission adopted the Report in which concluded that there was violation of the Constitution, Law on the Parliament and Rules of Procedure of the Parliament of the Republic of Macedonia, but its findings were not implemented. No one took neither political, neither legal responsibility for violation of all this legal

¹⁸ Rod Hague, Martin Harro and Shaun Breslin, *Komparativna vladavina i politika*, Zagreb: Fakultet političkih znanosti Sveučilišta u Zagrebu, 2011, p. 319.

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acts in Macedonia, including highest one - the Constitution.

Also, the procedure for judicial review of constitutionality of 2013 Budget was initiated in front of the Constitutional court, which showed again the shortages of the competences of this body, as well as its complete obedience under the will of the Government.

4. Judicial review and financial crisis in Macedonia

General conclusion from comparative perspective is that judicial review in crisis is constantly eroding. "In times of crisis, especially economic crisis, the practical efficacy of constitutional review is undermined by the way government initiative is exercised and the reluctance of the judiciary to undertake such review in a thorough and robust way".¹⁹

This is explained with several reasons. "Judiciary may feel not empowered to review financial measures, because they are technical in nature and their precise aim may not be easily understood. Similarly, the rhetoric of emergency may be used to justify these financial measures, which may infringe to a great extent the economic rights of citizens. Perception of the public good, which may vary between individual judges, may also interfere with how the judiciary may interpret these financial measures."²⁰

But, aside of these, general conclusions, there are also positive examples of judicial review in period of crisis. For example, Portuguese Constitutional Court is successful story about constitutional review of austerity measures. This court decided on cuts in wages, benefits and pensions for employees in the public sector in cases 396/3011, 353/2012 and 187/2013.²¹ In the first case the Constitutional Court of Portugal upheld constitutionality of austerity measures, explaining that there is the right to remuneration, but there is no right to the irreducibility of wages. In the next two decisions, Constitutional court decided that austerity measures exceed the "limits of sacrifice" that employees in the public sector might be called upon in the equal distribution of taxes and exceeded the limits of permitted differentiation. In the third decision, Constitutional court decided that one of the reduction measures may violate the right to minimum decent survival, which is indirectly protected by the Constitution of Portugal, and which has to be respected even in a state of economic emergency.

¹⁹ Andreas Dimopoulos, "PIGS and Pearls: State of Economic Emergency, Right to resistance and Constitutional Review in the Context of the Eurozone Crisis", ICL Journal, 4/2013, p. 512.

²⁰ Andreas Dimopoulos, "PIGS and Pearls: State of Economic Emergency, Right to resistance and Constitutional Review in the Context of the Eurozone Crisis", ICL Journal, 4/2013, p. 514.

²¹ More for these decisions, see in: Andreas Dimopoulos, "PIGS and Pearls: State of Economic Emergency, Right to resistance and Constitutional Review in the Context of the Eurozone Crisis", ICL Journal, 4/2013, p. 514-519.

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Macedonian Constitutional court is firstly, self-restraint in performance of its competencies. Other problems lay in its constitutional competencies and in the political shadow of the Government, which totally covers the Constitutional Court.

The Constitutional Court of Macedonia can perform *a posteriori* judicial review. The Constitution determines that Constitutional Court decides on:

- The conformity of the laws with the Constitution
- The conformity of collective agreements and other regulations with the Constitution and the laws.

As it could be seen, instead of enumeration of the acts which are subject of the judicial review, the Macedonian Constitution uses the term other regulations which is very broad and entails: by-laws (decrees, decisions of the Government, directions, rules and other acts of the administrative bodies) enacted by the executive power; local-government acts (municipality statute, decisions and conclusions of the municipal council etc.); the acts of the institutions and organizations with public powers; the statutes and rules of the educational, health and other institutions and organizations; the regulations of the Assembly of the Republic of Macedonia which do not have status of law (decisions, conclusions, declarations, resolutions and recommendations) etc. These acts are subject to the judicial review if they are general acts i.e. if they are valid for an uncertain number of entities in RM. But the evaluation whether some act is general or not is in power of the Constitutional Court. The Constitutional Court of Macedonia misused this power to declare itself incompetent for deciding in constitutionality of some acts, which were considered as acts, which are not general, by the members of the Constitutional Court.

The problematic issue in the competence of the Macedonian Constitutional Court is not only the question of acts on whose constitutionality and legality the Constitutional Court decide, but also the question with which acts all that rules should be in conformity.

The Constitution contains only a competence of the Constitutional Court to decide on conformity of the general legal rules with the Constitution and statutes. So, there is no explicit competence for the Constitutional Court to decide on the conformity of the general legal rules with the ratified international agreements, although they are part of the internal legal order and they cannot be changed by statute.

In the contrast with the legal provision that *anyone* in Macedonia can submit the initiative to begin the procedure and even the Constitutional Court can start a procedure without initiative of anyone, is the non-existence of real constitutional appeal. The Constitution of the Republic of Macedonia determines that Constitutional Court protects only few rights: "the freedoms and rights of the individual and citizen relating to the freedom of conviction, conscience, thought and public expression of thought, political association and activity as well as to the prohibition of discrimination among citizens on the ground of sex, race, religion or national, social or political affiliation". It is not clear the criteria on which the

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“framing fathers” selected only these rights to be protected by the Constitutional Court.

So, limited competence to decide on constitutionality and legality of only certain acts, as well as restricted competence to decide for protection of only few human rights, are extra factors that have negative influence on the role of the Constitutional Court in the times of financial and economic crisis.

Constitutional Court of the Republic of Macedonia decided on the issues connected with the financial and economic crisis in several cases. None of them contain substantial decisions, which will give to the Constitutional Court the attribute as important actor in decisions on constitutional aspects of the crisis.

In several cases the Constitutional Court decided on the issue of legality of the decisions of the public enterprise not to pay to the workers some additional payment that was previously agreed with collective agreement. The reasons for such decision of the management of the public enterprise were economic crisis and Fourth package of the anti-crisis measures, and the aim was to cut the expenses of the work of the enterprise. The Constitutional Court refused the initiative to decide on legality of the decision with explanation that the acts that were challenged are not general acts, but “internal acts of the public enterprise”, as well as because Constitutional court does not decide on conformity of the act with collective agreements.²²

There was also a case on the change in calculation of the prices of the electricity, which was less beneficial for the customers because the result of that were higher prices of this energy. The Constitutional court in its decision upheld the act adopted by the Regulatory Commission for energetics and did not start a procedure.²³ The Constitutional Court had similar attitude, with similar ending (refused the initiative) in the case concerning the obligation of the citizens who live in the buildings with central heating, to pay certain amount no matter if they were disconnected from the network for central heating.²⁴ Which decision as these, the Constitutional Court stood behind big companies, against citizens, refusing to decide the issues concerning to the rule of law and retroactivity in connection with the issue of financial crisis, especially in the case on Rules for supply heating.

For comparison, the European Court of Human Rights already has adopted important decisions that point that the citizens must not be exposed to excessive financial burdens, no matter if the financial crisis is the reason for that. For example, in the Case *N.K.M. v. Hungary*,²⁵ the European Court of Human Rights decided that 98 per cent tax on part of the severance pay of a Hungarian civil servant violated her right to peaceful enjoyment of property. The case concerned a civil servant who complained in particular that the imposition of a 98 per cent tax on part of her

²² U. No. 40/2011-0-0 Adopted on 14.09.2011; U. No. 10/2012-0-0 Adopted on 07.03.2012.

²³ U. No. 26/2013, Adopted on 24.04.2013.

²⁴ U. No. 197/2012-0-0 f Adopted on 11.09.2013.

²⁵ Application no.66529/11, Judgment of 14.05.2013.

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severance pay under a legislation entered into force ten weeks before her dismissal had amounted to an unjustified deprivation of property. The aim of the Tax Act was to fight against excessive severance payments in order to satisfy society's sense of justice and protect the public purse at a time of economic hardship. Despite the wide discretion that the Hungarian authorities enjoyed in matters of taxation, the Court held that the means employed had been disproportionate to the legitimate aim pursued of protecting the public purse against excessive severance payments. Nor had the applicant been provided with a transitional period in which to adjust to the new severance scheme. Moreover, in depriving her of an acquired right, which served the special social interest of reintegrating the labor market, the Hungarian authorities had exposed the applicant to an excessive individual burden.

Another problematic issue concerning the Constitutional court of the Republic of Macedonia was that it did not defend the budgetary powers of the Parliament, the independence of the legislative power and respect of the procedure for adoption of the budget in the Parliament.

After events of December 24, 2012, the procedure for judicial review on the 2013 Budget was initiated in front of the Constitutional Court.²⁶ The applicant asked the Constitutional Court to decide on the constitutionality of the Budget, because it was adopted in a procedure that was not in accordance with the Rules of Procedure and because that illegal procedure means also violation of the Constitution. This initiative was refused on two grounds. First, the Constitutional Court decided that it did not have competencies to decide whether the Budget was adopted in a procedure prescribed in the Rules of Procedure of the Parliament. As, the Constitutional Court wrote, the Constitutional Court is competent only to decide whether the acts are adopted by the competent body! This conclusion of the Constitutional Court is very dangerous because it leaves open door for the Parliament to violate the procedure for adoption of law, without any legal consequences or remedies for that. Other reason for refusal of the initiative in this case by the Constitutional court is its temporary character, i.e. the Constitutional Court decides only on the constitutionality and legality of valid acts. The 2013 Budget was out of legal system with the end of the year 2013. There is understandable suspicion that Constitutional Court waited on purpose 2013 to finish, to adopt its decision, because it was adopted in January 2014.

Political, instead legal decisions, as is this one concerning 2013 Budget, affected the authority of the Constitutional Court of the Republic of Macedonia. The Constitutional Court did not have high professional authority in the previous period. Till now the Constitutional Court of was very self-constrained in its activities. The explanations of its decisions were not elaborate, argued and suggestive, and political stamp on them is very obvious.

As it is already written, the real role of the Constitutional Court depends essentially on the following factors: the ability of the constitutional judges to adopt the decisions on the basis of developed theoretical awareness for the character and

²⁶ U. No. 20/2013-0-0, Adopted on 19.01.2014.

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further development of the constitutional order of the country (interpretation of the Constitution in compliance with the liberal democratic theory and the contemporary constitutionalism); second, the valor of judges to impose the rule of law as a frame of the state power (constitutionality control as a legal category); and third, the readiness of the judges to protect the Constitution, not only from formal breaches, but also from all forms of its factual change.²⁷

Unfortunately, Constitutional Court of the Republic of Macedonia was not prepared to become a scrutinizer on the Government and Parliament and guardian of the Constitution, neither in times of financial, economic and constitutional crisis, nor in other "normal" times, if there were such times.

5. Conclusion

Twenty-first century brought with itself the "wave of financial crisis." But, the bad news never comes alone. Financial and economic crisis in the Republic of Macedonia were followed by constitutional crisis.

The fundamental rights indispensable for a market economy, as are right to private property, freedom of contract, freedom of trade etc., are guaranteed in the modern legal systems. Also the social rights of the individuals are part of the contemporary constitutions. These rights are mostly endangered in the period of financial and economic crisis. The Constitutional Court of the Republic of Macedonia has not offered protection to some of these rights in its decisions in the time of crisis. This body was more willing to be a supporter of Government and Parliament instead to be their scrutinizer.

The Parliament of the Republic of Macedonia stepped back before the governmental and executive managerialism. It was even willing to violate its own rules in order to satisfy demands of the executive power. Media controlled by the government, restricted transparency of the government performance, weak opposition and policy against engagement with IMF, enabled Government to work almost without any control.

If during last financial crisis, different actions can be noticed in different countries, such as: important court decisions, constitutional reforms, changes in government or diminishing constitutional normativity, unfortunately Republic of Macedonia is characterized by the last one: diminishing constitutional normativity.

²⁷ Svetomir Skarich, "Constitutional Courts of the Republic of Macedonia" in Guisepppe de Vergottini (ed.), "Giustizia costituzionale e sviluppo democraticonei paesi dell Evropa Centr-orientale", Torina, 2000, p. 177.

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**THE CONSTITUTIONAL CHALLENGES OF THE FINANCIAL CRISIS
IN THE REPUBLIC OF MACEDONIA**

(Abstract)

Financial crisis that shacked our world presents a challenge for constitutional systems. Countries responded differently to the crisis. In some countries, Constitutional courts made shifts in constitutional interpretations and adopted groundbreaking court decisions. In other countries there were changes in the competences of state bodies. The financial crisis affected sovereignty, because of involvement of international financial institutions. But there were also countries in which constitutional normativity was diminished.

This paper analyzes the constitutional challenges that were raised in the Republic of Macedonia as a result of the financial crisis. The Constitutional court did not have important role in the facing with financial crisis. In several cases, it lost its chance to make groundbreaking decision. This paper elaborates these cases that Constitutional court did not use to become important player in managing with the crisis.

Most controversial issue in the constitutional order of the Republic of Macedonia happened during the procedure for adoption of the 2013 State Budget. The procedure in the Parliament was unconstitutional and finished with throwing out MPs from the opposition on the day of vote for adoption of the Budget. Again there was no response by the Constitutional court to unconstitutionality of the procedure for adoption of the Budget. The paper also analyzes this situation, which led to political crisis in the Republic of Macedonia.

Key words: financial crisis, constitution, judicial review, Parliament, Constitutional Court, state of emergency