

THE POSITION OF THE JUDICIAL POWER ACCORDING TO THE CONSTITUTIONS OF THE REPUBLIC OF MACEDONIA FROM 1945 UP TO 1991

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Abstract: *The geostrategic position of the Republic of Macedonia and the stability of the Republic of Macedonia, with a surface of 25,713 km² as one of the smallest states in Europe, are both important for Macedonia itself and for its neighbours. Such physical and geographical constants of the Republic's space, from a historical point of view, have enabled cultural, civilizational, ethnic and religious interlinking of Western and Eastern influences, respectively northern and southern, but on the other side, the separation and isolation of these influences. Viewed from a geostrategic perspective, the position of the Republic of Macedonia, but also the demographic structure, has a powerful influence on the historical events in the region. Between 1945 and 2017, the following constitutions were adopted in the Republic of Macedonia:*

1. *Constitution of the People's Republic of Macedonia on 31.12.1946,*
2. *Constitution of the Socialist Republic of Macedonia on 25.02.1974, and*
3. *Constitution of the Republic of Macedonia on 17.11.1991.*

During the preparation of this scientific paper, all Official Newspaper are available on the Web Page of the Official Newspaper of the Republic of Macedonia for the purpose of analyzing the role of the judicial power in different periods of constitutional development in Macedonia before and after its independence.

Key words: *Constitution of the People's Republic of Macedonia, Constitution of the Socialist Republic of Macedonia, Constitution of the Republic of Macedonia, judicial power.*

JEL classification: *K0, K1.*

1 INTRODUCTION

The Republic of Macedonia, takes the first elements of the state within the framework of the former Yugoslavia, the constitutional name of which was the Socialist Republic of Yugoslavia, is best known as "Yugoslavia of Tito", according to the name of the communist party leader regime that ruled after World War II. This state during the Cold War when the world was divided into blocks in the eyes of the world was seen as a successful treasury of the functioning of the multiethnic state in the Balkans.

The Republic of Macedonia established state frameworks in the former Yugoslavia under the communist regime but without the possibility to build up ethnic identity in the end.

It is said that this happened under the auspices of the Comintern at Stalin's request. Since the main identity was in ideology, and the national one was oppressed, the Macedonians never managed to build their full national identity. The main advantage, which symbolized the state's independence, was that of the current government, where the working heroes of the communist party were presented. The ideological nature of this skull is the wings can be seen from the muscles of the children, symbolizing the power and health of the working class. So, the state was born with a political decision by Comintern, and independence from Yugoslavia happened without a war. This means that neither the birth nor the division did not lead to independence (Rizvan, 2014)²². The story, about which Ernest Gellner speaks in his book "Nationalism", did not happen (Gellner, 1997)²³. The situation before which the Macedonians will find independence will resemble Masimo d'Azeglio's statement at the first parliamentary meeting in the newly established Italian kingdom with the words: "We created Italy, now we have to create an Italian." Gellner sees the people's culture and the state as a masculine couple where culture is the bride and the state is the bridegroom. In the spirit of this symbolic, it means that the Macedonians had the bridegroom, but lacked the bride. As the culture without a groom is not fertile, as well, as the bridegroom without the bride is sterile. So that a nation can have continuity, they must make this marriage. On the contrary, it risks the disappearance. Macedonians as many peoples in Eastern Europe need a political engineering.

²² Sulejmani Rizvan”(2014), “Sfidat shqiptare- analiza politike 2007-2014”,Logos, Shkup.

²³ Ernest Gellner(1997), “Nationalizm”, Weidenfeld&Nicolson, Great Britain, , përkthim shqip nga Instituti i Dialogut dhe Komunikimit, Tiranë. Faqe 118.

According to Gellner, *"In eastern Europe in general, there was no national state, nor national culture. If the nationalist imperative - a state, a culture - had to be fulfilled, and the passion for it came and became very powerful throughout the nineteenth century then both the state and the culture had to be created. You need both political and cultural engineering. And the material with which the engineers would work was the one that required some tectonic violence. The simultaneous creation of the national state and of the national culture in a social environment where both were missing and where there was a mosaic of complex linguistic and cultural diversity, both on the map and in the social structure: this combination is a recipe for a catastrophe. The elements of this recipe were more than present in Eastern Europe. (Hobsbaum, 1993)"*²⁴

2 THE POSITION OF THE JUDICIAL POWER ACCORDING TO THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF MACEDONIA (31.12.1946)

Part X of this constitution (Constitution of the People's Republic of Macedonia, 1946)²⁵, and Articles 107 to 115, refers to the People's Courts. The structures of the judicial power in the People's Republic of Macedonia were: 1) Supreme Court of PRM, 2) District Courts, and 3) Region Courts. A special court may also be established by law for types of disputes.

In implementing justice, the courts were independent and judged by law. Courts have been separated from the administration at all levels. Higher courts were entitled to oversight of lower courts in accordance with the law. The courts have enforced the right on behalf of the people.

Discussions before the courts have been conducted publicly, as a rule. Decisions of a court could only be changed by the highest competent court. The accused has been granted the right to defense before the court. All courts have adjudicated in the Council, except when the law allowed adjudicating an individual court. The councils of the District Court and the District Court, when they first tried, were composed of judges and jury. The District Court and District Councils, judging at first instance, consisted of judges and jury who were equally involved during the trial. The proceedings before the courts in PRM were conducted in Macedonian language. Citizens who did not know the Macedonian language could use their own language. Such citizens have been

²⁴ Ерик Хобсбаум, (1993), "Нациите и национализмот по 1879", Култура, Скопје стр. 67.

²⁵ Constitution of the People's Republic of Macedonia, 31.12.1946

granted the right to be informed of the inclusive material and to pursue the work of the court through interpreters. The President, Deputy Mayor and Judges of the Supreme Court of PRM charged and dismissed the People's Assembly of PRM. The District Court, Judges and District Judge of the District Court charged and dismissed the councils of the city and district council from district court district. District Court President, Judges, and Judges have charged and dismissed the district or town council of the district council.

The Supreme Court of PRM has been the highest body of judicial power in PRM. By law it was determined in which cases the Supreme Court of PRM has tried in the first instance, and in which cases in the second instance. The Supreme Court of PRM has also evaluated the lawfulness of all rulings of all courts in PRM, while it does not comply with the provisions of the law on the implementation of federal laws by the Supreme Court of the RSFY.

3 THE POSITION OF THE JUDICIAL POWER ACCORDING TO THE CONSTITUTION OF THE SOCIALIST REPUBLIC OF MACEDONIA (25.02.1974)

Part VII of this constitution²⁶ (Constitution of the Socialist Republic of Macedonia, 1974) relates to the judiciary and the public prosecution, whereby the issue of the judiciary is regulated in Article 268 and Article 285, while from Article 286 through Article 289 the issue of public prosecution is regulated. The judicial function in the unitary system of government and self-empowerment of the working class and all the employed people has been carried out by regular courts as bodies of state power and independent courts.

Courts have protected the rights and freedoms of citizens and the independent position of employed people and independent organizations and communities and have ensured constitutionality and legitimacy.

Courts while exercising their judicial function have been independent and have judged in accordance with the constitution, laws and general acts of independence. Regular courts were established under the law. The competences, composition and organization of regular courts as well as the procedures before them have been determined by law.

²⁶ Constitution of the Socialist Republic of Macedonia, 25.02.1974

Regular courts have decided on disputes on basic personal relationships, rights and obligations of citizens, rights and obligations of political-social communities, have imposed punishments and other measures against perpetrators of criminal offenses and other punishable offenses established by law, have decided on the legality of individual acts of state organs and organizations that have carried out public authorizations, have resolved disputes on labor relations and property relations, if these disputes have not been resolved by independent courts by solving other relations when this has provided for by law.

The regular courts have followed and analyzed the social relations and events of interest for the realization of their functions and of the Municipal Assembly respectively the Assembly of the Socialist Republic of Macedonia and other state bodies and independent organizations and communities have offered proposals for obstructing the events harmful and dangerous social and the strengthening of legality, social responsibility and socialist morality. The regular courts, within their scope, were entitled and obliged to inform the Municipal Assembly, namely the Assembly of the Socialist Republic of Macedonia on the implementation of the laws and their work.

Independent courts are established by administrative act or by agreement between the parties, in accordance with the constitution and the law. Independent courts, for certain disputes, could also be established by law. The powers, composition and organization of an independent court, as well as the proceedings before this court, have been regulated by law, respectively with the act establishing the court in accordance with the law.

Independent courts have established by constitution and law that certain disputes regarding socio-economic relations and other independent relationships, as well as disputes that would entrust people employed in joint work organizations, to independent interest communities, and in other independent organizations and associations established by mutual relations, have independently regulated what they were born of the freely available rights, unless by law it has been determined that certain disputes may be solved by regular courts. Citizens have been able to resolve certain disputes on the rights they have freely trusted in the peace councils or elected courts and other independent courts unless otherwise provided by law. Independent courts have been established as joint labor courts, peaceful councils, elected courts, and other forms of independent courts.

The Joint Labor Court has decided on the existence of conditions for the organization of the basic organizations of joint work and working communities and on the requirements for protection of the right to work by social means and

other independent rights and social ownership have resolve disputes about the organization and sharing of basic organizations of joint work, for union, association and division of the organization for joint work, and other types of disputes from other independent socio-economic relations as defined by law. The formation, competencies and composition of the court for joint work, as well as the proceedings before this court, have been regulated in accordance with the law. The discussion before the court has been public. Due to the protection of the secrecy, the protection of morals, the interest of minors, or because of the protection of other special interests of the social community, the law defines in which cases the discussion could be excluded from the public.

The court has adjudicated through the council. By law it could be determined that in certain cases to adjudicate the individual court. Judges, employed persons and citizens as judges, judge or or juries participated in the trial in the form prescribed by law, respectively, by the act establishing the court. By law it could be determined that only judges participate in certain courts and in certain cases at trial.

Judges and citizens who participate in the trial in the court of law have charged and dismissed the municipal assembly, ie the Assembly of the Socialist Republic of Macedonia. Judges in the regular courts are charged and dismissed from office in such a way that, under the conditions and under the procedure by which professional skills and moral-political responsibility for the performance of judicial function and the independence of judges during the trial were obtained. The judges and citizens who participated in the trial at the regular court were selected for a certain period but with a right to re-election. The judges, citizens and employees who participated in the trial at the independent court have been selected, named and dismissed in a legally prescribed manner.

No one who participated in the trial could have been summoned for responsibility for the opinion pronounced during the judicial decision, while in the procedure conducted for the criminal offense committed during the exercise of judicial function, could not be detained without the permission of the Municipal Assembly respectively the Assembly of the Socialist Republic of Macedonia. The judge was unable to exercise any other function or work because the judicial function is incompatible with the exercise of other functions.

After the appeal or some other remedy against the court decision, only a competent court could make the decision. The law, respectively, establishes when and under what conditions against its decision a legal remedy is allowed by the act establishing the independent court. By law, it was determined under what conditions it was possible for an independent court decision to be

dismissed by a regular court by determining the manner in which such decisions were to be enforced. Court decisions brought in other socialist republics and autonomous socialist provinces have been of great importance and have been applicable in the territory of the Socialist Republic of Macedonia.

4 THE POSITION OF THE JUDICIAL POWER ACCORDING TO THE CONSTITUTION OF THE REPUBLIC OF MACEDONIA (17.11.1991)

One of the founding values of the constitutional order of the Republic of Macedonia, in accordance with this constitution²⁷ (Constitution of the Republic of Macedonia, 1991), is: the division of state power into legislative, executive and judicial power. Section III "III. The organization of state power - point 4, relates to the judiciary and is regulated by articles 98 to 105 of the constitution. Judicial power is exercised by the courts. Courts are independent and independent. The courts shall adjudicate in accordance with the Constitution, international laws and agreements ratified in accordance with the Constitution. The organization of the judicial power is unitary. Extraordinary courts are prohibited. Types, competencies, establishment, organization and composition of courts, as well as proceedings before the court, are regulated by law, which is adopted by two-thirds of the total number of deputies.

The judge is appointed without restriction regarding the duration of the mandate. The judge cannot be moved against his will. The judge may be dismissed: 1) upon his request; 2) if he has forever lost his ability to exercise the judicial function established by the Republican Judicial Council; 3) if he meets the conditions for retirement; 4) if convicted for a criminal offense with an unconditional imprisonment sentence of at least six months; 5) due to the serious disciplinary violation provided for by law which makes it inappropriate for the exercise of the function of the judge, as evidenced by the Republican Judicial Council and 6) due to the irresponsible and unprofessional exercise of the judicial function that in the defined procedure by law, certified by the Republican Judicial Council.

Judges enjoy immunity. The Assembly decides on the immunity of judges. Judicial function is incompatible with the exercise of another public function and profession or membership in any political party. It is forbidden the organization and political action in the judicial power.

²⁷ Constitution of the Republic of Macedonia, 17.11.1991

The Supreme Court of the Republic of Macedonia is the highest court of the Republic and ensures unity in the application of laws by the courts.

The discussion before the courts and the pronouncement of the verdict are public. The public may be excluded in cases determined by law.

The court adjudicates in the council. By law it is defined in which cases it judges an individual judge. During the trial, a jury is also allowed when this is foreseen by law. Jury cannot be held responsible to express opinion and decision-making when making judicial decisions.

The Republican Judicial Council consists of seven members. The Assembly elects the members of the Council. The members of the Council are elected from the ranks of distinguished jurists with a six-year mandate, with the right of re-election only once. Members of the Republican Judicial Council enjoy immunity. The Assembly decides on their immunity. The function of a member of the Republican Judicial Council is incompatible with the exercise of other public functions and professions or membership of a political party.

The Republican Judicial Council: 1) Proposes to the Assembly the naming and dismissal of judges and confirms the proposal for dismissal from the judicial function in the cases provided by the Constitution; 2) decides on the disciplinary responsibility of the judges; 3) assesses the ability and responsibility of judges in the exercise of their functions; and 4) proposes two judges of the Constitutional Court of the Republic of Macedonia.

5 CONCLUSION

The Republic of Macedonia, due to its historical circumstances, has failed to finalize the process of forming a nation that will integrate its own people and at the same time internationally prove to be a subject in the world order as a political entity. With the constitution of 1991, the Republic of Macedonia made efforts to recognize the Macedonian ethnicity as a nation, namely to reconcile the cultural and cultural community of this ethnicity with the political organization of the state, or to impose its own will to other communities as well. This effort faced reactions within the state from Albanians to the Greeks. The attempt to change the historical context of the newly formed state and to promote a nation as a political entity in the international arena that would not be directly identified with ethnicity, with the amendment of the 2001 constitution, failed. The last-minute intervention in the text of the preamble

negotiated with the words " *The Macedonian people, as well as the citizens living in its borders that are part of the Albanian people*", as if I returned the situation as before 2001. This brought the political leaders of the right-wing Macedonians after coming to power to promote nationalism in an effort to create the culture and umbilicus as Gellner spoke. The country after a relative stability again confronted itself with the Albanian public opinion that does not accept this tendency and with the Greeks in the international arena. This confrontation upgrades inter-ethnic relations in the country and blocks the country's integration into international organizations such as NATO and the EU. Albanians and Macedonians judged by the public every day deepen the divergences with regard to the country's internal state regulation and the future that endangers its future.

Harmonization of these two extremes is the country's main challenge. Any extreme inclination in one or the other center of aggravation questions the unity of the state and threatens to nourish the centripetal political force. Exiting this situation can only be a political engineering for the nation's formation on a liberal, universal and inclusive basis because the Republic of Macedonia is multiethnic and any nationalism is liberal, particularism which questions inter-ethnic relations. The nation of the Republic of Macedonia as a political entity is predestined to be without umbilicus and to promote constitutional patriotism in the view of Habermas. Constitutional patriotism, that would not be tied to a concrete entity of a community, but for abstract processes and principles. This should put the state as "place of law" by, "nation" as "place of feeling". This should be the basis of a modern state called the Republic of Macedonia that guarantees the future of this country.

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