

**XXII International Scientific Conference „Legal days –  
Prof. Slavko Carić”  
“LAW AND JUSTICE”**

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The University of Business Academy in Novi Sad  
The Faculty of Law for Commerce and Judiciary in Novi Sad

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October 10<sup>th</sup> and 11<sup>th</sup> 2025 in Novi Sad

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“Legal days – Prof. Slavko Carić”

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## **THE CONSTITUTIONAL COURT OF SERBIA – POSITION AND CERTAIN COMPETENCIES**

### **Abstract:**

Serbia has had a Constitutional Court since 1963, but by changing its state status and adopting the Constitution, which expressed such a state status, Serbia introduced many new legal solutions on the organization and functioning of this body. With the 2006 Constitution, this body underwent the greatest changes. It is a special constitutional body, which is not a court, although it contains that word in its name. This body performs the function of controlling constitutionality and legality and protecting human and minority rights. It does so according to rules and procedures that are similar to the procedures of regular courts of general and special jurisdiction. The paper analyzes the constitutional, legal and procedural provisions that regulate the composition of the Court, the election and legal status of judges, jurisdiction, proceedings before the Court and the effect of the acts it adopts.

*Keywords: Constitutional Court, position, jurisdiction*

### **INTRODUCTION**

The Republic of Serbia Constitutional Court represents an independent and autonomous constitutional body whose competences are regulated by the Republic of Serbia Constitution of 2006. The legal function of the Constitutional Court in Serbia was established in 1963 when, at that time the socialist federation formed the Federal Constitutional Court, while each republic in the federation established its own Constitutional Court. In socialist systems of that time, it was rare to have a specialized body - the court that controls the constitutionality. Nevertheless, this body in the Socialist Federative Republic of Yugoslavia, as well as in the Socialist Republic of Serbia was organized and had a normative structure resembling the European model of constitutional court control. When after 50 years the constitutional system of the Republic of Serbia introduced the principle of the distribution of power, dividing government functions between the power holders, the Constitutional Court still maintained the position of the “guardian of the constitution”. With the introduction of the constitutional appeal, the Constitution of 2006 broadened

the competences of the Constitutional Court. Thus, the country's supreme legal act inaugurated this body in the contemporary framework of constitutional court control. It is our belief that the Constitutional Court contributes to establishing an equilibrium between three branches of power, performing the control of the constitutionality and legality of general legal acts. Also, the Constitutional Court offers the protection of constitutionally guaranteed rights and freedoms. Serbian legal system, as well all those which cherish the tradition of the rule of law and acknowledge the supremacy of the constitution and the protection of constitutionality, manage to secure in practice the compliance of all three branches of power with the decisions of the Constitutional Court.

## ELECTION AND COMPOSITION OF THE CONSTITUTIONAL COURT

The Constitutional Court consists of 15 judges elected and appointed by the representatives of all three branches of power. "The increase of the number of judges from 9 to 15 has both positive and negative sides. Positive effects and the justification of this solution reflect the need to have more judges contributing to more efficient work of the Court and its broader competence, while negative sides assume that in case of a greater number of Constitutional Court judges, some may be top quality professionals with high ethical principles, but some of them may be elected without adequate previous professional experience. In other words, fewer Constitutional Court judges force the election bodies to be more observant when selecting them"<sup>1</sup> Thus, one third of judges are elected by the National Assembly among 10 candidates proposed by the President of the Republic, one third are appointed by the President of the Republic among 10 candidates proposed by the National Assembly, while one third are appointed by the general session of the Supreme Court among 10 candidates who are proposed at joint session by the High Judicial Council and the High Prosecutorial Council. To be a judge of the Serbian Constitutional Court a candidate must be at least 40 years old, with at least 15 years of professional legal experience. A special qualification required by the Constitution is that a judge should be selected among "prominent lawyers", while this term has not been legally clarified. This means that the bodies which propose the candidates for Constitutional Court judges, that is, which select or appoint them, should first determine who can be considered to be "a prominent lawyer". "According to one interpretation, "a prominent lawyer is more than a top legal professional given the fact that he must possess exceptional personal characteristics, such as high moral integrity, autonomous thinking, courage, creativity and developed consciousness of responsibility."<sup>2</sup> The judges of Serbian Constitutional Court are elected or appointed for a nine-year term and can be re-elected a total of two terms.

The President of the Constitutional Court is elected by the judges of the Constitutional Court from among them, by secret ballot and a majority vote of all the judges, to a term of office of three years with the possibility of reelection. The President of the Constitutional Court represents the Constitutional Court, convenes its sessions, proposes the agenda and chairs sessions, looks after the implementation of Constitutional Court acts and harmonizes its work. The President of the Constitutional Court also exercises the duty of a judge. The Constitutional Court has a Deputy President, who stands in for the President of the Constitutional Court

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1 Nićiforović, A. (2025), *Election of Constitutional Court judges as a guarantee of constitutional- judicial independence*, Proceedings of the Faculty of Law in Nis 1(104), pp. 347-348.

2 Petrov, V. (2013). "Prominent lawyer" - a special condition for the election of Constitutional Court judges or an empty constitutional norm . *NPB – Journal for criminalistics and law*, 18(3), pp. 44-45

if the President is absent, or otherwise engaged. Deputy President is elected according to the same procedure for the election of the President of the Constitutional Court. Six months before the expiry of the nine-year term of office to which a Constitutional Court judge has been appointed, or elected, the President of the Constitutional Court shall notify thereof the authorized propounder and the National Assembly. The office of the Constitutional Court judge may be terminated upon his request, or in case of his death, or if legal conditions for his dismissal or retirement have been met. Constitutional Court judge shall file a request for termination of office before the expiry of the term to which he/she has been elected or appointed, to the authorized propounder for election or appointment, to the National Assembly and to the President of the Constitutional Court. The National Assembly decides on termination of office of Constitutional Court judge and if it fails to adopt a decision within three months from the day the request was filed, it shall be considered accepted. The Constitutional Court notifies the authorized propounder for election or appointment of a judge, and the National Assembly, that the judge has fulfilled requirements for mandatory retirement, no later than six months before the fulfillment of those requirements. Constitutional Court judge may be dismissed if: 1) he/she becomes a member of a political party, 2) accepts the position which violates the prohibition of conflict of interest, 3) suffers permanent loss of ability to perform the duty of a Constitutional Court judge, or 4) is convicted to a prison sentence or is convicted for a punishable offence rendering him/her unworthy to serve as a Constitutional Court judge. Fulfilment of conditions for dismissal of a Constitutional Court judge of duty is determined by the Constitutional Court. The first two conditions are the consequence of the principle of institutional and personnel autonomy of the Constitutional Court. Constitutional Court judge may not hold any other public or professional office or job, with the sole exception of a professorship at a law faculty in the Republic of Serbia. Constitutional Court judge may not be a member of a political party at the time of his/her election and is also prohibited to be politically active during his/her term of office. The loss of ability to perform the duty of Constitutional Court judge is determined by the professionals from the authorized medical institution, while the final decision that Constitutional Court judge is convicted to a prison sentence or for a punishable offence is issued and delivered *ex officio* by the competent court, or other government bodies.

### **ABSTRACT CONTROL OF CONSTITUTIONALITY BEFORE SERBIAN CONSTITUTIONAL COURT**

The main competence of the Constitutional Court is the abstract control of constitutionality and legality. This competence comprises several groups of authorizations. The first group is related to normative control of constitutionality and legality, the second to the authorizations aimed at securing the balance in the system of separation of powers, while the third group of authorizations guarantee the protection of constitutionally acknowledged citizens' rights and liberties. Within the normative control, the Constitutional Court ensures the supremacy of the highest legal act by passing decisions on: 1) the compliance of laws and other general acts with the Constitution and generally accepted rules of international law and ratified international treaties, 2) the compliance of ratified international treaties with law, 3) the compliance of other general acts with law, 4) the compliance of statutes and general acts of autonomous provinces and local self-government units with the Constitution and law, 5) the compliance of the general acts of organizations vested with public authority, as well as of political parties, trade unions, associations of citizens and collective agreements with the Constitution and law.

Therefore, the main competence of the Constitutional Court is the abstract control of constitutionality and legality of general legal acts, including the constitutionality of ratified international treaties and compliance of other normative acts with generally accepted rules of international law and ratified international treaties. This competence of the Constitutional Court originates from the monistic concept on the relationship between domestic and international law given the fact that the ratified international treaties and generally accepted rules of international law are the part of the legal system of the Republic of Serbia. In the hierarchy of normative acts, ratified international treaties are immediately below the Constitution and may not be in conflict with this supreme legal act. The Constitutional Court may exercise the normative control of constitutionality and legality in the procedures of preliminary and subsequent control. The Constitutional Court, by rule, exercises abstract assessment of constitutionality and legality in the procedure of subsequent control, which is performed after the general legal act has come into force. In exceptional cases, the subject of this control may include the laws and general legal acts which have expired if the procedure for their control was initiated within six months before their expiration. In the procedure of normative control, this body is authorized to suspend the implementation of certain acts, or activities undertaken under the acts, which are the subject of the constitutional normative control, until the final decision has been reached. At the request of one third of the members of the National Assembly, the Constitutional Court may perform the control of the constitutionality of laws before they come into force. In this case the Constitutional Court has the obligation to pass within seven days a decision on the constitutionality of the law which has been adopted by the National Assembly, but still not promulgated. If within the period of seven days the Constitutional Court does not reach a decision whether the law complies with the Constitution and the law is promulgated, there is an alternative solution - the Constitutional Court will continue with the regular procedure for the control of constitutionality and legality. If the Constitutional Court passes a decision that the law does not comply with the Constitution before it is promulgated, that law may no longer be the subject of the constitutional control. The decision of the Court in preliminary proceeding of the assessment of constitutionality comes into force with the day when the law is promulgated.

In theory, the following has been, rightfully, emphasized: “The combination of the model of preliminary and subsequent control of constitutionality in national law may yield positive effects, but it also contains some traps that may lead to the restriction of the functioning of the Constitutional Court. Namely, the law whose compliance with the Constitution is assessed before it comes into force can no longer be the subject of a constitutional control. Therefore, the representatives of the parliamentary groups in the National Assembly can use this form of constitutional control in order to protect “their own” draft of law against possible future control after the law comes into force. However, given the fact that the preliminary proceeding has been established as an emergency action with short period for passing a decision, it is not expected that this form of control will become the subject of abuse. If the law which is the subject of control is promulgated before passing the final decision whether it complies with the Constitution, the Constitutional Court may continue the procedure of *ex post* control, which means that now the procedure is conducted based on *ex officio* rule”<sup>3</sup>

In the legal system of the Republic of Serbia, in addition to an abstract control, there is also a concrete constitutional-judicial control. In the latter case, regular courts play a significant role. If in a proceeding before the court of a general or special competence an issue is raised whether a normative act is in compliance with the Constitution, generally

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3 Pejić, I. (2024). *Constitutional law*, Nis, University of Nis Faculty of Law p. 538.

accepted rules of international law, ratified international treaties or law, the Court may suspend the procedure if it deems there are grounds for it, and initiate the procedure for the assessment of constitutionality and legality of the given act before the Constitutional Court. We are speaking here about the control of constitutionality and legality which is performed for the specific purpose when a regular court assesses whether a general act, which is applied to a concrete case, is in compliance with the Constitution or law. Here the Court deviates from the rule to act *in abstracto*, no matter whether there is a specific reason to resolve a concrete case.

### CONTROL OF THE CONSTITUTIONALITY OF INTERNATIONAL TREATIES IN THE REPUBLIC OF SERBIA

The Constitutional Court of the Republic of Serbia cherishes the monistic view of the relationship between domestic and international law. Based on this view” domestic and international law form a single, unified legal system inside which both laws are inferior to each other. According to the proponents of this theory, either the international law is derived from the domestic law, which leads to a unique concept of law – legal monism, where domestic law is superior, or the domestic law derives from the international law, which also leads to legal monism where the international law is superior. Here the theory starts from the presumption of the unity of law which is achieved by confirming the derivative character of one legal system in relation to another. Two legal systems form a unity and a complete circle including both international and domestic law, that is international and domestic law constitute two inseparable parts of one unique legal system”<sup>4</sup> Thus, the provisions of the Constitution state that “generally accepted rules of international law and ratified international treaties are the integral part of the legal system of the Republic of Serbia and are applied directly.” The monistic concept of the relationship between domestic and international law is more precisely defined in Serbian Constitution in the provision on the compliance of these sources with the country’s supreme general legal act: “Ratified international treaties must be in compliance with the Constitution”. This rule can be found in the section of the Constitution which regulates the hierarchy of general legal acts in the national legal system. In the second case, a phrase “Ratified international treaties must not be in non-compliance with the Constitution”, is applied instead of the expression “must be in compliance with the Constitution”. Also, we have a more precise positioning of laws in the hierarchy of general legal acts given the fact that they are inferior to the Constitution, ratified international treaties and generally accepted rules of international law. This constitutional concept, we have no objections to, generally follows the monistic theory on the relationship between domestic and national law. However, the above stated provisions of the Constitution should be systematically interpreted and linked with the provision which regulates the procedure of the constitutional control of general legal acts in domestic legal system. In the procedure of subsequent and abstract control, the Constitutional Court, among other things, passes a decision on the compliance of the ratified international treaties with the Constitution.

The rule which has been established to be general assumes that the Constitutional Court decisions have *erga omnes* effect, which means that they nullify the normative act which is in non-compliance with the Constitution. This further means that ratified international treaties may be cassated that is annulled, in any time following their ratification and coming

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4 Đorđević, S. (1997), *The relationship between domestic and international law*. Annals of Law Faculty in Belgrade, 45(4-6), pp. 360.

into force if there is a proposal of the authorized propounder, or an initiative of the Court itself to decide on this matter. However, the Constitution does not regulate the legal effects and consequences of the Constitutional Court decision when the ratified international treaty is found to be in non-compliance with the Constitution. In this case there are two possible legal solutions: the first assumes that the international treaty is proclaimed void based on the Article 53 of Vienna Convention on the Law of Treaties<sup>5</sup>, if this solution is foreseen in the given treaty, while the second solution is to initiate the revision of the Constitution in order to harmonize constitutional provisions with those from the international law.

The Law on Constitutional Court<sup>6</sup> regulates the effects of Constitutional Court decisions related to the non-compliance of international treaties with the Constitution by mitigating the consequences of its cassatory effect. Namely, the unconstitutional provisions of the international treaty cease to be valid, as it is foreseen by that treaty itself and generally accepted rules of international law. “This legal provision in a way softened the effect of hastily drafted constitutional provision on the subsequent constitutional control of ratified international treaties in domestic legal system. The subsequent control of the constitutionality of ratified international treaties raises the question: can a state resort to national legislation should it fail to fulfill its obligations from international agreements?”<sup>7</sup> In that context, the rules of international law related to the procedure of signing international agreements are binding for states according to Vienna Convention and, therefore, the states may not resort to the rules of national legislation to justify their breach of international agreements and obligations. Thus Article 27 of Vienna Convention on the Law of Treaties states: “A state cannot use its own domestic laws as a justification for failing to comply with its obligations under an international treaty”. This rule is drafted to the detriment of Article 46 which balances a state’s sovereignty over its domestic legal processes with the need for security and stability in international treaty law.

There is a number of instruments used for expressing a state’s consent for signing an international agreement and assuming international obligations, all in accordance with international law. The Vienna Convention foresees a number of these instruments related to giving consent, such as ratification, exchange of letters of credits during the signing procedure, signing, acceptance, approval and accession to the agreement. States use these instruments to verify the conditions for signing an international agreement and implementation of its content that are foreseen in their domestic laws which increases security and certainty in international treaty law. The consent of the state body which is authorized by the Constitution to ratify the international treaty is the expression of the state’s will to fully accept all rights and obligations foreseen by that international treaty. When a state has expressed its free will to accept the contractual obligations, then these obligations shall be fulfilled according to the international law principle of imperative character – *pacta sunt servanda*.

“Systematic interpretation and linking of constitutional provisions pertaining to the relationship between international and domestic law, to the hierarchy of general legal acts, to the competences of the Constitutional Court and to the procedure of constitutional control lead us to the following conclusion: on one side we have a widely accepted “internationalistic” approach in structuring the legal system of the Republic of Serbia which proclaims the sources of international law to be integral elements of the national legal

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5 *Decree on the ratification of Vienna Convention on the law of treaties*, Official Journal of FRY – International treaties and other agreements no. 30/72.

6 *Law on Constitutional Court*, Official Journal of RS no. 109/2007, 99/2011, 18/2013 – decision of the Constitutional Court, 103/2015, 40/2015 – other law, 10/2023 and 92/2023.

7 Pejić, I. *op. cit.*, p. 538

system, while, on the other side we have a decrease in certainty, legal security and stability in the application of international treaty law. By allowing the Constitutional Court to assess the compliance of an international treaty with the Constitution in a subsequent control procedure, this legal uncertainty is even doubled: a) for the subjects of law in domestic legal system and b) for the subjects of law in international legal system.”<sup>8</sup> Majority of European states maintain the supremacy of the constitutional act in their legal systems. However, national systems of constitutional control address basic requirements related to the contractual capacity of the state to enter international agreements. This is the reason why the sources of international law may be only the subject of preliminary constitutional control which is performed before the international treaty comes into force.

The Constitutional Court may decide if an international treaty is in compliance with the Constitution in the procedure foreseen for assessing the constitutionality of laws before they come into effect. In the constitutional and legal system of the Republic of Serbia, the preliminary control of the constitutionality (of international treaties) is a novelty and it can be used in an efficient and comprehensive way - all aimed at avoiding the conflict between the supreme general legal act and an international act, that is between the national legal system and the state's obligations under international law, both in a formal and material sense. Formal assessment of constitutionality is related to the formal elements of law governing the ratification of international treaties which is passed by the National Assembly and this assessment should correspond to the requirements foreseen by Article 46 of Vienna Convention.<sup>9</sup> The international treaty is considered to be formally in non-compliance with the Constitution in relation to the body authorized to enter the international agreement, or in relation to the breach of the provisions of domestic law of essential importance. The assessment of constitutionality in a material sense is related to the mere content of the international agreement, that is to the rights and obligations which the state assumes by signing it. If the Constitutional Court decides that some elements of an international treaty are unconstitutional in a formal or material sense, then parliamentary ratification of the international treaty should be suspended. If the National Assembly wishes to complete the ratification of the international treaty, it should initiate the constitutional revision and thus indirectly ensure that the international treaty is in compliance with domestic constitutional law.

### THE CONSTITUTIONAL COURT PROCEDURE FOR A CONSTITUTIONAL APPEAL

The Constitution of 2006 introduced the constitutional appeal as an instrument of constitutional and judicial protection of constitutionally guaranteed rights. The constitutional appeal was known in times of socialist constitutions, while the Constitution of the Federal Republic of Yugoslavia of 1992 and the Constitutional Charter of the State Union of Serbia and Montenegro of 2003 introduced it into the legal system of the common state of Serbia and Montenegro. However, the Constitution of 1990 did not foresee the constitutional appeal as a separate legal instrument for the protection of citizens' rights

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8 Pejić, I. *op. cit.*, p. 540.

9 This Article of Vienna Convention states: “1) A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance. 2) A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.”

before the Constitutional Court. Based on its legal nature, constitutional appeal represents an exceptional legal remedy which the citizens may use against individual acts of judicial and administrative (executive) authorities. This legal remedy constitutes the entire national mechanism of protection of human and minority rights which precedes the system of rights protection before the European Court of Human Rights.

The Constitution of the Republic of Serbia sets a wide scope of the application of the constitutional appeal either related to the individuals who have legitimacy to resort to this instrument of legal protection, or related to the objects of protection and the individual acts that may be the subject of the Constitutional Court control. It can be filed against individual acts or actions of government bodies or organizations vested with public authority. The subjects of review under constitutional appeal are judicial, administrative or other acts of state bodies or organizations which execute public authorities. The subjects of review under constitutional appeal may also include actions, doings or non-doings of authorized state bodies or organizations. Constitutional appeal may be filed only when other legal remedies have been exhausted, or are not prescribed, or where the right to their judicial protection has been excluded by law (the principle of subsidiarity in the work of the Constitutional Court). "The rule is, although some exceptions have been found in comparative law, that constitutional appeal is allowed only if all other available mechanism of legal, administrative and judicial protection of human rights have been exhausted. In this way the constitutional appeal really becomes an exceptional and supplementary legal instrument of direct constitutional and judicial protection of human rights given the fact that it can be used only when all other available and allowed legal instruments for the protection of violated constitutional rights have been exhausted."<sup>10</sup>

The sphere of constitutional-judicial protection is rather extensive. Namely, the object of protection is the entire corpus of human and minority right guaranteed by the Constitution. Bearing this in mind, then it is not surprising that the constitutional appeal represents a powerful instrument of protection, not only of individual rights, but also of the rights of the autonomous province and local self-government units. The protection of the rights of individuals at the same time guarantees the protection of the legal order. Thus, the provisions on the human and minority rights should be interpreted in the context of enhancing the values of democratic society. "The examples in comparative law reveal that the interests of the individual citizens should be viewed from two sides: firstly, in the context of their relationship with public authorities whose power and arbitrariness should be restrained and secondly, in the context of securing individual rights in order to protect the objective legal order and the functioning of the legal state and the rule of law."<sup>11</sup>

The constitutional appeal has been inaugurated as an instrument providing institutional guarantees of human rights and freedoms. However, it does not exclude a specific legal protection of ethical, religious and other groups in relation to their rights. Thus, the specific collectives which enjoy, so called, minority rights, also can use the constitutional appeal to exercise these rights. The Constitution also guarantees the equal rights to autonomous provinces and local self-governments if an individual act or action of a state body or a local self-government unit hinders the autonomy in their work.

The right of the Constitutional Court to adjudicate on a constitutional appeal should not be viewed in the context of its supreme position in the hierarchy of regular courts. This means

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10 Simović, D. (2012). *Constitutional appeal – theoretical and legal framework*, Annals of the Faculty of Law in Belgrade, 60(1), p. 215.

11 Pejić, I. *op. cit.*, p. 542.

that the constitutional appeal is not filed for the purpose of reviewing a factual state or the legality of an individual act. The Constitutional Court can only decide whether a court decision violates a constitutionally guaranteed right, or whether the same right has been violated in a procedure that was conducted before an authorized body. This means that the individual act contains the wrong interpretation of constitutional law, or that in a procedure that was conducted before an authorized body a constitutionally guaranteed right has been violated.

The purpose of constitutional protection is not just to determine whether a concrete case contains unconstitutional elements. Namely, pointing out to unconstitutionality can entail the consequences in general sense, if we consider that the main function of the Constitutional Court is the function of “the guardian of the Constitution” and the guarantee of the legal system. This statement is not of particular significance from the point of view of an individual whose rights are violated or denied. Therefore, it is crucial that the Constitutional Court has a direct influence on restoring the violated or endangered basic rights. Based on the Law on Constitutional Court of the Republic of Serbia, an individual act against which the appeal has been filed, may be annulled by the decision of the Constitutional Court, that is an action may be annulled, or an execution of another action ordered. The legal phrase “annulment of an individual act” is not precise and can raise doubts in relation to the effects of the Constitutional Court decision. A decision of this Court which has annulling effects (in a constitutional appeal procedure) can have positive effects from the point of view of the subjects whose rights have been addressed. However, it is our opinion that this Law does not reflect the consistency in relation to the legal effect of the Court’s decision. Thus, Article 89 of this Law regulates the annulment of a legal act, but further states that the legal effects of the decision come into force “from the date when it is served to the parties in the procedure”. This means that the Constitutional Court decision will have legal effects in the future – *pro futuro*. The revision of the Law on Constitutional Court has given the Court an authority to include the claim for compensation for material or immaterial damages in the same decision adjudicating the constitutional appeal. “In theory, there are some stands that the constitutional appeal should not be used against individual acts and actions of courts (I. Krbeč), although they are also public bodies. These stands should not be accepted since the Constitutional Court does not decide on an appeal as a court of higher instance (a reviewing court). It does not assess the merit of the given dispute (determining the factual state or the application of law for resolving the dispute) and does not decide on the legal relations adjudicated by the given court, but it only assesses the court decision in relation to the violation or restriction of human or minority rights and freedoms which are guaranteed by the Constitution.”<sup>12</sup>

## CONCLUSION

Constitutional judiciary, as a state function, is of recent date. Setting up the Constitutional Court as a state body represents a logical legal consequence of having a written, strong constitution as an act of supreme legal force. The internal control of constitutionality in a material sense is conducted taking into account the content of the Constitution, while the external, formal control is related to constitutionally foreseen procedure of passing laws (legislative procedure). The same situation is in the Republic of Serbia. Serbian legislators, like the legislators worldwide, particularly in democratic countries, have envisaged the Constitutional Court as a body which ensures the rule of the Constitution and law and offers the highest legal protection of basic human rights

12 Marković, R. (2014). *Constitutional law*, Belgrade, University of Belgrade Faculty of Law, p. 556.

in national legal system. The Republic of Serbia has changed a number of legal solutions related to the organization and work of the Constitutional Court. Thus, the Constitution of 1990 did not have the competence to decide on the constitutional appeal since this institute was not present in the legal system of that time. When the legislator introduced the constitutional appeal in the Constitution of 2006, the Constitutional Court acquired this new competence that has been discussed in details in this paper, in addition to the control of the constitutionality of international treaties.

As for the constitutional appeal, several conclusions can be drawn: 1) that it represents a subsidiary instrument of the legal protection of constitutionally guaranteed rights; 2) in the procedure of constitutional appeal, the Constitutional Court will only look into the constitutional matter, that is the Court will only decide whether the contested act of the state body or organization vested with public authority violates human or minority rights or freedoms, 3) the subject of a constitutional appeal is, before all, an individual act of public authority, 4) in order to file a constitutional appeal, a person must possess legitimacy to appeal, that is. that his/her rights have been violated or denied by the contested act; 5) when deciding on a constitutional appeal, the Constitutional Court assesses whether it is justified and may only suspend the implementation of the contested act (it may not reverse the decision).

In this paper the authors underline that most of constitutional countries foresee some forms of control whether international treaties are in compliance with the Constitution. However, majority of European countries, including the Republic of Serbia, maintain the rule of the superiority of the constitutional act in domestic legal system. However, national systems of constitutional control address basic requirements related to the contractual capacity of the state to enter international agreements. This is the reason why the sources of international law may be only the subject of preliminary constitutional control which is performed before the international treaty comes into force.

Due to the restriction of the length of the text, this paper focuses only on addressing the main issues related to the Constitutional Court – its composition, the election and appointment of judges and their legal status, while only three competences have been discussed: the abstract control of constitutionality, the control of the constitutionality of international treaties and the control based on a constitutional appeal. The other competences are left to be analyzed in some future papers: the characteristics of the procedures before the Constitutional Court, that is the procedure of deciding on the suspension of the enforcement of the decision passed by an autonomous province body, the procedure of resolving the conflict of jurisdictions, the procedure of deciding on election disputes, the procedure of deciding on the prohibition of the work of a political party, trade union, citizens' association or religious community, the procedure of deciding on the breach of Constitution by the President of the Republic and the procedure based on the appeal filed to the Constitutional Court by a judge, the Court President or a public defender which excludes the right to submit a constitutional appeal against the decision on the termination of their term in office.

Finally, the image of the Constitutional Court depends on the social awareness on the importance of this institution. Currently, constitutionality and legality are not among top values in the hierarchy of social values. The activities and conduct of Serbian politicians have contributed to this situation, particularly of those at the executive levels. Also, the Constitutional Court does not seem ready to be more active in its role of the guardian of the Constitution which has adverse effects on its authority. The Constitutional Court should not only exist in the text of the Constitution, it should be present in its life as well. It seems

this is exactly the present situation in Serbia, since even the best normative solutions related to the Constitutional Court will not give results in practice if the judges are not ready to defend the Constitution.



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## УСТАВНИ СУД СРБИЈЕ – ПОЛОЖАЈ И ПОЈЕДИНЕ НАДЛЕЖНОСТИ

### **Апстракт:**

Србија има Уставни суд почев од 1963. године, али је променом свог државног статуса и доношењем Устава, којим је такав државни статус изражен, Србија увела многа нова правна решења о организацији и функционисању овог органа. Уставом из 2006. године, овај орган је доживео највеће промене. Ради се о посебном уставном органу, који није суд, иако у свом имену садржи ту реч. Овај орган врши функцију контроле уставности и законитости и заштитника људских и мањинских права. То чини по правилима и поступцима који су налик поступању редовних судова опште и посебне надлежности. У раду се анализирају уставне, законске и пословничке одредбе, које регулишу састав Суда, избор и правни статус судија, надлежност, поступак пред Судом и дејство аката које доноси.

**Кључне речи:** Уставни суд, положај, надлежности

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