

## SEPARATION OF POWERS BETWEEN THE POLITICAL BRANCHES OF GOVERNMENT IN THE REPUBLIC OF MACEDONIA

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RESUMEN: La división de poderes en la República de Macedonia es el tema abordado en este artículo. Comienza con una explicación relativa al contexto europeo que forma el entorno del surgimiento de la Constitución política de ese país, para después pasar a analizar aspectos muy puntuales de dicha norma fundamental. En esta parte puede percibirse una enunciación general acerca del problema del balance de poder entre las distintas ramas del gobierno, como uno de los objetivos fundamentales de la etapa constituyente de Macedonia. Se hace referencia a los distintos modelos que podían tomarse en cuenta para el diseño constitucional del nuevo Estado, lo que sirve como marco introductorio para los arreglos constitucionales que finalmente fueron consagrados en la norma básica. El resto del artículo incluye una descripción de la forma de gobierno consagrada en la Constitución de Macedonia y hace un esfuerzo analítico por clasificarlo dentro de los modelos existentes, concluyendo que se trata de un sistema híbrido o mixto de no fácil acomodo en las categorías clasificatorias tradicionales.

ABSTRACT: The subject matter of this article is the division of powers in the Republic of Macedonia. Beginning with an explanation as to the European context forming the environment from which the political constitution of this country has arisen, it then goes on to analyze very detailed aspects of said fundamental rule. A general discourse can be envisaged here on the problem of the balance of power between the different branches of government, as one of the fundamental objectives of the constitutional stage in Macedonia. Reference is made to the different models which could be taken into account for the constitutional design of a new State, which serves as an introductory frame for the constitutional arrangements finally adopted in the fundamental rules. The remainder of the article includes a description of the form of government consecrated in the Macedonian constitution, and makes an effort to classify this within existing models, arriving at the conclusion that it is an hybrid or mixed system which cannot be easily accommodated in the classification of traditional categories.

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## I. EUROPEAN CONTEXT

The breakdown of communist regimes and birth of new democracies in Central, Eastern and Southeastern Europe at the end of eighties and the beginning of the nineties of the last century, supported by changes of the global geo-political relations, is one of those events that will represent a special chapter in worldwide constitutional history. It was already named as part of “four Eighty-nines”,<sup>1</sup> as a new wave of spreading of constitutional culture based on democratic values. Longing for democratic rule and individual liberties of the people in this part of Europe suddenly got an open door towards the world of reality, which was, and still is there to be conquered, rather than to be taken as granted. It turned out that it was neither easy nor simple twofold objective.

One part of it, and an easier one, was to establish constitutional framework. It is indisputable that human rights, separation of powers and the rule of law have been introduced as fundamental values of the new constitutions of the countries in this region, as a result of acceptance of *ideology* of constitutionalism and reception of constitutional models of traditional *constitutional* democracies.<sup>2</sup> However, although they have the same theoretical basis, it is hard to say that there is a uniformity or identity of constitutional systems if one goes into details. Differences are obvious regarding the institutional system of distribution of compe-

1 Higuchi, Y., “An outside observer’s review of the constitutional law of the Caucasian States: A brief comment on the possibility and difficulty of transplanting constitutional culture”, Paper presented at UniDem Seminar: Constitutional developments in Transcaucasian States: The division of powers, Venice Commission, Council of Europe, CDL-INF (99) 11. According to him, the other three were: 1789-the French Declaration; 1689-the English Bill of Rights; 1889-the Imperial Constitution of Japan.

2 It is important to emphasize the acceptance of the *ideology* of constitutionalism as a new quality, since the idea of *higher law*, which is frequently referred to as the main pillar of the theoretical and formal explication of constitutionalism, had existed in this region, especially in the countries that had constitutional court as an instrument of constitutionality (Former Yugoslavia since 1963 and Poland since 1985). However, at that time it was a state of “constitutionality *without* constitutionalism”: a state where a constitutional court (of Austrian or German type) controlled the constitutionality of legislation and provided for the respect of the constitution as higher law, however which did not contain the principles of separation of powers, the rule of law, political pluralism etc., in a word, which lacked democratic substratum. Leaving the state of “constitution without democracy” these countries have opted the state of “constitutional democracy” rather than “radical or absolute democracy” i. e. “democracy without (rigid) constitution”. The establishment of constitutional court in each of these countries, except in Estonia where this function is carried by the Supreme Court, clearly shows the dominant approach in insuring limited government.

tencies between the legislature and the executive and their shared responsibilities and interference, in the forms of protection of human rights, in the judicial system, in the competencies and role of the Constitutional Court, etc.

The proper separation, as well as balances of powers between the legislature and the executive was one of the major objectives to accomplish. Expectedly, it was the European model of parliamentary government that prevailed in composing the systems of government in the constitutions of these countries, often mixed with some elements of presidential one,<sup>3</sup> mainly under the influence of the French so-called semi-presidential system. Many constitutionalists would classify most of the systems in the region into a mixed i. e. semi-presidential or semi-parliamentary system, with different level of mixture of certain elements.<sup>4</sup> Others would be somewhat critical to any normative classification, since it is possible, under certain political circumstances and political party system, to find that parliamentary system in fact works as presidential, while semi-presidential system works either in one or in another of the two opposites.<sup>5</sup> Yet, the substantial elements of the parliamentary system—namely, the accountability of the government to the parliament through vote of no-confidence, two-headed executive, and the right of the executive to dissolve the parliament— exist in all countries, except in Macedonia in respect of the latter, so that they constitutionally work or may work in final instance as parliamentary systems. For the time being, it seems that the ongoing constitutional reform in Moldova leads towards the only pure presidential system in Europe. Finally, whatever system is chosen, one could not deny their equal democratic value.

3 Thus, most of their constitutions provide for election of the president of the Republic by the citizens, which is considered to be an element of presidential system (Bulgaria, Croatia, Romania, Macedonia, Slovenia, Poland, Russia) which does not mean necessarily that the president has significant powers. For example in Macedonia the president of the Republic only formally entrusts the mandate to form a government to a candidate of the party respectively parties that gained majority in the Parliament, without any further influence on its composition and work, while in Croatia the president not only appoints the government, but the Government is accountable to him/her. Further on in some countries the president has a right to legislative suspensive veto, in others has not; somewhere he/she has the right to call for a referendum, in others has not; somewhere he/she presides over the meetings of the council of ministers, etc.

4 Skaric, S., "Ustavno pravo" (Constitutional law), *Vtora knjiga*, Skopje, Union Trade, 1995, p. 390.

5 Rousseau, D., "Relations between the executive and the legislature", *op. cit.*, note 1.

The other part of the objective was to cope with and to overcome transitional problems. The path to democracy was paved with huge economical, political and social difficulties that not only slowed the processes of democracy-building, but even jeopardized the existence of the elementary conditions for "living in a State" in some of the countries stroked by war and disorder. On the other hand, it should be born in mind that new democracies in this region, from time-point of view, are, still, at the same time "post-communist" regimes that have not yet forgotten the experience of old practices of exercising the power; an experience which is being carried as a mental burden. In those circumstances building and stabilizing the new democratic institutions, the new democratic form of government, the new political-party structure, as well as building political culture in practice, have been as difficult as important processes that substantially influenced the level of implementation of constitutional concepts of separation of powers. It was, then, a real challenge to match constitutional arrangements with political reality and to make them workable as an efficient system of responsible exercise of power.

## II. CONSTITUTIONAL ARRANGEMENTS

The Constitution of the Republic of Macedonia was adopted on November 17, 1991, by the Parliament. It was the final act that completed the process of gaining independence and sovereignty of the Macedonian State. At same time it was the first act that has introduced democracy with its fundamental values: human rights recognized in the international law; free expression of national identity; the rule of law; separation of powers into legislative, executive and judicial; political pluralism and free, direct and democratic elections; free market and entrepreneurship; humanism, social justice and solidarity; local self-government; humanization and protection of environment and nature; and respect for generally accepted norms of international law (art. 8 of the Constitution).<sup>6</sup>

<sup>6</sup> It is worthwhile to be mentioned that the first attempt to introduce parliamentary pluralist democracy had been undertaken by revision of the 1974 Constitution of the, then, Socialist Republic of Macedonia, still part of the Former Yugoslav Federation. In September 1990, the Macedonian Executive Council and the Assembly, still at that time of one-party composition, as a result of the pressure of events and the urgings of the newly established "informal" democratic parties, proposed and adopted a number of amendments to the Constitution. These constitutional changes introduced pluralism in the structure of ownership, created a full market economy, abolished the one-party

The principle of separation of powers is expressly stated in the Constitution, which is, unlike in the Western Europe, a common feature of the constitutions of new democracies in its eastern part. It obviously represents an expression of strong need to settle the accounts with the past principle of unity of power, and of clear commitment to democratic rule. Further, and most important, elaboration of this principle in the Constitution of the Republic of Macedonia is made in Chapter III titled: "Organization of the State Power" containing separate parts devoted to the Parliament, the President of the Republic, the Government and the Judiciary. This constitutional structure represents the concept of separation of powers based on democratic principle according to which the whole State power derives from the people as its sole source and is to be separated, or more precisely, divided between different branches in organizational and functional sense. Therefore, the interference and cooperation between the political branches of government is somehow inherent to the system, wiping out firm walls of separation, and enabling a complex system of mutual checks and balances.

The separation or division of powers between the parliament, government and president of the Republic in the Constitution of the Republic of Macedonia is structured, basically, within the framework of parliamentary system, declining in certain elements that are also characteristic for many other countries, but at same time that distinguish it from the others.

Namely, the government derives from the parliamentary majority and it is accountable only to the Parliament. The parliament carries out political control over the government through representative's questions, interpellations, survey committees and can force the government to resign by a vote of no confidence.

The executive is two-headed, but the president of the Republic is elected in general and direct elections, and is not politically accountable to

political monopoly, and directed individual citizens as the inalienable basis of the political system. The previous tricameral indirectly elected assembly was replaced by a unicameral parliament to be elected on the basis of absolute majority system. Instead of a collective presidential chief of the state, the amendments provided for a president elected by the parliament, and a government replaced the Executive Council of the Assembly. In the given circumstances at that time, these constitutional amendments could not be far-reaching, but no doubt they were grounds for the establishment of the new democratic system.

the parliament, nor there is an institute of ministerial countersignature of his/her acts. However, he/she may be impeached by the parliament before the Constitutional Court for violation of the Constitution and laws. An important constitutional provision is that the government, and not the president, is the bearer (the real head) of the executive power.

On the other hand, both the government and the president of the Republic may not dissolve the parliament, which is an obvious disadvantage for the proper balance of powers between the parliament and the executive that could involve the electoral body as a final arbiter in matters of substantial disputes on policy and of legitimacy. The lack of this essential element of parliamentary model is not to be regarded as a tendency towards presidential one, but rather as a relict of the previous “assembly” or council model and a tendency towards predominance of the parliament over the executive. The Constitution provides for dissolution of the Parliament only by a decision of the majority of its members, which is a peculiarity only more of Israeli Knesset. This is not to be compared with the possibility of self-dissolution of parliament as an alternative that is juxtaposed with the possibility of dissolution of the parliament by the executive (Croatia, Hungary). However this does not necessarily mean that the Macedonian government is weak-as a matter of fact, it is quite opposite.

Regarding the formation of the government the Constitution opts for *election* of the government by the parliament, and not for its *appointment* by the president of the Republic and approval by the parliament. The president of the Republic only formally entrusts the mandate for constituting the government to a candidate from a party, respectively parties that gained majority in the parliament, and that is the point where all prerogatives of the president of the Republic ends. The mandator is the one who proposes the composition of the government, as well as the program for its work, before the parliament. Besides, the parliament decides on changes in the composition of the government, on proposal by the president of the government.

The functional division of competencies between the parliament, government and president of the Republic also reflects this conception of predominant parliament, in spite of various institutional mechanisms of mutual checks and balances.

The Assembly of the Republic of Macedonia is a unicameral legislature<sup>7</sup> and it is defined as a representative body of the citizens and bearer of the legislative power. The legislative power is exclusively vested in the parliament, without a possibility of its delegation, except in a state of war or emergency when, by virtue of the Constitution, the government, and not the president of the Republic, adopts decrees with the force of law. The Assembly also has a decisive role in several fields such as the adoption of the budget, call for a referendum, ratification of international treaties, election of judges to the ordinary and to the Constitutional Court and of other officials etc. However, almost none of these competencies the parliament performs on its own, but in constitutionally established interference with the other branches, as well as with the qualified initiatives or even decisions by the citizens taken on referendum. Thus, the legislative initiative is vested equally in the members of the parliament, in the government and in 10 000 voters; the budget is proposed by the government; election of judges is taken on proposals by the Judicial Council or the president of the Republic when the Constitutional Court is concerned; the parliament appoints the governor of National Bank on proposal by the president etc.

On the other hand, the government determines the policy and adopts decrees for implementation of laws, govern the public administration, decides on establishment of diplomatic relations and recognition of states and perform other duties completely independently, except it is politically accountable before the parliament. It strongly influences the parliament by its right to initiate legislation, but also normatively strongly influences and hence diminishes the position of the president of the Republic since many powers of the president are shared with the government or depend on its proposals, which is emphasized in the fields of foreign policy and defense.

7 In the course of the debate on the project of the constitution, there have been proposals to introduce another house, representing the interests of the local communities or articulated and manifested public interests that could hardly be expressed through simple political representation. There have been also proposals to specifically organize the ethnic communities' interests and represented them in a second house. Such proposals have not been accepted, partly because of the predominant assessment that the basic interests and structures in the state had not been differentiated to the level to be separately represented, partly it was a result of the fear from the restoration of the self-management delegation representation, localism and ethno-political confrontation in the parliamentary process.

Finally, the president of the Republic hardly has real influence over the work of the government, since he/she does not presides over its meetings, either. He/she can only check the government by refusing to accept the proposals by the government or to finalize the decisions of the government in the fields of shared responsibility (for example, the government may establish diplomatic relations with a foreign state, but the president may refuse to appoint a diplomatic representative or to refuse to accept the credentials of foreign representative). The president also concludes international treaties, and gives opinion on treaties that are to be concluded by the government; he/she is Commander-in-Chief of the Armed Forces; grants pardon; and in state of war may appoint the government and takes over the parliament's appointing competencies.

With regard to the relations with the parliament, apart from above mentioned right to make certain proposals for elections of officials, the president of the Republic has a duty and right to address the parliament at least once a year, promulgates laws and above all has the right to suspensive legislative veto i. e. to return a law to the parliament for reconsideration. In such a case if the parliament adopts the law by an absolute majority, the president must sign the promulgation act. However, the president does not have this right in cases where a law is adopted by required two-thirds majority of votes.

According to aforementioned, the system of government in the Republic of Macedonia could not be classified either into clear parliamentary or presidential. Authors are somewhat confused with this interesting mixture of elements in their efforts to classify the system. There are those who claim that the system is semi-presidential or parliamentary-presidential,<sup>8</sup> others who claim that it is parliamentary system,<sup>9</sup> even those who claim that it is predominantly parliamentary, but with strong elements of assembly or council system.<sup>10</sup> However, I have already stated that systems in the new democracies in Europe, whatever the level of mixture of different

<sup>8</sup> Scaric S., *op. cit.*, note 4, p. 395.

<sup>9</sup> Nikolic. P., "Les fonctions et le developpement du parlement, General Report", *IV World Congress of IACL*, Tokyo, September, 1995. Spirovski, I., "Functions and development of the Macedonian Parliament", *IV World Congress of IACL*, Tokyo, September, 1995.

<sup>10</sup> Dimitrov, E., "Specificnostite na parlamentarizmot vo Republika Makedonija spored Ustavot od 1991 (Particularities of parliamentarism in the Republic of Macedonia according to the Constitution of 1991)", in *Pet godini od Ustavot na Republika Makedonija, Zdruzenie za Ustavno pravo na Makedonija*, Skopje, 1998.

elements is, in final instance may work, all the more they are designed to work as parliamentary systems, and so is the system in the Republic of Macedonia. The existence of various solutions that imply reception of elements of presidential system could not challenge the basic principle. The fact that the president is elected on general and direct elections has not significant impact on his/her position, which is, according to the competencies, similar to head of the state in classical parliamentary systems, like in Italy or Germany. Also, the right of the president to suspensive legislative veto is also a feature of many pure parliamentary regimes. Then, the impeachment procedure against the president is not a characteristic only of a presidential system, but also of parliamentary one (to mention again Italy and Germany). Having in mind that the president of the Republic is not the head of the executive, and the government is accountable to the parliament, one could ask what has left of presidential elements in the system. It appears that the direct election of the president has to do only with its broader legitimacy, rather than with the system of government.

On the other hand, the lack of a right of the executive to dissolve the parliament could imply both presidential and council elements, but the possibility of self-dissolution of the parliament, if happens, might be considered as another way of solving the political conflict within the parliamentary majority. It is really unbelievable that the MP-s would do so, but it is a fact that governments rarely dissolve “their” parliaments, as well.

After all, I don't think that the fruitful analysis of the system should rest on the level of theoretical classification based only on constitutional provisions. There is always a need to put some more light on functioning of the system in the real political life to see how it works, and whether it should be classified in one or another way.

### III. INSTITUTIONALIZATION

It was expected that the new Constitution, introducing parliamentary democracy, would provide for parliament's controlling power over the government. In theory, as well as in the Constitution it is the parliament that controls the government. From the above-mentioned provisions of the Constitution it follows nothing but powerful and self-responsible parliament vested with sufficient instruments to be in such power. However,

in fact, the government that has disciplined majority in the parliament controls the parliament and this is also true for Macedonia. On the other hand if the president of the Republic also belongs to a majority party or coalition of parties, then we could ask if the separation of powers between the legislature and the executive exist at all.

Republic of Macedonia used to be in three types of situation during past ten years that equally have proven that the political structuring and concentrating of the power substantially influence, even diminish the functioning of the system of separation of powers within its institutional framework: first, a situation of having “expert” non-political government; second, a situation of having president of the Republic that belongs to the opposition; and third, a situation of having president of the Republic that belongs to the ruling party or coalition.

a) The first situation took place in 1991, immediately after the first parliamentary elections had held towards the end of 1990 and lasted until the middle of 1992. In the meantime, in 1991, the parliament elected the president of the Republic according to the old, as amended, Constitution (it was not until the 1994 that the president was elected on general and direct elections, but he continued to exercise the function in full capacity as if he had been elected according to the new Constitution). The “experts Government” was elected after the parliament had failed to form a political government supported by the majority of its members, and it was a certain political compromise in order to focus the energy of all in deciding issues of vital national interest at the time. Needless to say, it was politically powerless. On the other hand, the personal authority of the president was indisputable both in the public and the parliament, and having in mind that he had substantially influenced the composition of the government, he gradually took over the substantial executive powers, especially in the fields of foreign policy and defense, and became the real head of the executive. There were two powerful organs —the parliament and the president— that could not dissolve each other. So, the system worked as presidential, in spite of constitutional arrangements. When the government came to an idea to come in between, it was voted no confidence. By the election of the new, political government, the parliamentary system came into being, in which the position of the president gradually languished.

b) The second situation existed between November 1998 and November 1999, after the third parliamentary elections had taken place and Republic of Macedonia entered into a period of, so to say, Macedonian version of French cohabitation. The relations between the parliament, the government, and the president of the Republic, who belonged to the opposition, raised series of constitutional issues pertaining to system's ability to solve institutional conflicts and to provide for efficacy. It was for the first time that such conflicts have occurred that brought to light the power of the branches to check each other, rather than to cooperate and to respect one another's constitutional prerogatives. The most striking concern in this respect is that the system might appear to be inoperative. Let's look into the matter more precisely, using three examples.

Constitutionally the president of the Republic is entitled to address the parliament at least once a year to inform the parliament about issues of president's competence. As a matter of constitutional interpretation and customary practice during the first two terms of the parliament, the president has never been deprived of this right and the parliament has always gathered at sitting whenever the president asked for. On the contrary, it has happened that the ongoing Speaker asked the President to clarify the purpose and substance of his wish to address the parliament in order to enable him to convene the sitting of the parliament with precise item on the agenda. It raised serious dispute about the proper conduct of the powers of the Speaker, but eventually, after a strong public pressure, it was settled in accordance with the Constitution. However, in the same course, the Speaker allowed the Prime Minister to have the floor after the President had completed his address, which jeopardize the principle of political no-accountability of the president before the parliament.

The next example shows a certain stroke back. Constitutionally, the president is entitled to suspensive legislative veto i. e. not to sign the act for promulgation of a law and to return a law to the parliament for reconsideration. It happened twice that the President refused to sign the promulgation act on a law, but the Speaker and few other leading members of the government coalition stated that the adoption of the law is in competence of the parliament and as a matter of political respect to the parliament, the President should not refuse to sign the promulgation act. On the other hand the President hesitate to sign or explicitly

to refuse to sign the promulgation act in rather long time in both occasions, which raised the question of constitutional deadlines for doing so. The latter question remains open since the Constitution provides for seven days after the adoption of a law by the parliament to be published, that led to two attitudes – first, that this seven days should be estimated as time limit for the signing of the promulgation act, since the law can be published only afterwards and, second, that this deadline doesn't refer to the duties of the president, but only to the parliament. It is, of course, unacceptable to have a president of the Republic who may prolong the signing of the promulgation act in indefinite period of time, which would turn the suspensive into an absolute legislative veto, and would change the structure of the legislative power.

Finally, the last example shows how the system got stuck within the executive. Namely, constitutionally the government decides on recognition of states, opens diplomatic offices abroad and establishes diplomatic relations with foreign states, but the president appoints diplomatic representatives on proposal by the government and receives credentials of foreign diplomats in the country. It happened that the government established diplomatic relations with the Republic of China-Taiwan, but the President refused neither to appoint Macedonian ambassador, nor to accept the credentials of Taiwanese representative in the Republic of Macedonia

These three examples of “cohabitational” problems imply that whenever there is a relatively stable government supported by the parliamentary majority, the position of the president is rather weak, and there is a strong pressure by the former to discard the president from the political scene. It is, anyway, a characteristic of a parliamentary system that tends to keep the head of the state within the prerogatives of a British Queen. Apparently, it gradually becomes a strategy of the political parties to keep the position of a Prime Minister for the leader of the party, and to leave the position of the head of the state to a less prominent party member. However, in such circumstances the president may, at least, check both the parliament and the government in order to balance the public interest with the predominantly party-interest. On the other hand, it is obvious that the above mentioned way of separation of competencies or making them complementary in fields of shared responsibilities in fact disables the real cooperation between the bodies and implies ineffi-

ciency of the system instead. Some of the problems mentioned might be addressed before the Constitutional Court, but most of them are pure political conflicts that must be solved where they occur. One can never establish an ideal system with magic instruments of solving political conflicts. An effort to do so is a noble commitment, but building political culture of responsible government is something that could not derive from a paper, and, yet, is inevitable for the proper exercise of powers in favor of the public interest. Therefore, the critique of the constitutional provisions should not be based only on theoretical and even mathematical constructions. Too much separation of powers can make the government equally inoperative as much as too much checks and balances.

c) The third situation was in existence since 1992 to 1998, and it has existed now since November 1999, when the new president of the Republic was elected. The main characteristic of it is the effective fusion of the legislative and executive powers, leading to a strong position of the government. In spite of the constitutional predominance of the parliament as a representative and sole legislative body, the government, using its right to legislative initiative and its disciplined majority, has been a master of the legislative process; instruments of political control have been used by the opposition just to make some pressure and to attract some attention from the public, without any expectation to be efficient, and they have been really without any substantial effect; parliamentary committees have been merely bus stops for the government's bills and bodies for party coordination, instead of sources of information and scrutiny; the parliament has been there only to approve the government's policies and has been turned into a controlled body. On the other hand, the relations between the government and the president have been quite cooperative, as well as between the parliament and the president. In those circumstances there have not existed real conditions and need for dissolution of the parliament by the executive and it wouldn't have happened even if it would have been constitutionally possible. There hasn't been institutional separation of powers at all, or nobody could recognize that there was a system of separation of powers.

#### IV. THE ROLE OF THE CONSTITUTIONAL COURT

The Constitutional Court of the Republic of Macedonia has been designed after the European centralized model and is defined as a body of the Republic that protects the constitutionality and legality. From the structure of the Constitution it is clear that it is neither part of the judiciary, nor “fourth branch” within the concept of separation of powers, but a special organ which checks all branches of power in order to keep them within their constitutional prerogatives, and to protect the constitutional rights of a man and a citizen.

Among its competences, those that affects the separation of powers are particularly the competence to decide on constitutionality of laws and other regulations; to decide on conflicts between the bearers of the legislative, executive and judicial power; to decide on accountability of the president of the Republic for breaches of the Constitution and laws (impeachment); and to determine the presence of conditions for termination of the mandate of the President of the Republic by virtue of the Constitution, as a condition for temporarily takeover of the function by the Speaker.

The abstract *a posteriori* control of constitutionality of laws and other regulations is predominant in the work of the Court, and formally, there has been no proposal for resolution of a conflict of competencies between the branches of state power or between the central organs and local self-government. Substantively, however, when the government or local self-government authorities, or other interested parties (there is an *actio popularis*, so that everyone is entitled to appear before the Court) initiate the procedure for evaluating constitutionality of laws and regulations, it is often a dispute over competencies i. e. overstepping the given authorization to regulate certain issues. Thus, when the Court decides upon constitutionality of a law or regulation, frequently challenged by the citizens in order to protect their constitutional rights, it actually decides upon infringement on powers between the legislative and executive branch, and between the central and local government.

Given the predominant pattern of “majoritarian” structuring of the state power and effective fusion of separated branches, where the government easily manages to pass laws that transfer the legislative power to it, the role of the Constitutional Court becomes of crucial importance

both in preserving the concept of separation of powers and in protecting the rights of the citizens. What is more, by this the Court serves as a powerful instrument in the hands of the opposition to play its role in balancing the powers and general interest.

In exercising its powers the Court adhered to a doctrine of judicial self-restraint, rather than to judicial activism, which appeared to be a principled attitude against its involvement into political questions. It was a factor of its acceptance by the public as an independent and trustful body. Anyway, it is beyond doubt that without the Constitutional Court, the functioning of the system would have been more dangerous.

## V. CONCLUDING REMARKS

From all above mentioned it is clear that the constitutional arrangements alone, no matter how precise they are, can not determine the relations between the parliament and the executive independently from the conditions and factors for structuring of the political power that substantially determine the way in which the system will work. The prevailing feature in the Macedonian parliamentary system is that instead of institutional and functional division of powers, there is a political separation of power between the majority and the opposition.

Although the conditions for maintaining the political stability of the parliamentary majority, especially a coalition one, and the opportunities of the opposition in balancing the public interest are rather issues of the political science, the constitutional law could, at least, accept the reality and contribute in creation of legal instruments capable to provide for proper institutional autonomy of the constitutional bodies, especially of parliament, and for proper rights of the opposition in order to facilitate the institutional effects of the system.

No doubt the concentration of power in the hands of the majority political-parties elites in the parliament and subsequently the concentration of power in the government is in opposite-ratio with the level of structural and functional institutionalization of the parliament. Constitutional provisions for the rights of the members of parliament and particularly the rights of committees, as well as proper rules of procedure are inevitable in providing opportunities for functioning of the parliament as a deliberative body that acts in public interest.

Another important field of legal arrangements is the electoral system that could provide for as much as possible true representation of political parties in the parliament, which could widen the basis of the political control over the government.<sup>11</sup>

These few legal points, together with the issue of dissolution of the parliament by the executive, are something that obviously lacks in the constitutional provisions. However, as this paper points out, the art of building democracy is not only a matter of legal expertise, but also a matter of political maturing. 

<sup>11</sup> In accordance with the Constitution the Assembly of the Republic of Macedonia is a unicameral Parliament consist of directly elected 120 members (the possibility to increase it up to 140 members has not been chosen, yet) with four years term of office. In the first two terms of the Macedonian Parliament (1991-1994; 1994-1998) the members of the Parliament were elected on the basis of a uninominal majority system in two rounds, while in the current third term (since November 1998) they were elected on the basis of a mixed model composed of uninominal majority system in two rounds (85 members) and proportional representation system according to D'Hont method (35 members), with 5% threshold. Both systems favor big parties, but the political structure in Macedonia, which has gradually become relatively stable, prevents the single party to win the majority seats in the Parliament, which imposes coalition in order to provide majority to form the government. Theoretically it diminishes the relative stability of the government, but in fact privileges of power in the case of Macedonia have been very strong factor of coalition unity. Further changes of the election system could bring more diverse structure of the Parliament through increasing the number of MP-s elected on a proportional basis and through lowering the threshold required, but could hardly change the general pattern based on political and socio-economic variables.