

INTERNATIONAL CONFERENCE
**„ CONSTITUTION IN THE GLOBAL CHANGE EPOCH AND THE
GOALS OF CONSTITUTIONAL REVIEW“**

Contribution

by

Mr. Nikola Ivanovski

**President of the Constitutional Court
of the Republic of Macedonia**

St. Petersburg, 15 May 2018

**Honorable President of the Constitutional Court of the Russian Federation,
Prof. Valery Zorkin,**

Ladies and gentlemen,

Dear colleagues,

Allow me, on behalf of the Constitutional Court of the Republic of Macedonia and on my personal behalf, to thank the organizer the Constitutional Court of the Russian Federation for the invitation to participate at this Conference.

Not only will the participation in this meeting enable us to exchange experiences and information on the exercise of our functions related to the topic of the Conference, but it is also an opportunity for closer acquaintance and creation of closer mutual contacts between the participants and the institutions represented at this Conference.

The topic of this Conference is quite popular but at the same time very complex, since the world we live in, in times of global changes has been confronted with serious challenges – growing terrorism, armed conflicts, economic and political crises, refugee crises – all of these represent serious threats to human rights and the rule of law as basic foundations of the democratic societies. In my short presentation I would like briefly to discuss one of these aspects and that is the issue of the protection of human rights and the national security.

National security is among the most significant state interests, both nationally and internationally. Citizens have the right to live and work without fear of threats by armed groups or terrorist threats and acts.

Unfortunately, in recent years and especially in recent months we have witnessed frequent terrorist attacks posing a global threat to democratic societies which rest on the principles of the rule of law and protection of human rights.

Especially in the last almost two decades the countries have stepped up their efforts to combat the global threats of terrorism and violent extremism. The measures taken for this purpose often threaten and restrict

human freedoms and rights, including the right to a fair trial and the rights to privacy and freedom of expression and association. These measures have a basis in international human rights documents, like the European Convention on Human Rights, which set forth limitations on certain human rights because of the need to protect national interests and public security, such as the rights guaranteed by Article 8 (right to privacy), Article 9 (freedom of religion), Article 10 (freedom of expression) and Article 11 (freedom of peaceful assembly), which rights may be restricted due to national security or public safety. However, although national security and public safety may justify restrictions on the exercise of certain human rights, such justifications must be subject to strict conditions, which means the measures restricting the right must be prescribed by law and be necessary in a democratic society, that is, proportionate to the purpose for which they are applied.

The limits of the exercise of human rights and freedoms arise from the indisputable truth that no matter how democratic, all-inclusive, extensive and comprehensive they are not absolute. The reason for their relativity is that they are not an end in itself, they are not always exercised personally and individualistically, but in interdependence with the rights and freedoms of others and the interests of the community as a whole.

The constitutional system of the Republic of Macedonia establishes the limits and restrictions on the exercise of human rights and freedoms in volume and measure, with an act and method which prove their reality and feasibility. The key constitutional provision in this regard, is Article 54 of the Constitution of the Republic of Macedonia, which says that the freedoms and rights of the individual and citizen may be restricted only in cases determined by the Constitution. The freedoms and rights of the individual and citizen may be restricted during a state of war or state of emergency under the provisions of the Constitution. The restriction of the freedoms and rights may not discriminate on grounds of sex, race, color of skin, language, religion, national or social origin, property or social status. The restriction of freedoms and rights cannot apply to the right to life, prohibition of torture, inhuman and degrading treatment and punishment, the legal determination of punishable offences and sentences, as well as the freedom of belief, conscience, thought, public expression of thought and religion.

Hence, it can be concluded that the Constitution of the Republic of Macedonia provides for two types of restrictions on the rights and freedoms of the individual and citizen: a) the restrictions stipulated by separate provisions governing individual rights and freedoms, and b) restrictions during states of war and emergency.

In regulating the question of when and under what terms and criteria the freedoms and rights of the individual and citizen may be restricted, the Constitution takes as a starting point one of the fundamental legal principles known and applicable in the case-law, in particular in the case-law of the European Court of Human Rights. Namely, the interpretation of these provisions leads to the conclusion that these rights and freedoms may be subject to restrictions only on the basis of a court decision (or law) and under the conditions and procedures prescribed by law. This means that the Constitution refers to the court's decision and the law as an institutional tool determining the need to restrict the freedoms and rights if there is necessity to protect, achieve or satisfy any interest of a "bigger, broader" relevance. This means that the restriction may "enter into force" only when and if there is a real and pressing need for the introduction of the restriction itself as a necessary and only measure whose application would allow protection of that "broader" interest. Obviously the Constitution takes as a starting point the necessity to ensure a balance between various competing interests. The restriction of the freedom or right is in relation to the need for implementation of a legitimate aim, the interest in achieving this aim and democracy. The protection of the security and defence of the state, the protection of the public interest, disclosure or prevention of crimes, prevention of the violent overthrow of the constitutional order, are all legitimate aims provided for in the Constitution and for the exercise of which the freedoms and rights of the individual and citizen may be restricted.

According to the above constitutional provisions, the restriction of the rights and freedoms is very restrictive, in terms that it cannot be discriminatory, but also because the Constitution defines certain freedoms and rights that may not be restricted. These are the rights considered to be inviolable and untouchable, such as the right to life, prohibition of torture, inhuman and degrading treatment and punishment, legal determination of

punishable offences and sentences, and freedom of belief, conscience, thought, public expression of thought and religion.

The constitutional jurisdiction of the Constitutional Court to ensure the exercise and protection of the rights and freedoms of the individual stems from the very constitutional guarantee of freedoms and rights, which is contained in Article 50 of the Constitution. Under this Article, every citizen may invoke the protection of freedoms and rights defined by the Constitution, before the courts and the Constitutional Court of the Republic of Macedonia, in a procedure based upon the principles of priority and urgency. The Constitutional Court accomplishes the protection of the rights and freedoms of the individual and citizen in two ways, directly and indirectly. The indirect protection of freedoms and rights is exercised through the protection of the principle of constitutionality and legality, that is, through the abstract control of the laws and bylaws. This means that all legal acts and provisions envisaging restrictions on freedoms and rights be subject to assessment of their constitutionality by the Constitutional Court, whose task is to assess whether in the legal regulation the legislator adhered to the frameworks of the Constitution and the strict provisions referring to the possibility of restricting certain freedoms and rights. Although, as I have said before, for the purposes of protecting national security and public safety the restriction of certain human rights and freedoms may be justified, such justification must be subject to certain strict conditions, which restrictions must be defined in a clear and precise manner and be necessary and proportionate to the goals desired to be achieved.

The very assessment of that balance, that is, the balance between national security and the enjoyment of human rights and freedoms is the task of the Constitutional Court, which thereby takes as a starting point the national law, that is, the national Constitution and its interpretation, but also international norms and standards and case-law of international courts, first of all the case-law of the European Court of Human rights, which provides guidelines and criteria for the assessment of the balance between public and private interests.

Finally I would like to summarise: current challenges such as terrorism and threats to national security of states impose the need for countries to use a wide range of legislative, administrative and political measures, and strategies and policies which should be firmly based and in accordance with the international law covering the area of human rights. This applies especially to measures that restrict the enjoyment of certain human rights and freedoms, which restrictions must have a basis in the Constitution, and be justified, proportionate and non-discriminatory, because that is the only way to achieve democracy and the rule of law, which are the fundamental principles on which the democratic society rests.

Thank you for your attention.