



„SS. CYRIL AND METHODIUS“ UNIVERSITY IN SKOPJE

## FACULTY OF LAW „JUSTINIANUS PRIMUS“

70 YEARS | TRADITION | EXCELLENCE

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### BOOK OF ABSTRACTS

# INTERNATIONAL CONFERENCE 2021

## 30 Years Since the Adoption of the Republic of Macedonia's Constitution



Skopje, North Macedonia, December 10, 2021  
Justinianus Primus Faculty of Law  
Ss. Cyril and Methodius University



## Book of Abstracts

### International Scientific Conference

### 30 Years Since the Adoption of Republic of Macedonia's Constitution

December 10, 2021

Iustinianus Primus Law Faculty

Ss. Cyril and Methodius University, Skopje, North Macedonia

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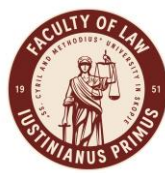
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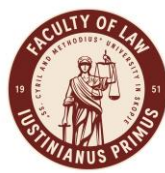
## Session 1:

# Constitutional challenges and dilemmas of modern constitutionalism – Macedonian and European Practices

**Moderator: András Jakab**, Full professor of Austrian Constitutional and Administrative Law, University of Salzburg (Austria)

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*30 Years Macedonian Constitutionalism – Politics of Conflict*, Iustinianus Primus Faculty of Law – Ss. Cyril and Methodius University
- **Prof. Vladan Petrov, PhD, Miroslav Djordjevic, PhD & Milos Stanic, PhD**  
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- **Assoc. Prof. Djordje Gardasevic, PhD & Dora Pavkovic, Mag. Iur.**  
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## **THE ADOPTION OF THE SLOVENE CONSTITUTION (1990-1991)**

The drafting of the new Slovene Constitution was led by the Commission for Constitutional Issues and the key person guiding the process was its chair, Dr France Bučar. The most important source for this presentation of the drafting process are the stenographic notes and materials of the Constitutional Commission from the archives of the National Assembly, published in several volumes under the title *Nastajanje slovenske ustave* [Creating the Slovene Constitution], edited by Dr Miro Cerar and Gorazd Perenič. The Constitutional Commission appointed an expert group to draw up a working draft, and it organized and directed the work of its two sub-commissions, which included members of the Constitutional Commission and experts on individual areas of law. In political terms, the Constitutional Commission featured deputies from all three chambers of the then Assembly of the Republic of Slovenia and the deputy groups of all parliamentary parties, which were represented on the Constitutional Commission individually, regardless of whether they were in the DEMOS governing coalition. The chair of the Constitutional Commission was always mindful of the fact that a two-thirds majority of all deputies in the three chambers of the then Assembly was needed to adopt a constitution, and that such a majority would be difficult to achieve and might be quickly jeopardized if even a just handful of deputies were opposed to one or more of the proposed solutions. The members of the Constitutional Commission were appointed based on proportional representation and their status did not depend on whether they were members of a coalition or opposition party or deputy group.



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## **RECONSTRUCTION OF THE PROCEDURE FOR ADOPTION OF THE CONSTITUTION OF THE REPUBLIC OF MACEDONIA OF 1991**

1. Legal basis for the adoption of the Constitution (natural or positive law)
2. Proposal for adoption of the Constitution (consequences of the proposal on the constitutional text)
3. The formation and the composition of the Expert Group (Decision for formation of the Expert Group and its composition)
4. The influence of the legislative and executive power on the Draft Constitution (suppression of the legislative power by the executive power)
5. The role of the Committee of Constitutional Affairs (conflict between the Expert Group and the Constitutional Committee)
6. Adoption of the Draft Constitution (blockade of the constitutional process and the final text of the Constitution)
7. Adoption and promulgation of the Constitution (difference in votes during the adoption and promulgation of the Constitution)
8. The influence of the constitutional theory over the Constitution of the Republic of Macedonia (the principle of separation of powers versus the principle of an assembly system)
9. Assessment of the democratic values of the Constitution (ethnos V.S demos)



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## **LIVING WITH THE CHANGING CONSTITUTION, LACKING CONSTITUTIONALISM AND DEMOCRACY**

Taking into account 36 amendments to the Macedonian Constitution from 1991, the authors examine who, why, when and how was changing the Constitution, including the Preamble, which is a rare constitutional phenomenon.

Indeed, our starting point is constitutional theory and practice of constitutional democracy worldwide. Therefore, we explore and evaluate Macedonian three decades long constitutional development through the lenses of key developments and trends in constitutionalism and constitutional law.

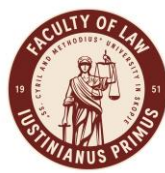
Living in the era of societal constitutionalism that goes beyond the nation state, reflecting and following the economic, political and social changes, we are raising some critical questions, theorizing about constitutions and constitutionalism.

Before us, there are new dilemmas and controversies connected to the influence of external actors as state builders who played an essential role in our constitutional changes.

We are witnesses of conflict between democracy and constitutionalism. Namely, representative democracy is in profound crisis, citizens and voters are losing power, and there is a need for new forms of government and participatory democracy. The important question is: can western constitutionalism survive, or has to transcend into pluralist and genuine constitutionalization, challenged by multiculturalism and how to solve the contestation of two constitutional principles: equality and difference: racial, ethnic, religious....

In our paper, we shall also try to answer the question: what is the result of imposed constitutional changes? Did they close the problems or have deepened the existing and opened new ones? Do the “guided sovereignty” and “therapeutic governance”, without rule of law, lead towards normal, European democracy or create “soulless states” with “original” constitutions, but without constitutionalism?





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### **30 YEARS MACEDONIAN CONSTITUTIONALISM - POLITICS OF CONFLICT**

Each constitution should establish an institutional and procedural order, that will enable political decisions to be made and conflicts to be solved in a more efficient manner. Macedonian society in the last 30 years has gone through episodes of serious conflicts (inter-ethnic, political, social) and some of these conflicts ended with changes in the constitution. This paper will examine the role of the Constitution of the Republic of Macedonia since its adoption till now in prevention and conflicts' resolution.

The paper will analyze the role of the constitution in four periods: 1991-2001, 2001-2008, 2008-2017 and 2017 till now. In the first period (beginning of the transition) the emphasis will be given to the role of the constitution in setting basis for liberal constitutionalism, which unfortunately was not established in practice. Second period of analysis will analyze the inter-ethnic conflict and its influence on the constitutional development that followed. In the third period from 2008 till 2017, the influence of populism on establishment authoritarian constitutionalism will be analyzed. The period after 2017 will be analyzed through the lens of the procedure of the last constitutional changes.

During the analysis of the four period of constitutional developments in Macedonia, following questions will be discussed: whether the constitution itself provoked some of the conflicts (as it was claimed by certain groups), whether constitution contained mechanisms that could have prevented some of the conflicts, whether formalism and primacy of the literal interpretation of the constitution or its disrespect provoked some of the conflicts that existed past 30 years etc.



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### **30 YEARS OF MACEDONIAN AND SERBIAN MODERN CONSTITUTIONALITY: COMPARATIVE OVERVIEW**

The contemporary Macedonian and Serbian states both originated from the same socialist constitutionality of the former Yugoslavia, whose postulates were in the large part abandoned for the sake of pursuit towards liberal democratic constitutionality and implementation of various European constitutional values. After 30 years, two Serbian constitutions and one in the meantime significantly revised Macedonian constitution, where do we nowadays meet and where did we part our ways? How strong are the influences of socialist constitutionalism? How far have we (or did we) come out from post-socialist constitutionalism? The creators of constitutional and normative solutions had to face special challenges in both countries when striving for the democratic achievements of Western European countries due to the burdens of the still low level of democratic culture. The authors of this paper analyze a number of aspects of Macedonian and Serbian constitutionality while trying to learn a number of lessons from the constitutional experience of these countries. The aim was to reach conclusions that could be used for further constitutional development, general progress and benefit of both countries.

**Keywords:** Constitution, Liberal Constitutional Democracy, Macedonia, Serbia, Constitutional Revision, Post-Socialist Constitutionality.



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## CONSTITUTIONALISM IN “TIMES OF STRESS” – THE CROATIAN CASE

The COVID-19 pandemic affected the entire world. While coping with the danger to public health, states are interfering with many human rights which are protected by both international agreements and national constitutions. At the same time, the pandemic caused profound legal changes in the operation of public bodies empowered to deal with the new threat. This confirms that the global situation once again triggered the classical discussion on how to understand the proper role of constitutionalism in “times of emergencies”.

Through an extensive analysis of possible solutions to the overall circumstances, it is thus our intention to show how the application of the Croatian Constitution meets the pandemic reality. We claim that the Constitution clearly offers a good solution to dealing with states of emergency. Although an overview of emergency constitutional norms and their interpretation shows the benefits and correctness of their use, the Croatian Parliament, instead, opted to combat the pandemic by amending the special anti-epidemic legislation. While this course of action was repeatedly backed by the Constitutional Court, we argue that this goes contrary to the solution provided by the Constitution for such scenarios. We also claim that it is neither correct nor efficient, as the balance between the executive and legislative power is disrupted and control and transparency are lost by giving the almost unfettered power directly to the government. Consequently, this goes with significant risks for constitutionally protected rights and freedoms. We believe that the case we intend to focus on may contribute to wider debates on the position of constitutional law in extraordinary times and may once again stress the importance of a proper application of the rule of law principles in democratic states.



## Session 2:

### The legal and political aspects of the Macedonian constitutionalism

**Moderator: Carlos Flores Juberias**, Full professor of Constitutional Law, University of Valencia (Spain)

- **Prof. Biljana Vankovska, PhD**  
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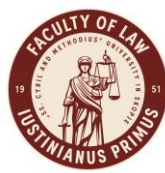


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## **IMPOSED CONSTITUTIONS (CONSTITUTIONS OCTROYÉES) AND INTERNATIONAL STATE-BUILDING: THE MACEDONIAN CASE IN FOCUS**

The paper deals with the rather forgotten phenomenon of imposed constitutions and/or constitutional changes, which de facto gains a reinvigorated significance in the context of international state-building efforts. An attempt is being made to theoretically differentiate between the notion of the imposed constitution and constitutional engineering, while the focus is on the particular (Macedonian) case study. The main hypothesis is that the recent constitutional history of the independent Macedonian state (1991-2021) involves both phenomena: what started as constitutional engineering has ended up into imposed constitutional changes and diminished/cancelled popular sovereignty.



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### **30 YEARS OF MACEDONIAN LEGAL AND POLITICAL STRUGGLE: A NEVER-ENDING STORY?**

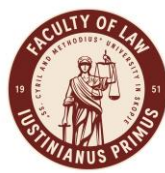
Macedonia has gone through a number of political, legal and economic crises in the past 30 years of its state independence. Political elites have failed to develop policies which are in the interest of the Macedonian people and other ethnic communities; instead, they have remained fully dependent on the instructions coming from different centers of power. Following the collapse of the Yugoslav federation, the former national dependence and affiliation with Belgrade as the capital and center of all developments was replaced with obedience and political dependence on Brussels and Washington. Unfortunately, the domestic political actors have not matured enough to take responsibility for the creation and implementation of national policies. As a result, international players have abused the weaknesses of the ethnically divided society and positioned themselves as indispensable for major policy processes.

The first decade following Macedonia's independence was characterized by a highly problematic process of privatization (which created a small, but politically powerful, network of oligarchs), as well as a range of scandals which characterized the country's political scene. However, different state officials tended to portray Macedonia as an "island of stability in a dangerous neighborhood," while stressing that "continued peace and development are closely linked to integrating Macedonia into Euro-Atlantic structures, especially the EU" (Radio Free Europe 1998).

Admittedly, such an evaluation, as clarified by Macedonia's first president Kiro Gligorov (2006), was largely because of the fact that his state was the only one to emerge from the former Yugoslav federation without some sort of a military conflict and/or intervention. In early 2001, the notion of an "island of stability" definitely lost its significance, with the Macedonian state having turned into a new testing ground for power-sharing experiments. What seems to have remained unanswered so far is what really happened in 2001 and, most importantly, whether Macedonia witnessed a restricted so-called civic conflict that was supposed to produce a much larger military intervention or an inter-ethnic conflict between the Macedonians and the Albanians (largely supported by Kosovo terrorists who had illegally crossed the border in order to destabilize Macedonia).

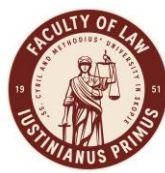
Also, it has still remained unclear if what happened corresponded to a civil conflict or, as some authors described it, a war without state of war being declared (Ragaru 2008; Vankovska 2007). Following the implementation of the Ohrid Framework Agreement, the Macedonian system has resembled a consociational power-sharing model, although it does not fully correspond to Lijphart's (1977) consociational democracy model.





The OFA did not manage to offer an adequate response to the 2001 conflict; instead, it has increased the tensions, with the majority believing that the inter-ethnic relations have actually become worse. Such an impression is largely due to the ethnicization aspect, meaning the new power-sharing and quota distribution system, making it unclear as to whether the OFA transformed the country into a bi-national state or a multi-ethnic society.

Furthermore, major issues in Macedonian politics have often been dealt with outside the national and international legal frameworks, as in the case of the name dispute. Instead of insisting on the recognized instruments and involvement of an international court, Macedonia agreed to controversial mediations and ultimatums which have nothing to do with international agreements. Domestically, the absence of the rule of the law and legal protection in the eyes of the citizens has been a serious problem. Many believe that the state is captured by the political and economic elites who exercise direct influence on judicial decisions and the work of prosecutors. In addition, the wiretapped conversations between different political figures, although recorded illegally.



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## **CONTRIBUTION TO THE DISCUSSION ON THE LEGAL NATURE OF THE GOVERNMENT SYSTEM IN THE REPUBLIC OF NORTH MACEDONIA**

In comparative constitutional law literature, the system of government of the Republic of North Macedonia is classified in various ways. Although the prevailing viewpoint is that the Republic of North Macedonia has a parliamentary system, several prominent authors have classified this state into the category of semi-presidential systems. Problems with classification are partially the result of the lack of a generally accepted definition of a semi-presidential system. The viewpoint that it is a semi-presidential system is founded on the thesis that North Macedonia has an effective dual executive, meaning that the Government and the President of the Republic have real powers. During the periods of cohabitation, North Macedonia showed the weaknesses of the system. However, in comparison with indisputable semi-presidential systems, we may conclude that the President of North Macedonia is among the powerless presidents amongst their colleagues. Namely, the role of the President of North Macedonia is very modest compared to other countries with semi-presidential systems. For this reason, it is more appropriate to say that the Constitution foresaw a parliamentary system of government. However, the functioning of the system of government to a great extent depends on the individuals who hold the position of chief of state. In that sense, it is still impossible to speak of a fully predictable practice in terms of how the system of government will function. In addition, in analyzing the system of government, elements of a consociational democracy which exist in this state should be taken into consideration. In that sense, it is not simple to answer the question as to the nature of the system of government in the Republic of North Macedonia.



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## **THE UNTOLD STORY OF THE MACEDONIAN CONSTITUTION: PARLIAMENTARY DEBATE AND ITS IMPACT ON THE FINAL TEXT**

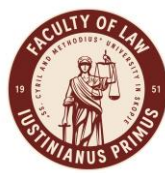
The Constitution of the Republic of Macedonia belongs to the “new generation of European constitutions” and was created in the spirit and tradition of the European constitutionalism. This standpoint is based on the following facts: the civil concept of the constitution, the guarantees for the basic freedoms and rights of the citizens, particularly the guarantees for implementation of minority rights, the incorporation of the principle of separation of powers in the organization of the government, the promotion of market economy etc.

Having this in mind, the paper will explore the impact of the parliamentary debate on the finalization of the text of the Constitution. The procedure began on May 6, 1991 when the President of the Republic proposed adoption of a new democratic constitution and was finalized on November 17, 1991 when the Parliament of the Republic enacted the new Constitution.

Over a period of 6 months in 1991, different Commissions of the Macedonian Parliament and the Parliament itself discussed many aspects of the new Constitution. Additionally, a wide public debate was organized by different stakeholders which presented diverse and often conflicting views on the future government and its specifics. As a result of that, a number of modifications have been made which to some extent have changed the initial concept of the Constitution.

This parliamentary debate represents a widely forgotten issue and the paper will shine a new light on key decisions passed by the Parliament and their sustainability. In several segments including organization of the judiciary and the concept and content of the preamble, the definition of sovereignty etc. the decisions made by the Parliament turned out to be incompatible with the needs of the society and eventually, were modified.

The paper will be based on archival works, transcripts of parliamentary debates and newspaper articles.



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## **MACEDONIAN PEACEBUILDING AS A SUCCESS MODEL**

The disintegration of Yugoslavia was characterized by armed conflicts that ranged from its northern to its southern state – from Slovenia at the beginning in 1991 to Macedonia at the end in 2001. Scholars studying the Yugoslav wars and peace, constitutional transition, transitional justice, as well as other features of successor states mainly focus their attention to Bosnia and Herzegovina (BiH), Croatia, Serbia and Kosovo, states that were, I argue, less progressive in peacebuilding and transition than Macedonia. Except for Slovenia, whose demographic composition was too homogeneous to continue the 10-day conflict in 1991, only Macedonia inherently succeeded in stopping the escalating war of 2001 between ethnic Macedonians and ethnic Albanians. The mainstream narrative is, however, that the 1995 Dayton Agreement is the most successful peace agreement in former Yugoslavia. Not only it failed in state-building because of ongoing problems in the functioning of democracy in BiH, it also failed in creating sustainable peace because disintegrative tensions are still part of mainstream politics in BiH. Thus, in this paper I argue it is the 2001 Ohrid Agreement that was the most successful not only in establishing peace itself, but also in creating a legal framework including constitutional amendments with consociational features that have proven to be sustainable in state-building, despite enormous obstacles Macedonia has faced after 2001. Unlike the dysfunctional federalist and power-sharing system of BiH, North Macedonia succeeded in maintaining sustainable peace, despite external obstacles coming from hostile diplomacy by Greece and later Bulgaria, and internal obstacles, including widespread political corruption and a huge wiretapping scandal. During the past two decades since the Ohrid Agreement, these external obstacles have posed far greater challenges for North Macedonia than the internal ethnic and religious tensions between Macedonians and Albanians.



### Session 3:

## The Constitutional-judicial practice, legal interpretation and the constitutionalism

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- **Prof. Biljana Kostadinov, PhD & Assoc. Prof. Ana Horvat Vukovic, PhD**  
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*Authentic Interpretation of Law: A Vestige of the Socialist Regime*  
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*The Legal Effects of the Decisions by the Constitutional Court of Republic of North Macedonia*, “Justinianus Primus” Faculty of Law – Ss. Cyril and Methodius University, Skopje
- **Ass. Prof. Denis Preshova, PhD**  
*Authentic Interpretation in North Macedonia: A remnant of the socialist past or a tool for uniform application of the law?* “Justinianus Primus” Faculty of Law – Ss. Cyril and Methodius University, Skopje
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## **NATURAL HUMAN RIGHTS AND THE CONSTITUTION**

On the wave of "new constitutionalism" and through the prism of the Macedonian authoritarian transitional experiences that arose precisely by using the forms of democracy, in a way that annuls its basic, human content, we have reached the point where it should be cleared of misconceptions about the idea of "majority rule" and "the majority will of the people". It has been shown that majoritarianism does not have the exclusive right to determine the meaning of democracy and that there must be substantial limits to power and additional guarantees for the legitimacy of its rule, as well as for the correctness of the laws by which it rules.

The essence of the "new constitutionalism" is to raise the universal character of human natural and inviolable freedoms and rights to the level of distinguishing between "constituent power" and "constituted power": the first as original, absolute and self-sufficient, because it is implanted in human dignity, freedom and rights; and the second as derived from the first, and therefore necessarily constituted by the constitution and laws, rational and functional as a public authority in the general interest of all citizens. Hence, the fundamental postulate of constitutionalism is guaranteeism, which implies the emphasis on two basic functions of the Constitution: as the highest legal act it should guarantee natural human freedoms and rights and the consistent realization of the principle of separation of powers. In the light of this basic postulate, the boundaries of public power set by the legal system do not only mean a precise definition and internal delimitation of the competencies of the three authorities (assembly-government-judiciary), but its primary purpose is to limit the "depth" of power in relation with the freedoms and rights of the individual, through legally fixed guarantees arising from moral and legal values.

This is the framework of the theoretical discourse focused on the question: whether the Macedonian Constitution and its embodiment in the legal system correspond to these postulates. The initial assumption, derived from a critical analysis of the legal system as a whole, is that it is far below them and that substantial constitutional reform should be approached without delay.





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## **CONSTITUTIONAL COURT OF THE REPUBLIC OF CROATIA AND THE „ABORTION DECISION“ – CONTEXT, IMPLICATIONS AND CHALLENGES OF IMPLEMENTATION**

The authors discuss the context, implications, and major challenges of implementing the Croatian Constitutional Court's historic 2017 „abortion decision“. Twenty-six years after it was originally challenged, the socialist era abortion-enabling 1974 law withstood the test of constitutionality against a new constitutional and value order introduced by the 1990 Croatian constitution. This preservation and constitutionalization of the periodic abortion model drew on a systemic and teleological interpretation of constitutional guarantees of the rule of law (regarding contestation of the law's formal constitutionality, seeing as it predated the new Constitution), equality, freedom and personality, protection of dignity, private and family life, and freedom of thought. It thus authoritatively protected a woman's right to terminate her pregnancy on demand, while simultaneously relegating to the Parliament the option of exactly pinpointing the start of (independently legally protected) „life“ and underlining the necessity of modernizing this almost 50-years-old piece of legislation. However, such a parliamentary mandate to complete the constitutional architecture of the right to freely decide on childbirth comes with some new issues and potential problems. This paper thus intends to highlight the upcoming major challenges in implementing the Court's decision, the foremost among them: the issue of conscientious objection. The authors discuss the remit of this phenomenon, identifying its „hard limits“ and expounding on limitations and conditions that will have to accompany its future regulation. The potential abuse of power inherent in the conscientious objection and its potential to impose a health practitioner's private opinion on other citizens and thus disable access to a legal health service will, the authors conclude, be a true litmus-paper of future abortion legislation's constitutionality.



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## **AUTHENTIC INTERPRETATION OF LAW: A VESTIGE OF THE SOCIALIST REGIME**

Author will argue that authentic interpretation of law, a legal act inherited from the socialist times, contravenes the very nature of liberal-democratic model of government. It allows the legislature to subsequently interpret the law with ex tunc legal effects. While the interpretation of laws by the legislator is undisputed, binding force thereof undermines the core principle of separation of powers, denies a rule of law on the matters of legal certainty and it may also infringe human rights. Contrary to beliefs of proponents of authentic interpretation, authenticity does not require authority per se. From epistemological point of view, one could also argue that the authenticity of interpretation is a mere illusion. Authentic interpretation of law will face a genuine critique and subsequent oblivion no sooner than the judiciary in post-socialist systems gets effectively emancipated into an autonomous and independent branch which is fully aware of its constitutional role and mission. Fortunately, the Constitutional Court of Republic of Slovenia has finally been able yet to conclude that the authentic interpretation of law as a legal instrument is unconstitutional in its core and purpose.



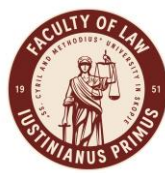
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## **THE LEGAL EFFECTS OF THE DECISIONS BY THE CONSTITUTIONAL COURT OF REPUBLIC OF NORTH MACEDONIA**

The paper „The Legal Effects of the Decisions by the Constitutional Court of Republic of North Macedonia”, analyzes the issues of the legal effects and enforcement of decisions by the Constitutional Court of the Republic of North Macedonia. The paper emphasized the importance of these two issues, because they directly determine the efficiency of the system of control of the constitutionality of legal acts, as well as provide a monolithic legal system. The author emphasizes that the proof of the importance of this issue is the fact that in comparative constitutional law, this matter is *materia constitutionis* and is regulated in detail by (constitutional and organic) laws for constitutional courts, which is not the macedonian case. This paper provides a detailed overview of the constitutional and procedural solutions relating to the legal effect of the decisions of the Constitutional Court, as well as the main factors that determine their enforcement.



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## **AUTHENTIC INTERPRETATION IN NORTH MACEDONIA: A REMNANT OF THE SOCIALIST PAST OR A TOOL FOR UNIFORM APPLICATION OF THE LAW?**

Authentic interpretation is a form of interpretation which is provided by the institution that has enacted the legal act, that is the parliaments in the case of statutes. The main purpose of this form of interpretation is to secure statutes are not interpreted contrary to the original intent and meaning provided by its enactor, the parliament. In this sense, the parliaments directly intervene in the manner in which statutes are applied and interpreted in practice. Frequently a common feature of former socialist states, it has been subject of serious objections and criticism especially for one its main characteristics, retroactivity. Namely this is perceived to be at serious odds with the separation of powers and thus often treated as a remnant of the socialist doctrine of unity of power. Even though the number of instances in which authentic interpretation has been delivered by the Assembly of North Macedonia is the highest among all former Yugoslav republics, the issues related to this type of interpretation have not been raised so far. This paper aims to break this silence and analyses the role and place of authentic interpretation in the legal and political system of North Macedonia against the background of the general discourse on its appropriateness in a system based on the doctrine of separation of powers. It deals with both theoretical and practical aspects of the (mis)use of authentic interpretation in North Macedonia and argues that it should be abandoned since its benefits are definitely outweighed by the costs and causes of concern of its further existence.



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## **LAWFULNESS AND CONSTITUTIONAL PROTECTION - CONSTITUTIONAL AND COMPARATIVE REVIEW**

The protection of constitutionality and legality, in the constitutional theory and the constitutional comparative law, in particular presents the fundamental principles whereon is set up the political and legal system of one state.

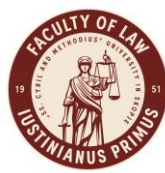
Constitutionality is the condition of acting in accordance with an applicable constitution, the status of a law, a procedure, or an act's accordance with the laws or guidelines set forth in applicable constitution, and respects the relative hierarchy of the legal acts of one country in the appearance of normative pyramid. This means that the constitutional –legal act lies on supremacy towards the laws and other legal acts in the frame of the legal national order. On different countries exist different mechanisms and forms of controlling the constitutionality and legality.

On the most countries of Europe, exist constitutional courts like special institutions for constitutional justice. This model concentrates all the power for the assessment of the constitutionality on one body. The American model have widespread system of protection of constitutionality gives the authority to all courts to assess the constitutionality of the laws. In Europe, there are number of countries that have accepted the American model, such as Denmark, Estonia, Ireland, Norway and Sweden.

The Constitution of the Socialist Republic of Macedonia established the Constitutional judiciary in Macedonia. The Constitutional Court of Macedonia has been established and became operable in 1964. The Constitution establishes the Constitutional Court of the Republic of Macedonia as an organ of the Republic which protects constitutionality and legality as fundamental freedoms and rights of the individual and citizen.

The Constitutional Court does not make law and does not determine what law is, but states what unlawful is.

**Key words:** constitutionality, legality, Constitutional Court.



## Session 4:

# The legal, economic and political aspects of the Macedonian constitutional identity

**Moderator: Darko Simovic**, Full professor of Constitutional Law and Human Rights, University of Criminal Investigation and Police Studies (Serbia)

- **Prof. Marika Ristovska, PhD**

*The Separation of Powers in the Constitutional Order of the Republic of North Macedonia*, “Justinianus Primus” Faculty of Law – Ss. Cyril and Methodius University, Skopje

- **Prof. Jovan Zafirovski, PhD**

*Macedonian Monetary Sovereignty in Times of Blockchain Revolution*, “Justinianus Primus” Faculty of Law – Ss. Cyril and Methodius University, Skopje

- **Assoc. Prof. Blerton Sinani, PhD**

*The Constitution of North Macedonia as the Supreme Normative Legal-Political Act: Current Situation and Prospects*, Faculty of Law, South East European University, Tetovo

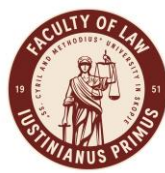
- **Ass. Prof. Marko Krtolica, PhD**

*The Impact of the Electoral System on the Development and Functioning of the Macedonian Political System*, “Justinianus Primus” Faculty of Law – Ss. Cyril and Methodius University, Skopje

- **Ilija Jovanov, LLM**

*Evolutionary Development of Sovereignty in the Constitutional and Legal System of Macedonia With Special Review of the Influence of the Ethnic Sovereignty on the Unitary Character of the Macedonian State*, Researcher





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## **THE SEPARATION OF POWERS IN THE CONSTITUTIONAL ORDER OF THE REPUBLIC OF NORTH MACEDONIA**

The paper will analyze the separation of powers as a basic principle of the organization of the government, which is one of the necessary preconditions for building a democratic political system in the Republic of North Macedonia. Special attention will be given to the constitutional concept of separation of powers as a normative principle. Regulation of functions of the holders of legislative, executive and judicial power, as well as the definition of the legal mechanisms for mutual check and balances will also be analyzed. The aim of this principle is to prevent arbitrariness and abuse of power in order to protect the rights and freedoms of the man and the citizen, i.e. fundamental rights and freedoms. Based on these premises, this paper will analyze the implementation of the separation of powers in the 30-year period of our country and will identify certain shortcomings and inconsistencies in the normative sphere and in practice. Finally, this paper will seek optimal solutions to overcome the weaknesses of the system.



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## **MACEDONIAN MONETARY SOVEREIGNTY IN TIMES OF BLOCKCHAIN REVOLUTION**

The adoption of the Constitution of the Republic of Macedonia established the Macedonian central bank as one of the pillars of the Macedonian monetary sovereignty. In the first years of country's independence the central bank was facing a unique challenge in establishing the Macedonian national currency the denar which was done in a period of transition of the Macedonian economy from socialistic to market economy amid wars and political instabilities in the region. Thirty years after the monetary independence, the monetary sovereignty is challenged not only by the process of creation and use of private money i.e. cryptocurrencies but also from the process of creation a digital central bank money called central bank digital currencies. After a brief review of the historical moment in establishment of the Macedonian monetary sovereignty the text will discuss different questions related to the effects of digitalization of money on the Macedonian monetary system and the challenges for the Macedonian central bank in this respect.



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## **THE CONSTITUTION OF NORTH MACEDONIA AS THE SUPREME NORMATIVE LEGAL-POLITICAL ACT: CURRENT SITUATION AND PROSPECTS**

The Constitution is a fundamental and not an ordinary law. As a fundamental law, the Constitution is a supreme legal act with a stronger legal force than all other legal acts in the framework of national legal order. In fact the Constitution is a legal fundament and framework for building, developing and functioning of the state and its legal system. Beside this, the Constitution is the main legal regulator of essential and the most important societal-political relations within the national legal system, such as the organization and functioning of state power and the guarantee of the basic freedoms and rights of the individual and citizen. Rather, the focus will be on certain several conceptual normative-legal aspects (*de lege lata*) of the Constitution of North Macedonia, i.e. description and analysis of the current situation as well as challenges and prospects and thereof the possible normative reform *de lege ferenda* of certain constitutional normative solution of the Constitution of North Macedonia.



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## **THE IMPACT OF THE ELECTORAL SYSTEM ON THE DEVELOPMENT AND FUNCTIONING OF THE MACEDONIAN POLITICAL SYSTEM**

Giovanni Sartori in his famous book *Comparative Constitutional Engineering*, pointed out that the electoral systems are not only the most manipulative instrument of politics but also they influence the shaping of the party system and the determination of representativeness. In that regard, the theory is always emphasizing the influence of the electoral system over the stability of the political system, the consolidation or fragmentation of the party system, the relationships between the elected and the voters, the voters turnout, the corruption present in the electoral process, the conflict management process in one divided society etc. In that perspective, the Macedonian story is a great possibility to analyze the influence of the electoral system over the political system taking into consideration that Macedonian political elites throughout the years often decided to change the rules of the electoral system when electing Macedonian MP's. The first and the second parliamentary elections were held by using the Majoritarian electoral system. For the third parliamentary election, Macedonian political elites decided to introduce the parallel electoral system. In 2002, another change happened and the proportional electoral system with a closed list was introduced. Since then, all parliamentary elections have been organized by using this electoral system. In the last couple of years in the wider public, the need for electoral reforms and introduction of new electoral system were often raised. Having all this into consideration, the paper will aim to analyze the influence of different electoral systems over the development and functioning of the Macedonian political system, as well as, to analyze what kind of impact newly proposed electoral solutions could produce.

**Key words:** politics, political system, elections, electoral system, democracy, transition.



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**EVOLUTIONARY DEVELOPMENT OF SOVEREIGNTY IN THE CONSTITUTIONAL  
AND LEGAL SYSTEM OF MACEDONIA WITH SPECIAL REVIEW OF THE  
INFLUENCE OF THE ETHNIC SOVEREIGNTY ON THE UNITARY CHARACTER  
OF THE MACEDONIAN STATE**

Sovereignty through the documents for the constitutional and legal development of the Macedonian state is a product mainly of two factors: one of which refers to the stage process in the formation of the Macedonian state, and the second on the existence of political authorities with different views and opinions on the character of the state government itself. Internally, sovereignty signifies the governing relationship between the political holder of power and the heterogeneously structured population. In this sense, it should be noted that the sovereignty of public authority should only be understood as the attitude of the existing state power towards other authorities that exist in the state, and not towards something that is not power. In this paper, a historical-comparative analysis of sovereignty in the constitutional and legal system of Macedonia is performed, starting with the Constitution for the future state structure of Macedonia from 1880, until the Constitution of the Republic of Macedonia since 1991 (including its constitutional amendments). During the analysis of the constitutional-legal documents, we will see an evident conflict between the ethnic and class sovereignty in the period of the socialist constitution from 1953 to 1990 and the conflict between the ethnic and civil sovereignty in the period from the independence of the Republic of Macedonia until today. Towards the end of this paper, we will try to answer the dilemma of whether there is a danger that the strength of ethnic sovereignty will jeopardize the unitary character of the Macedonian state, as well as whether the concept of civic sovereignty will contribute to overcoming the ethnic division in the Macedonian society and will introduce a desire for lasting unity based on the idea of collective interest.

**Keywords:** Constitution, sovereignty, Macedonia, state-ethnos, state-demos.



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