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Legal Norms as Objects of Constitutional Jurisdiction

1. Introduction

The Constitutional Court jurisdiction necessarily presumes a hierarchical legal system, which protects the Constitution from the acts against it. The Constitution is the highest law in the Republic of Albania, and its provisions are directly applicable, except in cases when it has been provided otherwise. This rule, explicitly provided by art. 4 of the Constitution and implied by many other of its provisions, sanctions the principle of primacy of the Constitution and confirms its top position above all other legal acts. The principle of the primacy of the Constitution and the principle of the rule of law require the compatibility of laws with the Constitution on the one hand, and the compatibility of sub-statutory acts with the laws and the Constitution on the other. It is exactly the primacy of the Constitution in the legal system and the constitutional justice as well, which are guaranteed by the organ vested with the function to exercise the constitutional control. According to art. 131 and 132 of the Constitution of the Republic of Albania, the control of constitutionality of legal norms is performed by the Constitutional Court, which has been considered as the highest authority that guarantees the respect for the Constitution and construes it authentically.

The Constitutional Court jurisdiction has known several fluctuations, both in the directions of broadening and narrowing the scope of its activity. Constitutional control, which is limited only within the area of Constitutional Court jurisdiction, requires special adjudicative procedures, which are conditioned by different elements such as: the right of specific subjects to initiate a constitutional proceeding ; the time limit and the way how the complaint is submitted, the exhaustion of all other legal remedies, the nature and type of the case under examination, the content of the challenged legal norms, the content and legal effects of the given decisions, the pronouncement of the decision and the moment of its entering into force etc. Cases that are subject to ex post control give a different character to the constitutional control than cases that are subject to ex ante control. Also, the exercise of abstract control of the legal norm presents its peculiarities in comparison with the way in which the Constitutional Court exercises the concrete control of legal norms.

The Constitutional Court jurisdiction is primarily focused on the manifestation of the will of the State power through the issuance of legal norms.[1] This positive will of the state organs, expressed by the respective legal norms, is subject to the constitutional control. The Constitutional Court jurisdiction encompasses such areas as the control of constitutionality of laws, international agreements before their ratification, normative acts of central and local organs, the settlement of conflicts between different powers, issues of constitutionality of political parties and their activities, the verification of elections, referendums, the procedures of eligibility and incompatibilities in exercising the function of the President of the Republic and of deputies and, especially, the protection of fundamental rights and freedoms.

[1] In addition to actions carried out by organs of the State power, which are materialized in the concrete legal norms subject to constitutional control, the issues concerning the control of constitutionality of legislative omission (which has not been treated in this paper) represent another highly relevant function in the area of Constitutional Court jurisdiction.

2. Authentic interpretation of the Constitution – object or method of Constitutional Court jurisdiction?

The main powers of the constitutional court are listed in art. 131 of the Constitution. The authentic interpretation of the Constitution, as an essential function of this Court, has been provided for by art. 124. This constitutional norm defines the role of the Constitutional Court, which guarantees the respect for the Constitution and interprets it authentically. In contrast to the rules sanctioned by the law "On the Main Constitutional Provisions,"[2] which included the authentic interpretation of the Constitution among the most important functions of the Court jurisdiction, actually, this constitutional function does not form part of the constitutional issues that constitute its basic competence. More concretely, the authentic interpretation of the Constitution, considered as an object and as a method, on the basis of which the Constitutional Court exercises its competencies laid down by art. 131 of the Constitution, has given rise to a long debate on the constitutional jurisdiction. The authentic interpretation of the Constitution, only in the cases necessarily related to one of the competencies of the Constitutional Court, provided for by the aforementioned provision, has been one of the aspects introduced by the constitutional scholarship. The other viewpoint gave a broader meaning to the Constitutional Court jurisdiction. According to this viewpoint, the authentic interpretation of the Constitution should be performed although it is not expressly mentioned among the issues included in the competencies provided for by art. 131 of the Constitution. These viewpoints have influenced and split up the opinions of the constitutional judges themselves, especially as regards the method to be employed for the authentic interpretation of the Constitution.

The Constitutional Court normally holds that the authentic interpretation of the Constitution may be performed even by including it as the sole and main object of an individual constitutional complaint. [3]

Initially, the examination of cases having the "authentic interpretation of the Constitution" as their object, in the context of art. 124, has been accepted as part of the Constitutional Court jurisdiction without imposing on the appellants the obligation to identify the existence of a concrete constitutional dispute. Such complaints put forward before the Court questions of constitutional character. From its decisions No. 37, 38 and 39, dated 23.06.2000, it has resulted that the Constitutional Court, on the basis of three separate complaints presented by a group of deputies of the Assembly of the Republic of Albania, which had "the interpretation of the Constitution" as the main object, has decided to interpret the constitution, confirming its jurisdiction over cases of such nature. The same approach has been followed in the case presented by the People's Advocate,

[2] Law no. 7491 of 29 April 1991 "On the Main Constitutional Provisions" served as the Constitution of the Republic of Albania until 28 November1998, when the people, by a constitutional referendum, adopted the new Constitution, which is currently in force.

[3] The interpretation of the Constitution by a constitutional court is provided for in Azerbaijan, Bulgaria, Burundi, Cambodia, Gabon, Germany, Hungary, Kazakhstan, Kyrgyzstan, Madagascar, Moldavia, Namibia, Nigeria, New Guinea, Russia, Slovakia, Sri Lanka, Sudan, Taiwan, Uganda, Uzbekistan, Zaire, as well in some federative units of Russia such as Adigea, Bashkiria, Buryatia, Dagestan, lrkutskaya Oblast, Komi Republic, Yakutia.

which aimed at an authentic interpretation of art. 134 para. 2 of the Constitution of the Republic of Albania.[4]

Certainly, the power of the Constitutional Court to decide on abstract questions of the construction of the constitution not related to a specific dispute changed the character of the constitutional jurisdiction. The submission of complaints, which had "the authentic interpretation of the Constitution" as their object, started to be admitted by the Constitutional Court only in cases where the constitution has been construed in different and contradictory ways which could have led to disputes. For the first time, the Constitutional Court took this approach in its decision No. 18 of 14. May 2003. Since the Assembly of Albania had made different interpretations with regard to the establishment of parliamentary investigative commissions (art. 77 of the Constitution), on the basis of a specific dispute, the Constitutional Court decided to consider the authentic interpretation of the Constitution as a case falling under its jurisdiction. In this decision, inter alia, the Court underlined:

Under these circumstances, when the appellant clearly demonstrates that the Assembly of Albania has taken different approaches interpreting art. 77 para. 2 of the Constitution, in order to avoid the contradictory interpretations in the parliamentarian activity in the future, the Constitutional Court admits that the submission of this complaint makes the court exercise its constitutional jurisdiction by interpreting the interpretation in an authentic way.[5]

Through its authentic interpretation, the Constitutional Court has finally resolved the constitutional misinterpretations, reaching the conclusion that the right to establish a parliamentary commission of enquiry is "another kind of constitutional authority, which is known as the power of the parliamentary minority. In the interpretation of the Constitution, the principle of its integrity has been employed, according to which the meaning of constitutional provisions, considered as being interrelated, is clarified through their interaction. If the authentic interpretation of the Constitution were considered as an issue falling under the Constitutional Court jurisdiction only when related to one of the issues listed in art. 131, then art. 124 would establish a specific competency of the Constitutional Court. From this viewpoint, the authentic interpretation of the Constitution set forth by art. 124, constitutes an independent source of competency of the Constitutional Court, which should not be absorbed by art. 131. This is the way every constitutional provision should be interpreted, which is not related to the issues provided within its material competence according to art. 131 of the Constitution. The in abstracto interpretation of the Constitution, resulting from contradictory interpretations of constitutional provisions, is already a consolidated case law of the Constitutional Court.

3. Control of constitutionality of legal norms with general effects

At first sight, the terminology employed by the Constitution of the Republic of Albania, in order to identify the legal acts that might be object of review by the Constitutional

[4] See the decisions of the Constitutional Court of the Republic of Albania No. 37of 23 June 2000; No.38 of 23. June 2000; No.39 of 23 June 2000; No.49of 31. July2000. Précis of Constitutional Court decisions, 2000.

[5] See the decision of the Constitutional Court of the Republic of Albania No.18 of 14 May 2003. Précis of Constitutional Court decisions, 2003.

Court, does not seem to create any space for giving a broader meaning to the constitutional jurisdiction. According to art. 131 of the Constitution, the Court decides on the compatibility with the Constitution of laws, international agreements before their ratification, and normative acts of local and central organs. Apparently, this constitutional wording does not employ the terminology used by the previous law "On the Main Constitutional Provisions" (and by the jurisdiction of some constitutional courts as well),[6] which have recognized as issues of constitutional jurisdiction even the review of compatibility with the Constitution of "acts with the force of law," or compatibility with the Constitution and laws of "acts and sub-statutory provisions." This terminology employed by the law "On the Main Constitutional Provisions," makes all acts issued by the Assembly subject to the review by the Constitutional Court, irrespectively of their classification (for example, decision,[7] resolution, regulation), as well as decrees of the President of the Republic, which in special cases had normative character"[8] etc.

The wording used by the current Constitution has been referred to the concept of "law" according to its formal meaning, excluding the other legal acts that do not have this classification. In spite of the fact that, according to art. 131, lit. "a", the Constitutional Court decides on the compatibility of laws with the Constitution or an international agreement, the case law has treated even "the normative acts with the force of law as objects of Constitutional Court jurisdiction." In accordance with art. 100 of the Constitution, the normative act with the force of law is not a law from the formal point of view, but from the material one. While sanctioning the legislative power in the hands of the Assembly of the Republic of Albania, the Constitution has allowed even some other constitutional organs, by way of exception, to issue acts having the force of law. The Constitution has concentrated the exercise of this right in the hands of the Council of Ministers, under the parliamentary supervision of the Assembly, conditioning it with the meeting of some needs, urgencies, with the intention of taking temporary measures. It is the decision No. 24 of 10 November 2006 of the Constitutional Court, which, by ascertaining "the legal ineffectiveness of normative act No. 4 of 13 December 2005 of the Council of Ministers "On a Supplement to the Law No. 8405 of 17 September 1998 "On Urbanization," has declared the review of constitutionality of "normative acts with the force of law as falling under its jurisdiction."

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[6] The Constitution of Bulgaria provides that the control of constitutionality "… of laws and *other acts* of the People's Assembly, as well as the constitutionality of other Presidential acts" falls under the Constitutional Court jurisdiction (art. 148, para. 2 of the Constitution). According to art. 32/A of the former Constitution of Hungary, "the Constitutional Court observes the constitutionality of law and *other acts,* and it performs other duties assigned to it by law (art.); art. 136 of the Constitution of Italy has provided for that "in cases when the Constitutional Court considers that a certain legal norm, *or an act with the force of law,* is unconstitutional, the norm is repealed one day after the publication of court decision"; the Constitution of Slovenia has recognized to the Constitutional Court the authority to be expressed with regard to the compatibility of laws and *other acts* with the international agreements…"; art. 161 of the Constitution of Spain has provided for that the Constitutional Court "… has the authority to adjudicate cases concerning the complaints for incompatibility with the Constitution of laws and *normative provisions with the force of law";* whereas, the Constitutional Court of Turkey "reviews the constitutionality of the form and essence of the laws, *decrees having the force of law and the Rules of Procedure of the Grand National Assembly"* (art. 148 of the Constitution).

[7] See the decisions of the Constitutional Court of the Republic of Albania No.1 and No.2 of 8 February 1993, and decision No.13 of 22 November 1993. Précis of Constitutional Court decisions, 1992-1997.

[8] According to art. 28, para. 19 of the law "On the Main Constitutional Provisions," the President of the Republic

> issues decisions and decrees of individual character. In urgent cases, he issues decrees of normative character, which are presented to the Assembly of Albania for taking the consent in the coming session.

An *international agreement* is another legal norm, which is subject to the Constitutional Court jurisdiction. In contrast to the meaning given by art. 131, lit. "b" of the Constitution to the exercise by the Constitutional Court of ex ante control of international agreements before their ratification, art. 180[10] has recognized even the ratified international agreements as issue of constitutional jurisdiction. On the one hand, this constitutional provision considers all international agreements ratified before the entering into force of this Constitution to be valid, but, on the other hand, it does not prohibit the review of their constitutionality. In cases of such nature, the initiative for proceedings for the control of constitutionality of the ratified international agreements has been left by the Constitution to the discretion of the Council of Ministers. Such a constitutional rule represents an exemption from the general rule, according to which, the control of constitutionality of international agreements is exercised only before their ratification by the Assembly.

The intention of the drafters of the Constitution was to establish the primacy of the Constitution over all other acts having lower force, as well as to guarantee the normal functioning of the rule of law, which excludes the continuity of the legal force of those ratified international agreements that are not compatible with the Constitution. This constitutional provision not only expands the Constitutional Court jurisdiction to the ratified international agreements, but, at the same time, it allows the exercise of the control of constitutionality of legal norms even beyond the 3 year time limit, which is the maximum time limit according to art. 50 of the law "On the Organization and Functioning of the Constitutional Court."[9]

Another function of the Constitutional Court is the review of normative acts of local and central power with respect to their compatibility with the Constitution and international agreements, laid down by art. 131, lit. "c" of the Constitution. In the case law of the Constitutional Court, primarily normative acts of the Council of Ministers and of the ministers have been the object of review, while the constitutional expression "normative acts of central organs" takes a much broader meaning. The notion of "central organs" includes not only the Council of Ministers and ministers, but also other central institutions that are identified as such by the law. The central organs receive such meaning not only by the law, but also by art. 117, para. 1 of the Constitution, which has set forth the publication in the Official Journal as a condition for acquiring the legal effects of laws, along with the normative acts of the Council of Ministers, and of the ministers and acts of other central State institutions. In the same way, the abovementioned constitutional norm, without excluding the other central State institutions from the notion of "central organs," has established the Constitutional Court jurisdiction for the control of constitutionality of normative acts issued. The Constitutional Court is limited in its powers to review norms. The abstract interpretation of constitutional provisions, as well as the approach of constitutional case law shows that the review of compatibility of sub-statutory norms with the ordinary law does not fall under the competences of the Constitutional Court. The Constitution likewise has not adopted the power to abolish the sub-statutory norms of a lower power due to their incompatibility with the sub-statutory acts of a high-

[10] Art. 180 of the Constitution provides: "1. International agreements ratified by the Republic of Albania before the effective date of this Constitution are deemed ratified according to this Constitution. 2. The Council of Ministers submits to the Constitutional Court international agreements that contain provisions in conflict with this Constitution."

[9] According to art. 50 of the law No. 8577 of 10 February 2000 "On the organization and functioning of the Constitutional Court of the Republic of Albania," "The complaints for the review of compatibility of law or other normative acts with the Constitution or international agreements can be submitted before the Constitutional Court within the period of 3 years from their entering into force."

er power. However, there might be cases when the unlawfulness of a sub-statutory act can be identified at the same time with its unconstitutionality. According to art. 118, para. 2 of the Constitution,

> a law shall authorize the issuance of sub-statutory acts, designate the competent organ, the issues that are to be regulated, and the principles on the basis of which the sub-statutory acts are issued.

The unlawfulness of sub-statutory acts of the Council of Ministers or of ministers is very obvious in cases when they issue such acts without being expressively provided with a legal authorization, or in excess of their power. The non-observance of these constitutional requirements by the respective organ assigned by the law, at the same time, brings about even the unconstitutionality of the concrete sub-statutory act. As in such cases there is no distinction made between the unlawfulness and unconstitutionality (which is particularly treated below), the examination of legality of a sub-statutory act is not left outside the Constitutional Court jurisdiction.

4. The time of adoption of a legal norm and its ineffectiveness – crucial aspects of Constitutional Court jurisdiction

Constitutional Court jurisdiction involves not only the laws issued on the basis of the current Constitution, but also the laws adopted before it becoming effective. According to art. 178 of the Constitution,

> Laws and other normative acts adopted before the effective date of this Constitution shall be applied as long as they have not been repealed.

The phrase "as long as they have not been repealed" implies not only the right of the Assembly to amend or repeal the laws that are not appropriate with the today's situation, but also the jurisdiction of the Constitutional Court to control their compatibility with the Constitution, as well as the power of this court to abolish such laws when they violate the Constitution. The aforementioned constitutional wording has defined the laws and the other normative acts, despite the time of their adoption, as falling under the Constitutional Court jurisdiction. However, according to the constitutional case law the control constitutionality of laws and other normative acts has not been exercised beyond the time limit provided for by the law. According to art. 50 of Act No. 8577 of 10 February 2000 "On the Organization and Functioning of the Constitutional Court,"

> The constitutional complaints with respect to the compatibility of laws or other normative acts with the Constitution, or international agreements, can be submitted before the Constitutional Court within 3 years from their entering into force.

This legal provision has limited the Constitutional Court jurisdiction in cases when the complaint is submitted beyond this legal time limit.

The constitutional control of laws or normative acts within the time limit of three years is applied only in cases of abstract control, while, during the procedures of incidental control and the resolution of the conflicts of competencies between powers, both the constitutional case law and the law do not impose any obstacles on the Constitutional Court jurisdiction. Thus, we are speaking of a different subject matter in cases when the ordinary courts, during the judgment of a concrete case between parties are not able to deliver a final case resolution, insofar as they believe that the applicable law is unconstitutional. In order to get the last word over the constitutionality or unconstitutionality of the law, the ordinary court is obliged to forward the case to the Constitutional Court. The

lapse of time since the adoption of the law does not impede the Constitutional Court to exercise the constitutional control of the law and to provide a solution for the concrete case. So, in its decision No. 65 of 10 December 1999, on the basis of a prejudicial question submitted by the Supreme Court by way of an incidental control, the Constitutional Court declared the death penalty provided for by the Criminal Code as unconstitutional, in spite of the fact that the time limit of three years had lapsed since the law entered into force. The same approach was taken when a conflict over competencies between different powers, provided by art. 131, lit. "ç" of the Constitution had to be decided. A conflict of competencies between powers can be raised at any time. So whenever the conflict of competence derives from the law, the 3 year time limit does not apply. In the conflict of competencies between powers, there cannot be a prescription, since otherwise the State would not be able solve such conflicts. In its relevant case, the Constitutional Court underlined that

> this kind of approach within the State, i.e. the declaration of inadmissibility due to the lapse of the time, cannot be upheld. The reason is that the State activity cannot violate the constitution forever. Otherwise, we would be faced with situations where the conflict of competencies raised due to the law, would be prescribed de jure within three years from the adoption of the law, while de facto the conflict of competencies continues.[10]

This is why the law on the Constitutional Court has not used the same wording for the procedures for the solution of the conflict of competencies between powers and those related to the abstract control of laws and other legal norms. The same approach has been taken by the Constitutional Court in its decision No. 29 of 21 December 2006, through which it has decided to solve the conflict of competencies between the local and central power by abolishing, – beyond the three year time limit – some provisions of the law "On Urbanization." Another theoretical and practical subject matter, related to the limits of Constitutional Court jurisdiction, is the control of constitutionality of legal norms, which are not in force at the time of their review, or have been amended or repealed. The Constitutional Court case law reveals that the object of the constitutional jurisdiction has been only the control of constitutionality of legal norms in force. Art. 132 of the Constitution conveys only the power to invalidate the acts to the Constitutional Court. The legal term "invalidate" has the meaning of interruption and non-continuation of the legal effects of a legal act, which until that moment has produced legal effects. This would imply that a norm, which has produced legal effects, ends at the moment when the abolishing decision of Constitutional Court becomes final. According to art. 26 of the act "On the Main Constitutional Provisions," the laws that were abolished on unconstitutional grounds lost their legal force one day after the publication of the decision in the Official Journal.

The Constitution opens a legal review only for acts in force. This has been recognized in the case law of the Constitutional Court, which, when facing acts which are not in force, has rejected the case. Thus, in its decision No. 9 of 19 March 2008, the Constitutional Court held that

> the appellants' complaints regarding the incompatibility of art. 23 para. 1 subpara. 3 of the law No. 9741 of 21 May 2007 with the Constitution are inadmissible, because, at the moment of the proceedings, this provision was not in force anymore, since it has been thoroughly amended. Under these circumstances the Constitutional Court holds that the claim to review para.1 of the aforementioned provision, which is the object of complaint, is dismissed and, therefore a decision on the suspension of the application of this provision is not necessary anymore.

[10] See the decision of the Constitutional Court of the Republic of Albania No. 29 of 21 December 2006. Précis of Constitutional Court decisions, 2006.

With reference to the acts which are not published in the Official Journal,[11] the Constitutional Court has shared the same opinion considering them as not in force and, consequently, not subject to its jurisdiction. In its decision No. 47 of 7 July 1999, the Constitutional Court has observed that the decision of the Council of Ministers, which is the object of review, was not published in the Official Journal. Under these circumstances, the Court concluded that

> it cannot decide on an act which has no legal effects in accordance with the Constitution. Consequently, the complaint should be rejected due to the lack of an object.

Nevertheless, the possibility to extend the Constitutional Court jurisdiction to review norms, which are not in force anymore, but which for a certain period of time could have produced unconstitutional effects, remains a debatable issue for the scholarship and the Constitutional Court. This issue is particularly evident in cases when the constitutional review is based on a prejudicial question by an ordinary court, which has been asked to decide the case applying the law in force when the facts of the case took place. The law-maker might exactly abolish the law during the proceedings before the Constitutional Court. Under these circumstances, the question lodged with the Constitutional Court would be whether it should have jurisdiction to review the constitutionality of the law that the ordinary court had to apply when deciding a specific case, once the law has been abolished by the law-maker. This remains an issue to be taken into consideration by the case law of the Constitutional Court in the future.

5. Control of constitutionality of constitutional laws

The Constitutional Court jurisdiction is limited mainly to the control of compatibility with the Constitution of laws, international agreements before their ratification, and normative acts of local and central organs, without directly specifying the approach to be followed with regard to the constitutional laws or the laws amending the Constitution. The special place of constitutional laws in the legal system and their primacy over the ordinary laws is defined by the Constitution. The peculiarity of constitutional laws is that they cannot be amended or repealed by ordinary laws. Even the procedure for their adoption and amendment differs from that of ordinary laws. This guarantees a higher degree of stability for the relations regulated by them. Constitutional laws cannot and should not violate the Constitution, in the same sense as ordinary laws, which must be in line with the Constitution and the constitutional laws. A constitutional law cannot restrict the Constitution, or eliminate the direct applicability of the Constitution. If the constitutional law could be amended by an ordinary law, the constitutional law would lose its character.

The Constitution of the Republic of Albania has mentioned the notion of "law," but has not given any specification for "constitutional laws." The only provision that is related to the notion of "constitutional law" is art. 117 of the Constitution, which has provided for the "constitutional amendment." The act "On the Main Constitutional Provisions" provided for the concept of "constitutional law" both from the formal and substantial point of view. The adoption of constitutional norms, and even their review by a certain law, imposed the existence of the "constitutional law" from the formal point of view. Art. 24 of the law "On the Main Constitutional Provisions" extended the Constitutional

[11] According to art. 117, para.1 of the Constitution, "The laws and the normative acts of the Council of Ministers, ministers and other central state institutions acquire legal effect only after they are published in the Official Journal."

Court jurisdiction to the interpretation of constitutional laws in addition to the interpretation of the Constitution:

When the court finds that a right protected by a constitutional law has been violated, it enforces the respect and guarantee of this right and, where possible, the elimination of the consequences and the just compensation for the damage caused.

While the Constitutional Court makes a distinction between the constitutional laws and the constitutional provision it uses both as parameters of constitutionality in the same way. Thereby, the constitutional laws acts were given a higher rank than ordinary laws, putting them on the same footing as the Constitution. The law act "On the Main Constitutional Provisions," as well as all the amendments and additions to these constitutional norms, was adopted in the form of constitutional laws. Thus, acts No. 7555 of 4 February 1992; No. 7558 of 9 April 1992; No.7561 of 29 April 1992; No. 7570 of 03 June 1992; No. 7596 of 31 August1992; No. 7692 of 31 March 1993, as well as act No. 8257 of 19 November 1997 have amended and supplemented the act "On the Main Constitutional Provisions." Such kind of formalization of constitutional amendments through laws brought about a degree of uncertainty in relation to the power of the Constitutional Court to review of these constitutional laws with respect to the Constitution. The act "On the Main Constitutional Provisions" did not clarify the extent to which the constitutional control could be exercised with regard to the constitutional laws. As a consequence of this ambiguity of the constitutional norm, the Constitutional Court in its decision No. 57 of 05 December1997, proprio motu, established the constitutional nullity of art. 2 of act No. 8257 of 19 November 1997 "On a Supplement to act No. 7561 of 29 April 1992 "On some amendments and Supplements to act No. 7491 of 29 April 1991 "On the Main Constitutional Provisions."[12] In this decision the Constitutional Court for the first time had the courage to exercise the control of constitutionality of constitutional provisions, affecting in this way the Constitution itself. In this case, the Court has exercised a special type of control known as supra-constitutionality or supra-normativity. This constitutional case law, which turned out to be a political reaction rather than a decision of the constitutional justice, was the result of a very sharp conflict between the Constitutional Court and the Assembly. The goal of the Constitutional Court was "to consider its decisions as a kind of entirety of supra-constitutional rules, claiming in this way to be an ordinary power above the constitution."[13]

At first sight, by not mentioning the notion of "constitutional law," the present Constitution does not seem to create any space for examining the compatibility of ordinary laws with the constitutional laws, or the compatibility of constitutional laws with the Constitution. Meanwhile, a questionable issue for the Constitutional Court jurisdiction remains the control of constitutionality of constitutional amendments. To this end, the Constitution remains silent. Nevertheless, arts. 4, 116, 124, 131 and 132, which have sanctioned that the law constitutes the basis and the boundaries of the activity of the State, which make evident the principle of the primacy of the Constitution and gives the highest position in the hierarchy of laws to it, and which define the Constitutional Court as the highest authority that guarantees the respect for the Constitution having the power to abolish those acts not compatible with the Constitution, do not seem to exclude the control over laws amending the Constitution. Such question has not been conclusively answered by the constitutional scholarship.

[12] See the decision of the Constitutional Court of the Republic of Albania No. 57 of 5 December1997. Précis of Constitutional Court decisions, 1992 - 1997.

[13] *Thomas Frachery*, Le Droit Constitutionnel Albanais, À l'épreuve de la pratique des institutions, Revue internationale de droit compare 59 (2007) 2, p. 333-358.

The extension of constitutional control over the procedural aspect of the constitutional amendments is not a new question for the constitutional case law, in contrast to what can actually be said for the control over the content of the constitutional amendments. Art. 124 of the Constitution has vested the Constitutional Court with the function of guaranteeing the respect for the Constitution and its authentic interpretation. The Constitution can be violated by the laws amending it, if their content is in opposition to the spirit, principles and universal values expressed and protected by it since the very beginning, in its preamble. Expressing their choices in a referendum, the people decided for its own Constitution, but this is not sufficient to restrict the political power from amending the Constitution through unconstitutional amendments. It is the principle of supra-constitutionality that makes the constitutional control necessary. As an organ that guarantees the respect for the hierarchy of legal acts derived from the Constitution, in principle, the Constitutional Court should not be impeded to review the constitutionality of a constitutional amendment. It might appear that supra-constitutionality has been accepted, taking into account the fact that the Constitution has not provided expressis verbis any limitations regarding the material review of the constitutional amendments. The distinction between supra-normativity and supra-constitutionality is based on the fact that, while the first is related to the control of constitutionality of constitutional laws, the latter goes up to the control of the Constitution itself.[14] More concretely, art. 131, lit. "ë," art. 152 and art. 177 of the Constitution, which attribute the power to decide on the constitutionality of a referendum to the Constitutional Court, limits its authority to verify the constitutionality of the constitutional amendments, after their adoption by the Assembly. At first glance, it appears that only through the preliminary review of the constitutionality of the issues submitted to referendum, the control of constitutionality of the norm amending the Constitution can be exercised.

According to the constitutional definitions, the Constitutional Court is not prevented from exercising the substantial control over any acts amending the Constitution. Art. 151, point 2 prohibits that issues related to the territorial integrity, the limitation of fundamental rights and freedoms, the budget, taxes and financial obligations, the amnesty etc. be submitted to a referendum. The referendum cannot take place without the exercise of ex ante control of constitutionality of these issues by the Constitutional Court. The Constitutional Court reviewed issues submitted to a popular referendum not only under the procedural aspect, but also under the substantial aspect. In its decision No. 31 of 19 November 2003, the Constitutional Court, examining the case on the merits, has prohibited the organization of the popular referendum for the repeal of an act that provided for the increase in the pension age. This approach has further developed the constitutional case law, removing the barrier for a constitutional review of the content of drafts of constitutional amendments related to issues of such nature. The only barrier laid down by the Constitution, related to the constitutional amendments, lies in the provision that prohibits the President of the Republic to send back an act amending the Constitution adopted by the Assembly (art. 177 para. 6). *Kristaq Traja*, one of the drafters of the Constitution, shares the same opinion saying that:

Also, it cannot be said that, since the provisions for amending the Constitution have not mentioned the intervention of the Constitutional Court, this is not legitimated to act, because these provisions also have not mentioned the control over the amending procedure. The duty of the Court, as the watchdog of the Constitution, is to guarantee not only

[14] *Sokol Sadushi*, "Kontrolli Kushtetues," published by "Botimpex" Publishing House, Tirana 2004, p.16-17.

the observance of art. 151/2, but also the respect for the spirit, principles and the fundamental values of the Constitution. Furthermore, in cases when the constitutional amendments are not submitted to popular ratification, but receive only the parliamentary approval. We should not wait for the referendum in order to have the intervention of the Constitutional Court, but it should do this even on behalf of the values and spirit of the Constitution, any time the amendment is adopted by the Assembly.[15]

However, the further elaboration of such issue will be done by the constitutional case law in the future.

6. Individual legal act – object of control of constitutionality

There were several cases in which the Constitutional Court reviewed not only laws and normative acts, but also acts of individual character with respect to their compatibility with the Constitution. The legal acts of such nature include the decisions of the Assembly and the decrees of the President of the Republic. Their review by the Constitutional Court is not carried out by way of abstract control of constitutionality of the legal norm, but such a review is the result of other competencies that derive from art. 131 of the Constitution. So, the complaints of public officials aiming at the protection of their right to due process of law (lit. "f" of art. 131),[16] or complaints, whose object is the settlement of the conflict of competencies between powers (lit. "ç" of art. 131) have been the main reason why the Constitutional Court has decided to extend its jurisdiction over the legal acts of individual nature. In its decision No. 76 of 25 April 2002, after having observed that the proceedings for the removal of the former General Prosecutor violated the due process of law, the Constitutional Court decided to quash the decision of the Assembly and the decree of the President of the Republic as unconstitutional. This decision represents the first case, which laid the foundation for respecting the standard of due process of law in parliamentary proceedings. As the result of the Constitutional Court decision, the Assembly made some additions to its Internal Regulation. In another case, which had "the solution of a conflict of competencies between the parliamentary minority and the Assembly of Albania" as its object, the Constitutional Court quashed the decision of the Assembly, reaching the conclusion that it was the main cause for bringing up a conflict of competencies between powers.[17] In this decision, it was underlined that

> the right of the parliamentary minority to establish an inquiry commission is a constitutional competency and it must be respected. It cannot be violated through the decision-making process of the parliamentary majority, except for cases when the constitutional principles have not been respected.

The extension of the Constitutional Court jurisdiction to the decrees of the President of the Republic has been criticized by scholars and in ordinary and constitutional case law. The political or administrative nature of presidential decrees might be one of the main reasons for these polemics. The abstract review of the acts of the President of the Republic is known for both the Albanian and foreign constitutional doctrine. The review of compatibility of acts issued by the head of State has been laid down by the constitutions

[15] Ibid.

[16] See the decision of the Constitutional Court of the Republic of Albania No.76 of 25 April2002. Précis of Constitutional Court decisions, 2002.

[17] In its decision No. 20 of 04 May 2007, the Constitutional Court has decided to declare decisions No. 59 of 18 September 2006 and No. 60 of 27 September 2006 of the Assembly of the Republic of Albania incompatible with the Constitution, as they were the main reason for bringing up the conflict of competencies.

of several countries, while in others this review falls under the administrative court jurisdiction.[18]

In this aspect, the Constitution of the Republic of Albania differs from the act "On the Main Constitutional Provisions." Art. 24 of act No. 7561 of 29 April 1992 "On some Amendments and Supplements to act No. 7491 of 29 April 1991 "On the Main Constitutional Provisions," established the power of the Constitutional Court to review laws and acts having the force of law with respect to the compatibility with the Constitution. The normative character of the decrees of the President of the Republic in some urgent cases, according to art. 18 of the act "On the Main Constitutional Revisions," was correctly interpreted as an act having force of law. Therefore, the decree was subject to an abstract control exercised by the Constitutional Court. According to the present Constitution, the President of the Republic has not been vested with the power to issue decrees of normative character (except for the state of defense, since the power to issue normative acts having force of law has been attributed to the Council of Ministers. The decree of the President of the Republic has an individual character and therefore no force of law (moreover, art. 131, lit. "a" of the Constitution has provided the power of the Constitutional Court to decide only on the unconstitutionality of the law), which upholds the idea that the decree cannot be subject to an abstract control, but only to ordinary court jurisdiction. The special laws, and even the case law of the Supreme Court, have exercised the jurisdiction for some of the decrees of the President of the Republic related to the removal from duty of the ordinary prosecutors, removal or abasement of senior military officers, revocation of citizenship etc.[19] In this sense, the Constitutional Court case law has had a significant impact. So, in its decision No. 25 of 13 February 2001, this court has abolished the provision of the act "On the Public Prosecutor Office," which denied to the public prosecutor the right to a court appeal against the measure of removal from duty. In this decision, the Court has underlined that

> the right of public prosecutors to appeal derives from the Constitution and a distinction that might be made between them (public prosecutors) and the judges and civil servants regarding the right to appeal infringes the spirit and the content of the Constitution of the Republic of Albania. Going even further, this Court, through its case law, has considered the right to appeal as closely related to/ the right to due process of law, provided for by art. 42 of the Constitution and art. 6 of the European Convention.[20]

The Constitutional Court has differently treated individual complaints by which persons, according to art. 131, lit. "f" of the Constitution, have requested the quashing of presidential decrees after the exhaustion of the legal remedies aimed at the protection of their constitutional rights in cases in which they pretended to be violated in their right to due process of law. This kind of adjudication has not been treated as part of the abstract control of the norms.[21] The Constitutional Court does not have the power to evaluate the

[18] The Constitution of the Russian Federation provides for the power of the Constitutional Court to resolve the issue of compatibility with the Constitution of "…normative acts of the President of the Russian Federation," whereas, according to the Constitution of Bulgaria, the Constitutional Court may express itself "… about the unconstitutional character of the acts of President." The review of acts of the President is also provided for by the constitutions of Ukraine, Lithuania, Moldavia, etc.

[19] See the decision of the Constitutional Court of the Republic of Albania No. 163 of 31 October2001: Stefan Naumov *v.* Decree of the President of the Republic. Précis of Constitutional Court decisions, 2000-2001.

[20] See the decision of the Constitutional Court of the Republic of Albania No.25 of 13 February 2001. Précis of Constitutional Court decisions, 2000-2001.

[21] However, it should be taken into consideration that in these cases the Constitutional Court does not review the constitutionality of the Presidential decree on its merits, but only the procedural aspects. This

constitutionality of the Presidential decree on its merits, but only its procedural aspects. Such a limitation is related to the understanding of art. 131, lit. "f" of the Constitution. In its decision No. 76 of 25 April 2002, the Constitutional Court has resolved this problem, as well as the issue of exhaustion of legal remedies, reasoning that

> the decree of the President of the Republic for the removal from duty of the General Prosecutor, as an individual act of administrative character, cannot be treated in the same way as the other administrative acts, which are examined by the ordinary court. The peculiarity of this decree of the President of the Republic is based on the fact that it is indissolubly related to the parliamentary procedures, on the basis of which the decision has been issued. According to the arts. 324-333 of the Civil Procedural Code the administrative acts of such nature cannot be examined by ordinary courts, because these acts are the result of parliamentary proceedings. Under these circumstances, the Constitutional Court considered the legal remedies to be used by the appellant for the protection of his constitutional and legal rights to due process of law as exhausted.

It follows from the competencies listed in art. 131 of the Constitution, that even some other decisions of the Assembly, related to the removal from duty of the President of the Republic and of judges of the Constitutional Court and the Supreme Court, to the incompatibility or inability to exercise the functions of the President of the Republic, to the ineligibility and incompatibility to exercise the functions of a deputy, form part of Constitutional Court jurisdiction concerning acts of an individual character.

Legal acts of constitutional institutions that might have given rise to a conflict of competencies between State organs, acts of the Central Election Commission for the verification of the results of a referendum and the elections of deputies, as well as the decisions of the ordinary courts also fall under the constitutional jurisdiction. Decisions of ordinary courts are subject to the control exercised by the Constitutional Court only in the way of final adjudication of the individual complaints for the violation of their constitutional rights to due process of law. However, the right of a directly elected organ of the local government unit to lodge a complaint with the Constitutional Court against the decision of the Council of Ministers, within 15 days, represents the purest case of this Court jurisdiction for verifying the constitutionality and lawfulness of individual acts of an administrative character.[22]

7. Constitutional principles and standards – guidelines for the constitutional case law

The main function of the Constitutional Court is focused on the control of constitutionality of legal norms with the provisions of the Constitution, by which it reviews norms with respect to the constitutionality. The question has been raised whether law review by the Constitutional Court is based only on provisions of the Constitution or also on constitutional principles and standards. The Constitution should be read, analyzed and interpreted integrally, as a whole text, where the preamble, specific provisions and the embodied principles are the starting point on the basis of which the Constitutional Court resolves the cases falling under its jurisdiction. The direct provision in the Constitution,

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has to do with the jurisdiction of this Court, which has the power to decide on the individuals' complaints related to the violation of their right to due process of law (author's note).

[22] Art. 115 of the Constitution reads: "1. A directly elected organ of a local government unit may be dissolved or discharged by the Council of Ministers for serious violation of the Constitution and laws. 2. The dissolved or discharged organ may complain, within 15 days, to the Constitutional Court, in which case the decision of the Council of Ministers is suspended. 3. If the right to complain is not exercised within 15 days, or if the Constitutional Court upholds the decision of the Council of Ministers, the President of the Republic sets a date for election in the respective local unit."

as well as the special identification by the constitutional case law, of the constitutional principle and standards are the essential guidelines for the function of constitutional justice.

The Constitutional Court enjoys the power and, at the same time, the obligation, by guaranteeing the respect for the Constitution through its authentic construction, to remove all unconstitutional legal acts. The declaration of the legal norm as violating constitutional principles, without directly citing the specific provisions, lies within the competencies of the Constitutional Court. This competency derives from the fact that the Constitution does not only consist of articles, paragraphs and the preamble, but also of guiding principles and standards, in order to ensure its primacy and the protection of its values. Such principles as "the rule of law," "separation and balancing of powers," "legal certainty," "acquired rights," "proportionality," "independence of the judiciary and of the courts," "subsidiarity," "devolution," "local autonomy," "positive discrimination," "university autonomy," "academic freedom," "equality of arms," "contradiction," as well as many other principles generally accepted by the doctrine, are thoroughly analyzed by the constitutional case law not simply by referring to a specific provision, but also by interpreting the Constitution as a whole. There are several decisions of the Constitutional Court, in which the Court has decided on the constitutionality of the legal norm, basing its analysis and interpretation of constitutional principles and standards rather than on a specific constitutional provision. It can be said that the constitutional case law is consolidated to this end.

The rule of law, which has been guaranteed since the very beginning of the Constitution, in its preamble, is one of the most crucial and fundamental principles of the democratic State and of the society. As such, it represents an independent constitutional norm, and that is why its violation constitutes in itself sufficient ground for declaring the unconstitutionality of a certain law.[23] The constitutional principle of the rule of law has been considered as being violated when the legal certainty, legal stability and legal expectancies have been denied or infringed. The Constitutional Court has underlined in some of its decisions that

> the law-maker cannot unreasonably deteriorate the legal situation of individuals, deny the acquired rights, or ignore their legitimate interests. A democratic society should offer certainty, clarity and continuity, so that the individuals conduct their actions appropriately […][24]

The independence of judges and of the courts is another very essential principle of the democratic State, to which the Constitutional Court has referred in many of its decisions. The role of the judge and of the courts in the democratic State is to ensure the implementation of the norms explicitly provided by the Constitution, the laws and other legal acts, to ensure the rule of law, and to protect the human rights and freedoms. The respect of the independence of the judiciary has been treated by the constitutional case law as an indispensable prerequisite for the protection of fundamental rights and freedoms. In this regard, this independence has not been considered as a privilege, but as one of the major duties of the judges and the courts, which derives from the individuals' rights to have an

[23] See the decision of the Constitutional Court of the Republic of Albania No. 34 of 20 December 2005. Précis of Constitutional Court decisions, 2005.

[24] See the decision of the Constitutional Court of the Republic of Albania No.36 of 15 October 2007. Précis of Constitutional Court decisions, 2007.

impartial arbiter in a conflict. The guarantee of such a standard represents the criteria for the independence of the judges and of the courts.[25]

There are numerous cases where the Constitutional Court declared a legal norm unconstitutional, referring to the preamble of the Constitution. For the first time, the referral to the preamble of the Constitution has been made in decision No. 65 of 10 December 1999, which has declared the death penalty incompatible with the Constitution. In this decision, the Court argued that

> the intention of our Constitution, which has been made clear in its preamble, as well as in many other of its provisions, is that the right to live is the basis of all the other rights and its denial brings about the elimination of the other human rights. Considered as such since the very beginning, the human life becomes a value superior to all the other values protected by the Constitution.

In another decision, the Constitutional Court has declared the compatibility of the Rome Statute "On the International Criminal Court" with the Constitution reasoning that

> in its preamble, the Constitution has recognized justice, peace, harmony and cooperation between nations as the highest values of humanity. In its art. 2, sanctioning the sovereignty as an essential principle for the existence of the State, the Constitution, in the spirit of its preamble and all of its content,[26]

allows Albania to take part in a system of collective security for the maintenance of peace and national interests. These constitutional standards, which have been confirmed by the constitutional case law, have served as guidelines for the Constitutional Court activities, in order to correctly resolve the cases submitted before it.

8. Unconstitutionality and unlawfulness and their interrelation

The relation between the control of constitutionality and lawfulness of the legal norm is another controversial issue of the scholarship and the case law of the Constitutional Court. However, taking into consideration the primacy of the constitution, in a democratic State under the rule of law, a legal norm cannot be reviewed with respect to its constitutionality excluding the control of lawfulness from the Constitutional Court jurisdiction. The control of compatibility of a legal norm with the Constitution and with the laws has been provided for by the jurisdiction of some constitutional courts such as the Constitutional Court of Austria, Macedonia, Croatia, Slovenia, etc. Even the act "On the Main Constitutional Provisions" provides for a broader understanding of the constitutional jurisdiction concerning the review of the questions of constitutionality and lawfulness by the Constitutional Court. Its jurisdiction includes the declaration of the incompatibility of legal acts and sub-statutory provisions with the Constitution and laws, as well as the power of the Constitutional Court to abolish unconstitutional or illegal acts.

For the constitutional case law, the relation between the unconstitutionality and unlawfulness is one of the most delicate points of the control of constitutionality of a legal norm. According to art. 131 of the Constitution, the Constitutional Court jurisdiction appears to be orientated only toward the verification of the constitutionality, and not of the

[25] See the decision of the Constitutional Court of the Republic of Albania No.11 of 02 April 2008. Précis of Constitutional Court decisions, 2008.

[26] See the decision of the Constitutional Court of the Republic of Albania No.186 of 23 September2002. Précis of Constitutional Court decisions, 2002.

lawfulness. In the frame of the abstract review of legal norms, the Constitutional Court has not been conceived as a universal guardian of the compatibility of legal norms of all levels. The Constitutional Court reviews the compatibility of laws and other legal acts with the Constitution. It results from an analysis of cases laid down by lits. "a", "b", "c", "d", "dh", "ë" of art. 131, which confirm the basic powers of the Constitutional Court, that the control of the constitutionality of norms is one of its fundamental function, whereas the lits. "e", "f", as well as some other provisions, do not avoid the control of lawfulness.

The Constitutional Court is not impeded to abolish a sub-statutory norm, but only as a result of its unconstitutionality. This reveals that the Constitutional Court is above all the guarantor of the constitutionality, even when examining the sub-statutory acts. On the other hand, the Constitution has not vested the Constitutional Court with the power to abolish sub-statutory regulations of inferior authorities when these regulations are incompatible with the sub-statutory acts of a superior authority, because this is an (issue) which falls under the jurisdiction of ordinary courts.

It should be distinguished between unlawfulness and unconstitutionality. In a specific case, when the unlawfulness is evident, there should only be the control of lawfulness. The control exercised by the Constitutional Court was structured in this sense until 2001 with the verification of lawfulness of election of deputies. According to art. 131, lit. "e" of the Constitution, the verification of the election of deputies is part of Constitutional Court jurisdiction. The Constitution has not given details about the exercise of this competence by the Constitutional Court, leaving the solution of this issue to the Electoral Code. Despite the fact that the constitutional wording of "verification of election of deputies" has not been amended since the adoption of the Constitution in 1998, this competence of the Court has undergone some changes. By the Electoral Code of 2000, the Constitutional Court was conceived as the only court to decide cases concerning the invalidity of elections and of their results. The control exercised in this case by the Constitutional Court against the decisions of the Central Electoral Commission (CEC) was focused only on the aspect of unlawfulness.[27] The review of the CEC decisions even from the aspect of unlawfulness turned the Constitutional Court into an ordinary court. This adjudicating procedure, being the same as the adjudication of cases on the merits, gave another form to the constitutional adjudication. The existence of such problems necessitated the amendment of the Electoral Code, which provided for a thoroughly new dimension of the adjudication of the invalidity of elections. According to the actual Electoral Code, the competent organ dealing with the invalidity of elections is an election panel established at the Court of Appeal of Tirana. However, the constitutional competence provided by art. 131, lit.it. "e" was not again treated by the provisions of the Electoral Code. From this viewpoint, the right of the Constitutional Court to verify the elections of deputies, which has not been mentioned by the Electoral Code, today is considered as an issue that is controversial.

In spite of the constitutional language used by its drafters, from a more detailed analysis of art. 131 and of other provisions of the Constitution, which have established the

[27] A similar constitutional wording about the power of the Constitutional Court to review the lawfulness or constitutionality of the election of deputies has been provided for by some constitutions of other countries. According to art. 59 of the French Constitution, in case of disputes, the Constitutional Council decides on the regularity of the election of deputies and senators, whereas according to art. 148, para. 2, subpara. 7 of the Constitution of Bulgaria, the Constitutional Court decides the conflicts related to the lawfulness of the elections of the people's representatives (author's note).

powers of the Constitutional Court, it has been concluded that its jurisdiction is not so limited with regard to the verification of the issues of lawfulness. According to art. 115 of the Constitution, the Council of Ministers has the power to remove a directly elected organ of the local government unit for serious violations of the Constitution or of laws. It is a question of law whether the directly elected organ of the local government unit has violated the law or not. The expression used in the Constitution "serious violation … of laws" aims at the control of how the laws have been applied by the organ of the local government unit and by the supervising organ as well, i.e. the Council of Ministers. The control of lawfulness of the decision of the Council of Ministers is constitutional jurisdiction, which the Constitution has directly assigned to the Constitutional Court. In this aspect, according to the abovementioned constitutional provision, the Constitutional Court jurisdiction, besides the review of questions of constitutionality, includes even the verification of lawfulness of the decision of the Council of Ministers.

The review of a legal norm with regard to its lawfulness has been developed as a controlling function of the Constitutional Court from the analysis of some of its other competencies. The resolution of the conflict of competence between State organs, set forth by art. 131 lit. "ç" of the Constitution, gives the power to evaluate any kind of legal or sub-statutory act to the Constitutional Court, action or inaction of State organs, or organs of local government, that have led to a conflict of competencies among them. Art. 56 of the law No. 8577 of 10 February 2000 "On the Organization and Functioning of the Constitutional Court," reads:

> when the conflict of competencies is related to legal or sub-statutory acts issued by organs in conflict with each other, in order to resolve the conflict, the Constitutional Court reviews the constitutionality or lawfulness of the act.

Arts. 126 and 137 of the Constitution, the procedure of consent by the Constitutional Court to bring an arrested judge of the Constitutional Court or of the Supreme Court to the court is another case, where the Constitutional Court has to decide on the lawfulness of the detention or arrest of the respective judge.

The Constitutional Court is not excluded from dealing with questions of lawfulness when it controls the "constitutionality of political parties and other organizations," and their activity, because art. 131, lit. "d" of the Constitution refers to its art. 9. The constitutionality of political parties or other organizations, and the way how they exercise their activity are regulated by the act "On Political Parties" or by other laws. Part of constitutional jurisdiction remains the verification of the way art. 9 of the Constitution and the special laws shall be applied. Another competence of the Constitutional Court related to the verification of the result of the referendum (art. 131, lit. "ë" of the Constitution) extends the constitutional jurisdiction to the control of lawfulness of legal acts issued by the organs which deal with the administration of this result.

The review of a law with regard to the compatibility with another law, even when adopted by a qualified majority, has not been considered by the Constitutional Court as part of its constitutional jurisdiction. In its decision No. 35 of 10 October 2007, referring to a previous approach upheld by it, the Constitutional Court held that it is not within its competencies to review the collisions and incompatibilities between two different laws or between laws and codes.[28] The questions regarding the way of interpretation and application of a law or a sub-statutory act have been considered by the constitutional case law as part of ordinary court jurisdiction. The harmonization of legal provisions remains

[28] See the decision of the Constitutional Court of the Republic of Albania No. 11 of 27 May 2004. Précis of Constitutional Court decisions, 2004.

a competence of ordinary courts, whose main function is the interpretation and application of a law.

The constitutional case law took a different approach in cases when the Court has observed that the existence of unclearness, inaccuracy, logical contradiction or inapplicability of legal norms, which bear the imminent danger of a violation of the principle of the rule of law, served as a sufficient argument, in the field of constitutional control to consider them as incompatible with the Constitution. The content of a legal norm, which leaves room for different interpretations and which could lead to different outcomes, is not in conformity with the intention, stability, credibility and effectiveness that the norm itself aims to achieve. The standards of interpretation of a law, which lead to a clear and accurate identification of its content, are part of the constitutionality of the law, in general, and of the respect for the principle of the rule of law, in particular.[29]

The issues of Constitutional Court jurisdiction are numerous and in permanent evaluation. This can be observed by the physiognomy of the modest case law of the Constitutional Court for about 20 years. The foremost intention of this paper was not to analyze the whole dimension of Constitutional Court jurisdiction, but its most essential function related to the control of the constitutionality of legal norms.

In addition to the constitutional control of the positive will manifested by the organs of the State power when issuing legal norms, another very important function in the field of Constitutional Court jurisdiction is the control of constitutionality of the legislative omission, which remains to be elaborated in another paper due to the problems it presents.

[29] See the decision of the Constitutional Court of the Republic of Albania No. 36 of 15 October 2007. Précis of Constitutional Court decisions, 2007.