SUMMARY

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Summary of the monograph "Constitutional Justice and the Protection of Fundamental Rights", Ciela Publishing House, Sofia, ISBN 9789542832003, 2020, Scientific editor Assoc. Prof. Konstantin Pehlivanov, PhD.

The monograph is dedicated to the protection of fundamental rights as a leading field of the activities of modern constitutional jurisdictions. The understanding that effective legal (judicial) protection is an integral component of the rule of law, but at the same time an essential requirement for any democratic society, is one of the achievements of the European legal heritage. Everything that makes rights and freedoms enforceable and protected is an expression of democracy. Hence, the authority to exercise control over laws for their compliance with constitutionally guaranteed rights is democratically legitimate.

The protection of fundamental rights is the intention and purpose of the functioning of every constitutional court, and the mechanisms for enforcement of constitutional control, also by the individual citizen contribute to the achievement of this goal in practice. The monograph examines in detail the forms of indirect and direct access of citizens to constitutional justice.

The main emphasis is placed on the institute of the constitutional complaint and its manifestations in a comparative legal aspect. An attempt has been made to outline the parameters of the future introduction of a constitutional complaint in the legal order of Republic of Bulgaria.

The first chapter of the monograph is devoted to the mechanisms for protection of fundamental rights

Each of the historical stages of the emergence and development of fundamental rights goes hand in hand with the awareness of the need for the existence of reliable mechanisms for the protection of fundamental rights, so that they do not remain only as a blank formula without real content. Their quality of subjective rights in the public sphere includes a claim to the state to ensure the observance of the rights and to protect them against violations, but also a claim to

eliminate the violation, resp. for equalization or compensation. The state should take into account the emerging needs of man, which have become subjective rights, in order to be guaranteed by the means of law. The establishment of reliable mechanisms for the protection of rights is a supporting beam in the construction of any democratic society and a key indicator for defining the state as a constitutional one.

The regulation of fundamental rights and the degree of their protection in objective law are a defining attestation for the democratic development of any society. The intensity and depth of the due protection vary during the different stages of the establishment and development of the concept of constitutional rights. Historically, three main models for the protection of human and civil rights and freedoms are known.

In the first model, which is the oldest, the protection of rights and freedoms is entrusted to the courts from the pillar of general justice. As a rule, they protect all rights and freedoms that are violated or threatened without restriction of the subject.

In the second model, insofar as rights and freedoms are also protected by the courts from the pillar of general justice (criminal and civil), the activity and empowerment of these courts in connection with the protection of constitutional rights and freedoms are regulated as in the previous regime. However, this model is characterized by the establishment of special administrative protection of those rights and freedoms that have been violated by state bodies with their acts or actions or by other public law entities authorized by the state. As a rule, the administrative legal protection is completely organizationally and functionally separated from the system of general justice.

In the third model, which is the latest in its emergence, the protection of human and civil rights is also carried out by ordinary and administrative courts, but in cases of violation of rights and freedoms guaranteed by the Constitution, citizens are provided with additional, immediate protection by the Constitutional Court. In addition, this protection may cover all rights provided for in the Constitution (Croatia, Slovenia); or a certain type of fundamental rights - equality before the law and especially defence rights (Spain); or the "fundamental rights" under the section of the same name in the Basic Law of Germany, but also some other rights in the Basic Law.

European jurisdictions exercising constitutional control have the important function of providing legal protection to the individual against encroachments or threats to the exercise of his or her rights. This purpose of constitutional justice brings to the fore the question of how citizens, as bearers of these rights and freedoms, can reach the Constitutional Court in order to restore legal justice in their personal legal sphere. Comparative constitutional law offers

different solutions. One possibility is for direct access to the Constitutional Court to be entrusted to the highest levels of public authority, and for citizens to be able to refer the matter to the Constitutional Court indirectly. Indirect access to constitutional justice is a very important tool to ensure that individual human rights are respected at the constitutional level. There are a wide range of choices, many of which exist simultaneously.

A common form of indirect access is the institute of incidental control of constitutionality, which allows the attention of constitutional courts to be engaged in the issue of constitutionality of law not in the abstract, but through the prism of a specific legal dispute. The incidental control of constitutionality is a path for challenging a law by individuals and legal entities in the course of proceedings in a specific case.

In the context of the incidental control of constitutionality, a relatively new trend stands out: a breakthrough in the monopoly position of the constitutional courts to monitor the compliance of laws with the Constitution. It is referred to in the literature as a process of decentralization of constitutional control, catalysed by factors of national and supranational origin.

Among the internal factors, the duration of the constitutional proceedings is decisive. In its practice, the European Court of Human Rights assumes that national constitutional courts are not "immune" to breaches of the requirement to hear and resolve cases within a reasonable time.

Membership in supranational organizations such as the European Union and the Council of Europe poses new-generation challenges to national courts, which also include the decentralization of constitutional control.

However, the importance of the arsenal of resources available to citizens to seek protection of their rights before the Constitutional Court, in addition to the vertical relationship "*state-citizens*", is manifested on another level too. In modern legal doctrine it is accepted that, exceptionally, fundamental rights can be addressed to an individual. This is a departure from the general rule that constitutional rights act vertically (defence of the citizen against the state) and a recognition that, exceptionally, fundamental rights can have a horizontal effect (in private law). The justification of this lays in the importance of fundamental rights as an objective value. The horizontal function of fundamental rights is an evidence of the complex interrelationship that exists between public and private law. However, such a departure is permissible only where it is considered that, in the circumstances, private autonomy must give way to a guarantee in favour of a third party arising from specific fundamental rights; only then can fundamental rights take effect in private law relations.

This deviation, which presupposes judgment, has its roots in German constitutional science and practice and is denoted by the term Drittwirkung, in German. The doctrine of the indirect effect of fundamental rights vis-à-vis third parties owes its development and application in German jurisprudence mainly to the constitutional complaint as a means of activation of constitutional control.

Chapter two of the monograph is devoted to the referral to the Constitutional Court by the citizens

European jurisdictions exercising constitutional control have the important function of providing legal protection to the individual against encroachments or threats to the exercise of his or her rights. This purpose of constitutional justice brings to the fore the question of how citizens, as bearers of these rights and freedoms, can reach the Constitutional Court in order to restore legal justice in their personal sphere. Comparative constitutional law offers two possibilities:

- *of indirect access* – in this case, direct access to the Constitutional Court remains reserved for the higher levels of public authority, and citizens can refer to it indirectly. Indirect access to constitutional justice is a very important tool to ensure that individual human rights are respected at the constitutional level. The advantage of this model is that the public bodies authorized to refer to the Constitutional Court have the necessary competence and expertise to formulate a valid claim and at the same time to prevent the court from being overwhelmed with clearly unfounded claims;

- *of direct access* – under this model, citizens have the right to file a constitutional complaint. In the literature, it is justly defined as the most powerful means of protecting fundamental rights and freedoms through the institution of constitutional justice.

The roots of the institute of constitutional complaint can be traced to the middle of the 19th century in German-speaking Europe. The infighting among the elements / states that form the composition of the union state, as well as the development of the rule of law in two aspects: formal (legal certainty) and material (legal justice), create a favourable environment for this.

Art. 126, para 5 of the Constitution of the German Reich of 1849, among the powers of the so-called "Imperial Court" (Reichsgericht) contains also rulings on complaints of German citizens in cases where public authorities (at provincial or imperial level) violate their rights promulgated in the Constitution of the Reich or the individual semi-state. It is worth noting that an appeal against the government of a particular province can be brought before the Imperial Court only after all possibilities of defence within the province itself have been exhausted. An

understanding, preserved to this day in the German legal tradition, where the constitutional complaint is, in the words of the Federal Constitutional Court of Germany, an extraordinary form of legal aid. The constitutional complaint does not replace the legal remedies in the proceedings of the other branches of law. It stands outside them and finds application after the person has exhausted all other means of "legal" protection. Hence, and in its essence, the constitutional complaint is a last and subsidiary possibility for extraordinary legal aid for anyone whose fundamental rights have been violated by the public authorities.

The Constitution of the German Reich of 1849 never became a valid law, but its main provisions, including the individual constitutional complaint, were reproduced in the subsequent constitutional development of the German state. Thus Art. 93 of the Constitutional Charter of the Free State of Bavaria (Verfassungsurkunde des Freistaats Bayern) recognizes the right of every Bavarian citizen and any legal entity established in Bavaria to lodge a complaint with the so-called State court (Staatsgerichtshof), if he/she/it considers that through its activity a state body has violated his/her/its right established in the Constitution.

The Basic Law of the Austro-Hungarian Monarchy of 21 December 1867 also provided a direct way to protect the individual's personal sphere. The then-existing Court of the Reich had the power to rule on citizens' complaints of violations of their fundamental political rights. The doctrine notes that in the period 1867-1918, Austria was the only European country in which the explicit jurisdiction of a court to consider constitutional complaints filed against the state, resp. against autonomous territorial authorities was recognized. During that period, only the Swiss Federal Court had such jurisdiction, but limited to allegations of infringement of fundamental rights by the cantonal authorities.

Today, the constitutional complaint is an element of the constitutional legal order of many countries with similar features, but also with a number of nuances in the regulation - conceptual and/or procedural. There are different criteria for classifying the types of constitutional complaint. Depending on its subject scope in comparative terms we distinguish:

- *a genuine constitutional complaint* allowing an attack on any act of public authority that allegedly violates constitutionally guaranteed rights - not only laws, but also judicial and administrative acts;

- *regulatory constitutional complaint,* which can be defined as a corrective of the genuine one and which is addressed against a regulation of law, which served as a basis for issuing a public law act.

Active legitimacy and the nature of the protected interest are also used as a guide for differentiating certain types of constitutional complaint. According to this criteria are known:

- *individual constitutional complaint* – aimed at protecting the personal (private) interest of the claimant.

- *collective constitutional complaint* - allows collective entities (universities, municipalities, etc.) that have specific interests other than those of individuals, to protect their rights;

- actio popularis – can be defined as a constitutional complaint in the general interest, i.e., the subject filing it does not need to prove direct and personal harm from the attacked act.

Despite the existing variants of the individual constitutional complaint, the main characteristics of this institute can be summarized as follows:

- *the constitutional complaint is a special procedural means of protection (extraordinary form of legal aid, ultima ratio) only of constitutionally established ("fundamental") rights;*

- *the proceedings on it are developed before a specialized court (supreme, constitutional) and have as subject the issue of the constitutionality of the attacked act of a public authority;*

- *serves to protect directly affected persons (i.e. it is a means of personal, subjective protection, not to assert another's rights);*

- *the decision of the specialized court on the appeal has the consequence of restoring justice in the legal sphere of the individual.*

Chapter two of the monograph examines the models of constitutional complaint in Germany, Austria and Spain, which are leading and followed in the introduction of the institute in other countries. The subject of analysis are also the mechanisms for direct access of citizens to constitutional justice in the Czech Republic, Poland and Croatia, which in the 90s of the XX century, like Bulgaria, took the path of democratic transformation.

Chapter three of the monograph is devoted to the protection of fundamental rights in the constitutional justice of Republic of Bulgaria.

Constitutional justice is a new institution in the Bulgarian legal and public reality. According to Article 49 of the Constitution of Tarnovo, "*Only the National Assembly has the right to decide whether all the conditions set out in this Constitution are observed when issuing a law*." This line, according to which the National Assembly self-controls the compliance of the laws adopted by it with the Constitution, is reproduced in the next two Constitutions of Bulgaria – these of 1947 and 1971.

The commendable thing in this case is that in the first decades of the last century the idea of constitutional control is permanently present in the works of prominent representatives of our legal thought such as Stefan Kirov, Peter Dzhidrov, Stefan Balamezov, Lyubomir Vladikin. Special mention should be made of the constitutional project of Prof. Venelin Ganev of 1947, also known as the "*Draft Constitution of the Bulgarian League for the Protection of Human and Citizens' Rights*", which highlights the envisaged opportunity for citizens to directly refer to the so-called "*Constitutional Guarantee Court* ".

As an expression and embodiment of the determination demonstrated in the Preamble for the establishment of a democratic and legal state, the Constitution of the Republic of Bulgaria of 1991 provided for a Constitutional Court as an independent state body with functions for protection and reproduction of the supremacy of constitution. Constitutional justice is the intersection of the two main components of the rule of law, which often compete with each other. The Constitutional Court is called upon to invalidate legislation when it infringes fundamental rights (rule of law in the material meaning), but within the framework of a formalized process (rule of law in the formal meaning).

Fundamental rights and their protection fall within the scope of our supreme constitutional jurisdiction most often in connection with the following powers:

- *for obligatory interpretation of the Constitution (art. 149, para 1, item 1 of the Constitution);*
- *to rule on a request for establishing the unconstitutionality of the laws and other acts of the National Assembly, as well as of the acts of the President (Article 149, paragraph 1, item 2 of the Constitution) and*
- *to rule on the conformity of the international treaties concluded by Republic of Bulgaria with the Constitution before their ratification, as well as on the conformity of the laws with the generally recognized regulations of international law and with the international treaties to which Bulgaria is a party (Art. 149, para 4 of the Constitution).*

The power for obligatory interpretation of the Constitution ranks Republic of Bulgaria among the few countries in the world whose constitutional jurisdictions are competent to interpret the Constitution in the abstract. The interpretive activity of the Constitutional Court against the background of its classical defensive function has a strengthening effect on the democratic foundations of the state, giving common criteria and lines for the activity of state bodies, outlining the general framework in which they can operate. Through the interpretation of the Constitution, the Constitutional Court provides the authorities with conceptual tools and

criteria for their activities. In this way, the obligatory interpretation not only defends the Constitution, but also contributes to the development of the state as a democratic and legal one.

The interpretive function of the Constitutional Court has an important preventive character. The reasons for the Interpretative Decision of the Constitutional Court No. 8 of 2005 explicitly state that "*by clarifying the exact meaning of the constitutional provisions and building a coherent and uncontroversial system of regulatory acts related to the Constitution, the interpretation helps to prevent the use of sanctioning powers of the Constitutional Court and in particular the declaration of a law as unconstitutional*". It is the interpretation of the constitutional provisions that ensures to the highest degree the fulfilment of the main purpose of the Constitutional Court - to be the guardian of the supremacy of the Constitution and not to allow its violation, including in the process of possible future constitutional changes. Hence, the mandatory interpretation of the Constitution inevitably includes a preventive component.

The preventive function of the interpretive power of the Constitutional Court is also clarified in the constitutional law doctrine. It is stated that the interpretation is necessary in order "*to guide the future legislative process in the right direction*". It is also pointed out that "*the binding interpretative decisions of the court have ensured a future uncontroversial constitutional interpretation, which prevents unconstitutional legislation by resolving the constitutional ambiguity in advance, ex ante"*.

In the context of the protection of the fundamental rights of citizens, the preventive nature of the interpretative power thus outlined stands out particularly clearly, and clarifies the meaning and protected content of the respective right so that it is applied in unison with the will of the constitutional legislator. In this way, a parameter of a preserved personal sphere is outlined, in which the state bodies should not enter, and the activation of the sanctioning powers of the court is spared.

The mandatory interpretation of the provisions of the Constitution is also of great importance due to the fact that they have direct application by the courts and other state bodies, especially in cases where the fundamental rights and freedoms of citizens are concerned.

A significant part of the interpretative decisions of the Bulgarian Constitutional Court are directly related to the fundamental rights of citizens - equality; freedom of religion; right to defence and general clause for appealability of administrative acts; right of association; communication rights and freedoms; right to strike; right to health insurance, etc.

The power of the Constitutional Court to assess the constitutionality of laws is one of the most commonly used. In the doctrine, this situation is explained by the strong resonance that can cause the control under Art. 149, para 1, item 2 of the Constitution - to suspend the

effect of a regulation, which contradicts the Constitution. Since its establishment until today, the Constitutional Court has ruled on the compliance of laws with the Constitution (as a whole or in individual parts thereof) relating to the following fundamental rights: equality before the law; right to property; communication rights (right to opinion, freedom of press and other media, right to information); right to work; right to social security; suffrage; right to free business initiative; right of association, etc.

According to Art. 150, para 2 of the Constitution, the Supreme Court of Cassation or the Supreme Administrative Court, when they establish a discrepancy between the law and the Constitution, suspend the proceedings in the case and refer the matter to the Constitutional Court, which shall rule definitively. This power of the court is a variant of its basic power to exercise abstract control over the constitutionality of laws, but it also has its own significance. This control opens the possibility for individuals and legal entities to challenge the law, but not in the abstract, but in the course of the proceedings in a specific case.

According to the current constitutional law, only the Supreme Court of Cassation or the Supreme Administrative Court has the right to be a plaintiff in an incidental control of constitutionality. The parties to the case do not have the right to refer to the Constitutional Court. No other court of lower instance has the right to refer the matter to the Constitutional Court within the specific control of constitutionality. The issue of granting the right to the lower courts to refer directly to the Constitutional Court when there is a pending case has been widely discussed in the process of drafting the current Constitution. The main (then) argument against expanding the possibility of access to the Constitutional Court through incident control is the fear of speculatively delaying the progress of cases in lower instances through frequent requests to verify the constitutionality of laws that are relevant in this case. Currently, opponents of the idea of the lower-rank courts having the right to appeal to the Constitutional Court to declare the unconstitutionality of an applicable law, also point to the possibility of speculative adjournment of cases, as a basic practical consideration.

In the process of drafting the fifth amendment of the Constitution of Republic of Bulgaria, the possibility of expanding the range of courts that can initiate such control was widely discussed. The reasons for this were as follows:

- *any court may make a preliminary reference to the Court of Justice of the European Union in Luxembourg, but paradoxically does not have access to the Bulgarian Constitutional Court;*

- *not all cases reach the Supreme Court of Cassation or the Supreme Administrative Court, for example the administrative-criminal proceedings, where the last / cassation instance*

is the respective administrative court. The parties in these cases are deprived of the opportunity to reach the Constitutional Court through the incidental control of constitutionality;

- within the general justice the situation is further complicated because, unlike the Supreme Court of Cassation, which acts as a cassation instance, the Supreme Administrative Court is the first instance for appealing / protesting the acts of the Council of Ministers and ministers regarding their legality, as well as other acts stipulated in a law as subject to appeal only before the SAC. Thus, the parties in these administrative cases are in a more favourable position for the dispute over the constitutionality of an applicable law to be considered by the Constitutional Court while their case is at first instance, which creates a certain imbalance between general and administrative justice.

Ultimately, fears prevailed of speculative delays in lower-level instance cases through frequent requests to review the constitutionality of laws that are relevant to the case. This led to the current solution of Art. 150, para 4 of the Constitution, the Supreme Bar Council to refer to the Constitutional Court with a request to establish the unconstitutionality of a law violating the rights and freedoms of citizens.

The purpose of the power of the Constitutional Court under Art. 149, para 1, item 4 of the Constitution is not to allow the effect of an international treaty contrary to the Constitution or to suspend the effect of a law contrary to international treaties.

The control for constitutionality of the international treaties under art. 149, para 1, item 4 of the Constitution is preliminary and preventive. It is preliminary, as it precedes the ratification of an international treaty by the National Assembly. Its preventive function is manifested in the prevention of a possible conflict between an already ratified international treaty and the country's obligation to implement the treaty (pakta sunt servanda), on the one hand, and the obligation to comply with the Constitution of Republic of Bulgaria, on the other.

Thus, the supremacy of the Constitution over international treaties rests on the control of constitutionality under Art. 149, para 1, item 4 of the Constitution of Republic of Bulgaria, which at the same time acts as a mechanism for its achievement in practice. A possible contradiction of international treaties with the Constitution cannot be allowed, provided that its main feature is its supremacy. Exactly this predetermines their position within our legal system.

Against the background of this principle statement, there is a clear tendency in which the hierarchization of the relationship "international - national constitutional law" is gradually giving way in favour of their mutual influence and enrichment. The interaction of the two legal systems is a dynamic, reciprocal process in which national constitutional law is "globalized" and international law is modelled on constitutional models.

In the context of the growing influence of global constitutionalism, modern constitutional law theory and practice increasingly use the concept of constitutional identity as a core of fundamental values and principles on which society has agreed and which have been raised to the constitutional level. It is accepted that the symbiosis between the two legal systems - the national constitutional and the international, can be achieved only when the core of fundamental values and foundations, recognized as the constitutional identity of the state, is not encroached upon.

Constitution is aptly defined as a precious heritage, which is why its identity cannot be destroyed. Constitutional identity manifests itself as a new dimension of the principle of vertical proportionality, so that the interaction between the two legal orders - the national constitutional and international, does not sacrifice the value and institutional core of state-organized political communities.

Constitutional identity leaves the orbit of the hierarchy and makes it possible to strike a balance between opposing legal orders and tolerate difference. It is considered as a more flexible manifestation of the theory of sovereignty, which adequately responds to the challenges of a globalizing world and outlines the boundary between national and supranational constitutionalism in a dynamic way. Constitutional identity is an extraordinary and ultimate form of protection of the original values and pillars of the society against external interference.

Viewed from a different point of view, in addition to being a limiter, constitutional identity also has a connecting function. It outlines the territory on which the interaction between the national and supranational legal order can legitimately be located. This brings clarity, certainty and predictability to the relationship between the two legal systems.

In the conditions of an established constitutional identity, it is its highlighting and defending that is a source of inspiration and argumentation in the construction of supranational constitutional legal orders. The position of the German Federal Cassation Court of the 1970s and 1980s is noteworthy, according to which at that time EU law did not contain a catalogue of fundamental rights and in this sense provided a lower standard for their protection than the national law. A practice that is an incentive to take decisive steps towards fundamental rights in the European Union acquiring not only a written from but also a codification in the Charter of Fundamental Rights, where classical civil and political rights are written together with social and economic rights. The Charter of Fundamental Rights is currently a building block in the EU legal space, with the same legal force as the EU Treaties (Article 6 TEU/Treaty on the European Union).

Undoubtedly, the elements outlining the profile of constitutional identity should be sought in the constitution of a particular state. Identity is "constitutional" because it is contained in the Constitution. The fundamental nature of the values and the principles that form it possess a justification for their incorporation into the Supreme Law of the country. Therefore, it is achievable that the content of the Bulgarian constitutional identity be derived from the text of the Constitution itself, as well as from its interpretation and application.

The difficulty in defining the core of fundamental values and principles lies in the fact that constitutional identity as a concept is not contained in the current Bulgarian Constitution. A situation that should not be seen as an omission, but as a manifestation of a living constitutionalism that is able to adapt to the dynamics of socio-economic and political relations. This, in turn, presupposes the use of legal-realistic, sociological, anthropological and historical arguments in highlighting and defending the constitutional pillars of society. Such a complex approach impresses on the richness of the constitutional identity, which has both positive legal and socio-political features, and which projects the concept of citizens about their nature as a constitutionally organized political community.

Another specificity is related to the fact that the constitutional identity has no fixed content. It should not be limited by an attempt to exhaustively list its ingredients, as it will by definition be incomplete.

Traditionally, the constitutional identity of a state is located on the plane of the unchangeable or difficult to change provisions in a Constitution. The heavy procedure for revision of the Basic Law makes it independent from conjunctural moods and gives a permanent character to the elements of its identity.

According to the Federal Constitutional Court of Germany, constitutional identity is a legal concept that outlines the core of values underlying the German Constitution, which cannot be changed. An understanding based on established traditions in German legal doctrine.

The Constitution of the Republic of Bulgaria from 1991 does not contain a catalogue with the so-called "Timeless clauses", but provides for a dual regime for its revision. By virtue of Art. 153 the National Assembly may amend and supplement all provisions of the Constitution with the exception of those provided for in the powers of the Grand National Assembly. In this way a balance is achieved between the need to create a lasting and principled regulation of basic social relations, while at the same time setting up flexible mechanisms for adaptation to the changes in the socio-economic and political environment that have occurred in the meantime.

Closest to the notion of constitutional identity as a core of long-standing, traditional and fundamental values, principles and institutions are some of the matters considered to be

particularly important for society and the state, which can be remodelled in a complex, qualified order: by convened for the purpose Grand National Assembly. It is no coincidence that the provision of Article 158 of the Constitution is the contextual framework in which in 2004 the Constitutional Court answered the question of whether the conferral of constitutional powers on a supranational organization such as the European Union and whose bodies create a law which acts directly in each Member State does endanger the sovereignty of the Member State, in this case, Republic of Bulgaria. It is about two sides of the same coin: constitutional identity as a more flexible complement and an alternative to sovereignty that makes it possible to strike a balance between global and classical national constitutionalism.

In connection with the role of the Constitutional Court with its powers of the "*external authority*" to be a guarantor of fundamental rights, two groups of issues to be resolved by the Grand National Assembly are of interest: to change the form of government (Art. 158, item 3 of Constitution) and to amend the provisions of Art. 57, para 1 and 3 concerning the irrevocability and the admissible restrictions in the exercise of the fundamental rights of the citizens (Art. 158, item 4 of the Constitution).

Chapter three of the monograph presents the main considerations "*for*" and "*against*" the introduction of a constitutional complaint in the legal order of the Republic of Bulgaria. The common feature of the leading doctrinal "*concerns*" related to the incorporation of the institute of constitutional complaint in our country is that they are surmountable.

Thus, its opponents point to the low percentage of accepted complaints in order to justify its weak useful effect. However, the constitutional complaint is far from the task of achieving high levels of success. In this case, it is not so much the quantitative indicators that are important, but the qualitative characteristics of the institute, measured by the protection of constitutionally guaranteed rights of individuals. Moreover, the small percentage of upheld complaints speaks positively about the level of respect for fundamental rights in the country concerned, which is a determining factor in its classification as legal. This is fully in line with the purpose of the constitutional complaint to be an extraordinary and ultimate form of protection in individual and therefore isolated from the general trend cases of disregard for constitutionally guaranteed rights, and not to serve as a shield against their mass violation.

In general, the inclusion of the constitutional complaint among the national mechanisms for protection of fundamental rights is in itself evidence of a high legal culture and a perceived need to respect them; it is the last element, completing the whole set of legal instruments for their protection. The ultimate goal is for each individual case of violation of constitutional rights to

come under the scrutiny of the bodies competent to take care of their observance, so that in case of a duly established violation, legal justice will prevail.

The next argument against the constitutional complaint is that it significantly complicates and burdens the work of the Court. This is a rather pragmatic, easily manageable consideration, insofar as, in a comparative aspect, the flow of complaints is curbed by establishing strict admissibility requirements and procedures for filtering them. The latter are of organizational-technical and legal-institutional nature.

In recent years, there has been a clear trend in which the debate "for" or "against" the introduction of the institute of constitutional complaint in our country, gives way to a constructive dialogue on the model of individual protection through constitutional justice. The author of the monograph shares the proposals expressed in the doctrine for the adoption *of the regulatory constitutional complaint* in our country.

Considerations for this can be divided into two groups:

a) *conceptual* - the Constitutional Court of the Republic of Bulgaria is not part of the judiciary system. This conclusion follows primarily from the systematics of the Basic Law, where the Constitutional Court and the courts are regulated in two separate chapters of the Constitution (Chapters Six and Eight). The Constitutional Court is outside the three authorities under Art. 8 of the Constitution and exercises its competencies independently and along with the legislative, executive and judicial branches.

It is well known that a fundamental principle on which the judicial authority operates is the principle of independence, which excludes control by a body external to the judicial system. In Germany, where the roots of the actual constitutional complaint come from, the legal framework of the Federal Constitutional Court is placed in the chapter on the judicial authority, i.e. the Federal Constitutional Court is part of the judicial system there.

With regard to the control over the executive, the consideration is valid that under the Constitution it is granted to a specially created pillar of administrative justice.

b) pragmatic - a completely new institute of constitutional complaint is to be introduced in the legal system of the Republic of Bulgaria, which requires its smooth incorporation without any rush towards expansion of its scope.

Main contributing moments in the monograph:

- The three main models for protection of human and civil rights and freedoms are presented;

- The conclusion is made that the protection of fundamental rights is the intention and purpose of the functioning of every constitutional court, and the mechanisms for activating constitutional control contribute to the achievement of this goal in practice;
- The forms of indirect access of citizens to constitutional justice are considered in detail;
- In the context of the incidental control of constitutionality, the tendency for decentralization of the control on compliance of the laws with the Constitution, catalysed by factors of national and supranational origin, has been studied in detail;
- The doctrine of the horizontal effect of fundamental rights is analysed;
- Through the prism of the practice of the Court of Justice of the European Union, the mechanisms for protection of fundamental rights in the territory of the European Union are examined;
- The genesis of the institute of the constitutional complaint is traced and its main characteristics are highlighted;
- The models of constitutional complaint in Germany, Austria and Spain are presented, which are leading and followed in the introduction of the institute in other countries, as well as the mechanisms for direct access of citizens to constitutional justice in the Czech Republic, Poland and Croatia, which in the 1990s, like Bulgaria, took the path of democratic transformation;
- The practice of the Constitutional Court of the Republic of Bulgaria on the exercise of powers related to the protection of fundamental rights and freedoms available at the time of writing the monograph is analysed;
- The elements of the Bulgarian constitutional identity are highlighted, in which the core of values, encoded in the basic rights of the citizens, is projected, which has a timeless nature and does not lend itself to remodelling under the weight of supranational processes and influences;
- The practice of the European constitutional jurisdictions regarding the constitutional identity is analysed;
- The leading doctrinal considerations "for" and "against" the introduction of a constitutional complaint in the Bulgarian legal system are presented;
- It analyses the practice of the European Court of Human Rights regarding the constitutional complaint as a domestic legal remedy, which should be exhausted before filing an appeal to the European Court of Human Rights;

- It outlines De lege ferenda of the parameters of future introduction of a constitutional complaint in the legal order of the Republic of Bulgaria.

Summary of the article: Outlook of the Constitutional Justice as an Instrument for Protection and Defence of the Constitution - Studia Iuris, Issue 1/2014, ISSN 2367-5314.

The importance of the Constitution as a basic law of the country, as a "regulation of the regulations", presupposes the existence of reliable mechanisms for its protection against encroachments by state bodies. Such a mechanism is undoubtedly the institute of constitutional justice. It is known that constitutional justice is a novelty in the legal and political tradition of Bulgaria. According to Art. 49 of the Tarnovo Constitution "Only the National Assembly has the right to decide whether all the conditions in this Constitution are observed when issuing a law." This line, according to which the National Assembly self-controls the compliance of the laws adopted by it with the Constitution, is continued in the Constitutions of Bulgaria of 1947 and 1971. The commendable thing in this case is that in the first decades of the last century the idea of constitutional control is permanently present in the works of prominent representatives of our legal thought such as Stefan Kirov, Peter Dzhidrov, Stefan Balamezov, Lyubomir Vladikin.

With the current Constitution, the constitutional justice in Republic of Bulgaria is already a fact, but it faces a number of challenges. A room for development is opened above all in the constitutional process, and in particular, in the part of referral to the constitutional jurisdiction.

Summary of the article: The Constitutional Complaint as a Means for Protection of the Religious Freedoms before the German Federal Constitutional Court - In: Contemporary aspects of the religious tolerance in Bulgaria, EkoPrint, 2014, ISBN 978-619-7109-04-7.

The article examines the German constitutional complaint as a mechanism for protection of the religious freedoms. In particular it comprises the following aspects of the German constitutional complaint proceeding:

- which rights are protected by the constitutional complaint;

- who has the right to file a constitutional complaint;

- which public acts can be challenged before the Federal Constitutional Court

A considerable part of the article is dedicated to the jurisprudence of the Federal Constitutional Court of Germany. A special emphasis is put on the comprehensive analysis of three decisions of the Federal Constitutional Court that are of crucial importance to the clarification of the essence of religious freedoms guaranteed by article 4 of the German Basic Law.

Summary of the article: Hfrizontal Effect of Basic Rights in the Light of Marital Agreement-the German Experience - In: Family Relations in a Changing World, Sibi, 2014 , ISBN 978-954-730-889-3.

"Basic rights" is a term of the constitutional state and is used as a synonym of the constitutional rights. Rights are basic because they are in the Constitution, i.e. in the Basic Law of the state and the rights are in the Constitution , i.e. are constitutional because they are basic. The modern trend in the constitutional regulation requires the basic principles of family and marriage to be proclaimed at constitutional level. That is how they become objective values of the constitutional order and thus of the legal order as a whole.

Leading principle of the democratic and law-governed state is that the basic rights are directly applicable, i.e. they are not just programme phrases whose execution is left to the good will of the legislator but they are objective law that are binding on the public authorities. In this sense the main addressee of the basic rights is the state. But in the modern legal doctrine it is widely accepted that in certain cases basic rights may address private persons. This is a deviation from the common rule, stating that the constitutional rights have vertical effect (a defence of a citizen against the state) and a recognition that as an exception basic rights may have horizontal effect (in private law). This exception is only possible when given the specific circumstances the private autonomy has to give way to the guarantee in favour of a third person, resulting from certain basic rights. Only then basic rights may have horizontal effect.

The third party effect doctrine of the basic rights (Drittwirkung) is developed and applied in the German constitutional practice. In two decisions, rendered upon filing a constitutional complaint: from the 6th of February 2001 and the 29th of March 2001, the Federal Constitutional Court (FCC), basing its arguments on the horizontal effect of constitutional rights, voids as unconstitutional clauses of two marital agreements.

Summary of the article: The Rights of the Children and their Place in the Bulgarian Constitutional Model – Legal Theory, Issue № 2/2015, ISSN 1310-7348.

The article examines the attitude of the constitutional legislator towards the children and their rights in the light of the evolution of the child rights concept. Nowadays, the rights of the child are incorporated in the legislation of the democratic societies, together with mechanisms for their protection. The challenge remains to recognize them on the highest, constitutional level.

In its report, named *„The protection of Children's Rights: International Standards and Domestic Constitutions"*, the European Commission for Democracy through Law (Venice Commission) encourages the states to consider special clauses on the rights of the child during future constitutional reforms. Although, there is no uniform pattern to be observed when complying with the recommendations of the Venice Commission, the following checklist must be used when formulating constitutional provisions on children's rights:

- Does they follow the key principles of the UN Convention on the Rights of the Child?
- Can they serve as the basis for future legislative reform?
- Are they consistent with the general content of the constitution?
- Did children participate in their formulation?

Summary of the article: Protection of Fundamental Rights through Constitutional Justice in Republic of Bulgaria 800 years after the Magna Carta - Studia Iuris, Issue 2/2015, ISSN 2367-5314.

When we return to the legacy of the Magna Carta, we usually recall a few basic principles written in this feudal document, which have become timeless principles of constitutionalism: the right to a proper trial; habeas corpus; participation of jurors, etc. However, it is often forgotten that the germs of the concept that underlies the emergence and consolidation of the idea of constitutional control and according to which the parliament is not omnipotent but limited by supreme rules that it should not violate, arise precisely from the Grand Charter of Freedoms.

By signing this historic document, King John of England undertook to respect the human rights and freedoms gained. What is remarkable in this case is that the Charter declares any action of the King that violates them and invades intolerably the sphere protected by them as "*null and void*" (Article 61 of the Charter). A consequence that today is associated with laws duly declared as unconstitutional.

The understanding that regulations that do not respect the fundamental human rights and freedoms cannot have the meaning of a legal regulator gains ground in the course of the

subsequent constitutional development of Great Britain. Moreover, in 1396, with the sanction of King Edward III, the Parliament passed a law according to which: "*Any act of the legislature that contradicts the Magna Carta shall be considered null and void"*.

Thus, the covenant of the Grand Charter of Freedoms to respect human rights and any action of public authority that violates them to be invalidated is what mostly legitimizes and justifies the existence of constitutional control. Jurisdictions exercising such control are entrusted with the important function of providing legal protection to the individual against encroachments or threats to the exercise of his or her rights.

Summary of the article: Voting Rights for People with Intellectual Disabilities and Mental Health Issues – Legal Theory, Issue № 3/2016, ISSN 1310-7348.

The adoption of the UN Convention on the Rights of Persons with Disabilities shows that the international community has come to realize that our societies need to move away from considering people with disabilities solely as *"objects of law"*. The Convention ensures that people with intellectual disorders and mental health issues enjoy the same rights and opportunities as everyone else. It covers the many areas where persons with disabilities have been discriminated against including participation in political and public life.

The author analyses whether the full political participation of persons with mental disorders is compatible with the public function of the suffrage by which essentials organs of the state are created. Special focus is put on the ongoing legal reform in Republic of Bulgaria on the legal status of people with disabilities and its reflection on their political participation.

Summary of the article: Guardianhip in the Practice of European Constitutional Courts – Legal Theory, Issue № 3/2017, ISSN 1310-7348.

The UN Convention on the Rights of Persons with Disabilities is not the first international document that deals with legal status of people with disabilities. The revolutionary thing is that the Convention challenged the stereotypes about people with intellectual disabilities or mental health problems established in the public mind by presenting them in a qualitatively new light - as active holders of rights. The state-parties to the Convention are expected to develop laws and policies to replace the mechanism of substituted decision-making with supported decision-making.

Driven by the desire to speed up the implementation of the commitments of the Republic of Bulgaria following from the ratification of the CRPD in 2014 the National Ombudsman appealed to the Constitutional Court for revocation of the relevant texts of the Persons and Family Act. The aim of this article is to analyse the decision issued by the Bulgarian Constitutional Court in comparison with the practice of other constitutional jurisdictions of Central and Eastern Europe in identical disputes about the constitutionality of the legal guardianship regime.

Summary of the article: Referendum as an Object of Constitutional Control - In: Law - Traditions and Outlook, Sofia, Ciela, 2018, ISBN 978-954-28-2625-5.

In comparative terms, two main forms of judicial control of a referendum are known: preliminary control (**a priori**) directed against the decision of the competent authority to raise a question at a referendum, and ongoing control concerning the referendum procedure itself and the validity of the results obtained from it.

In the first case, the control is over whether or not to hold a referendum on an issue. In the ongoing control, the verification is concentrated on the process of conducting the referendum, as is the case in Austria, Greece, Ireland, Spain, Sweden, and Turkey. If in the course of the inspection significant procedural violations are established, this is a ground for invalidation of the results obtained from the referendum (in whole or in part).

Republic of Bulgaria belongs to the group of countries (Hungary, Italy, Latvia, Poland, Russia, etc.), which assign the verification of the constitutionality of the decision to hold a national referendum to the Constitutional Court. The article examines the grounds on which such a decision of the National Assembly can be attacked as unconstitutional before the Constitutional Court.

The subject of analysis is also the question whether it is procedurally admissible the failure to act by the National Assembly, expressed in a failure to pronounce a decision on a duly submitted proposal for a national referendum, to be attacked before the Constitutional Court under Article 149, para 1, item 2 of the Constitution. The issue is discussed in the literature mostly in the light of laws as basic parliamentary acts. It is of great practical value, given that many constitutional provisions are of a programme nature and can be violated and negatively.

Summary of the article: On the Indirect Access of Citizens to Constitutional Justice- Studia Iuris, Issue 2/2018, ISSN 2367-5314.

The article is dedicated to the indirect access of citizens to constitutional justice. The significance of this topic is determined by the fact that in a state committed to the rule of law citizens rely on judicial protection for the realization of their rights and freedoms. The emphasis is put on the traditional dimensions of concrete judicial review as a mechanism for triggering the control on compliance of legislation with the constitutionally guaranteed rights and freedoms. The author analyses as well the contemporary trends for decentralization of judicial review, driven by the increased influence of global constitutionalism.

Summary of the article: Voting Rights of People with Intellectual Disabilities and Mental Health Issues – International Standards - Legal Theory, Issue № 2/2019, ISSN 1310-7348.

The article outlines the contemporary international standards on the exercise of voting rights by persons with intellectual disorders and mental health issues. The emphasis is put on Article 29 of the UN Convention on the Rights of Persons with Disabilities and its interpretation in the light of the object and the purposes of the Convention and the practice of the UN Committee on the Rights of Persons with Disabilities. The author examines the correlation between Article 29 of the Convention and other international treaties related to citizens' political participation. The practice of the EU member states in the process of complying with the requirements of Article 29 of the Convention has also been analysed.

Annotation of the article: The Constitutional Justice and the Protection of Fundamental Rights – In: Scientific Readings, dedicated on the 140th Anniversary of the Adoption of the Tarnovo Constitution, Siela, 2019, ISBN 978-954-28-3043-6.

Over the years the Bulgarian Constitutional Court has established itself as the pillar of the fundamental rights and freedoms of the citizens and the irreversibility of the democratic processes. However, in the context of the growing influence of global constitutionalism it now faces a number of challenges of a new generation. The most significant democratic tool to meet these challenges is the individual constitutional complaint. The article aims to outline the parameters of future incorporation of the constitutional complaint in the Bulgarian legal order.