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## CONSTITUTIONAL CONTROL AS A FACTOR OF MARKET ECONOMY MAINTENANCE

### I. INTRODUCTION

The Constitutional Court (CC) of the Republic of Bulgaria is one of the newest state's authorities, regulated within the acting National Constitution. For the period of its relatively short existence the Court has enacted a set of decisions, which shaped its rich in range and mostly in significance practice. Undoubtedly, the issues concerning the statute of this state body, together with its legal powers and functioning, is a subject of investigation and analysis of the study of Law. Nevertheless, the effect of the activity of the Constitutional Court, comprising in the specific constitutional justice<sup>1</sup>, more and more, at that to a greater extent is directly influencing certain economical relations.

As a basic and supreme Law of the Republic of Bulgaria the Constitution contains some norms which represent a source of justice for almost all public relationships. The main principles, promulgated in Chapter two of the Constitution have been left merely as fundamentals of recommended nature with no real applicability and influence on particular individuals or jural relationships. It is the Constitutional Court as a state body which is standing aside of the three authorities of the state,<sup>2</sup> which protects and stands up for the principles of the basic Law by means of passing judgements upon legal disputes brought before him, by turning the abstract constitutional regulations in operating vital law.<sup>3</sup> Lack of the faculty to appeal against the acts of the Constitutional Court contributes to the stability within the relevant process matter, thus obstructing possibility for future disputes between the state authorities and whatever legal entities (incl. economic entities)<sup>4</sup> to arise and to be submitted.

During the last years more and more suits heard by the Constitutional Court had to do with the pillars of the economical system in the country, inviolability of the

private property, with the competitiveness. Some fundamental decisions of the Constitutional Court passed during the past years are treated in this work; decisions which directly or indirectly influence or introduce new elements into the social and political life of the country. The role of the CC to a great extent is defined by the fact, that each act being proclaimed as unconstitutional has not been applied as of the day of the decision's coming into force, regardless of the groundings and arguments set forth in the motives.

### II. LEGAL POWER OF THE CONSTITUTIONAL COURT

#### *Interpretative power*

The Constitutional Court as part of the system of state authorities in the Republic of Bulgaria is characterized by its powers. Having in mind the specifics of functions which are to be executed by such an institution — to assure the supremacy of the Constitution<sup>5</sup>, the faculty of the CC has been set by the basic law, thus to the highest degree providing for its independency and for the steadfastness of its decisions. Constitutional prohibition for suspension of the powers of the CC by means of an act of the legislative body — the National Assembly (NA) — also contributes to the strengthening of its positions.

The essence of the exercised constitutional control is reduced to two main trends — providing obligatory interpretations of constitutional regulations (normative interpretation) and passing judgements in respect to the concord of the National Assembly's acts with the Constitution. Providing the specialized state authority (as the CC is) with the opportunity to pass interpretative acts in relation to the basic and supreme law of the state, which are binding for everyone, seems quite excessive as a legislative formulation. There is a hypothesis at hand upon which the CC during its ordinary functioning may

<sup>1</sup> Concerning the defining of CC's activity as juridical and its terminological differentiation — see Penev, P., Zartov, Y., Constitutional Justice of the RB, S., 2004.

<sup>2</sup> See Drumeva, E., Constitutional Law, S., 2008, p. 659; Decision No 18 from Dec. 16, 1993 of the CC of the RB upon the const. c. No 19/93.

<sup>3</sup> See Decision No 10 from Oct. 6, 1994 of the CC of the RB upon the const. c. No 4/94.

<sup>4</sup> This rule shall be of absolute character up to the point in which the legislative body adopts new norms stipulating upon the same matter, which on their part shall be a subject of control of the CC.

<sup>5</sup> See Art. 1, para. 1 of the Constitutional Court Act.

turn out to be an authority, which complements and/or alters the sense of the Constitution. This is absolutely inadmissible with view of the polity in Bulgaria — a republic with a parliamentary ruling in which the supreme power of ruling is conceded to a legislative body, elected by direct elections. Though, this danger is only affected as there guarantees on hampering eventual tries on the part of the CC exist to exercise changefully its powers. CC is not granted the right to act on its own initiative,<sup>6</sup> and can be referred to by the high state authorities only<sup>7</sup>. The establishment of its structure is also a kind of measure envisaged to ensure the independency of the Court as a whole. The interpretative power of the CC is not revolutionary<sup>8</sup> and it's exercising, comprising in the establishment of a permanent juridical practice should not be taken as writing up of the Constitution, as a secondary legislative process, carried out by the CC. The interpretation of the constitutional regulations eliminates their abstractness and brings clarity in their existence thus contributing to the enforcement of their direct application.<sup>9</sup> The interpretative competence of Bulgarian CC has to be taken as an achievement of the *rule of law*, as well as a growing and establishment of the constitutionalism in its most natural meaning. By means of its interpretational decisions the CC in an indirect manner decides upon important political conflicts which could have negatively influenced the process of reforms and the society. The multitude of decisions from the practice of the CC is the best proof for this.<sup>10</sup>

In its decisions, the Constitutional Court has had the opportunity to pass judgements directly or indirectly in respect to the free business initiative which is one of the main principles the market economy of the country is established and developed upon. The brevity and abstractness by which the majority of the Constitution's norms are characterized impose their interpretation in order to subsequently provide for the unity and non-

discrepancy upon application. This on its part to a great extent ensures the subsequent application of the immediate endorsement of the constitutional norms, by virtue of which each citizen and each legal entity is given the opportunity to rely on the basic law in protecting his/her rights and lawful interests.<sup>11</sup> Having in mind the constancy in the court's practice and the steadfastness of the constitutional text through the time, a normative interpretation once enacted is a sure indication, that the corresponding regulation shall be applied unambiguously.

#### ***Constitutional review***

The second substantial element of the constitutional control carried out by the CC consists in enacting of decisions in respect to this whether the relevant ordinance or law corresponds to the Constitution. This classical form of the Continental (Australian) model of constitutional control much more times repeatedly applied by the constitutional courts<sup>12</sup> due to the multiplicity of legislative acts adopted by each configuration of the National Assembly during its particular mandates. In fact, this control exercised by the CC is spread both over the acts of the National Assembly and over the Decrees of the President of the Republic, as well as in respect to the international contracts concluded by Bulgaria prior their ratification. The CC is competent to pass judgements in respect to the compliance of the national legislature with the international contracts upon which Bulgaria is a party, as well with the generally acknowledged regulations of the international law. In the last occasion, however, the decisions of the court are not grounded on the Constitution and its principle, but on a particular international contract and on an established principle of the international law, respectively. The specifics and the range of types of constitutional control, together with

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<sup>6</sup> As per the Art. 150, para. 1 of the Constitution — The Constitutional Court shall act by the initiative of at least one fifth of the representatives, the President, the Council of Ministers, the Supreme Court of Cassation, the Supreme Administrative Court and the Attorney-General.

<sup>7</sup> The issue of independent consideration of the matters in question by the Constitutional Court is not strange to the constitutional law — See Spasov, B., Constitutional Law, part one, S., 2002, p. 248.

<sup>8</sup> Analogous authority for interpretation of institutional regulations have the Constitutional Courts in some 30 countries, including Germany, Russia, Slovakia, Uzbekistan and others. Detailed overview: Harutyunyan, G., Mavcic, A., THE CONSTITUTIONAL REVIEW AND ITS DEVELOPMENT IN THE MODERN WORLD (A COMPARATIVE CONSTITUTIONAL ANALYSIS), Yerevan — Ljubljana, 1999.

<sup>9</sup> See Decision No 12 from July 23, 1996 of the CC of the RB upon the const. c. No 13/96, Decision No 3 from Feb. 8, 2001 of the CC of the RB upon the const. c. No 16/2000.

<sup>10</sup> See Decision No 8 from Sept. 1, 2005 of the CC of the RB upon the const. c. No 7/2005. With the interpretation made in this decision in respect to certain norms of the Constitutions the National Assembly is given the opportunity to alter the main law of the government with a view to provide the forthcoming for that moment EU membership.

<sup>11</sup> See Decision No 10 from Oct. 6, 1994 of the CC of the RB upon the const. c. No 4/94, State Gazette, issue 87/94.

<sup>12</sup> More — See, Harutyunyan, G., Mavcic, A., Quot. Sel. works.

the force imposed by the decisions of the CC are not subject of the present work; therefore they shall not be treated in details.

The faculties of the CC are not exhausted with the two defined large groups. They are supplemented by the so called powers by statute of the CC, which relate to the possibility to carry out control in respect to the elections of deputies, of the President and Vice-President, as well as to the passing of judgements against the State Head and termination of the mandate of judges, members of the CC's board. Constitutional Court is the body which shall have the right to hear and decide upon cases about competency between the central executive bodies and the bodies of the local self-governing.

### III. THE ROLE OF THE CONSTITUTIONAL COURT FOR THE FUNCTIONING OF COMPETITIVE ECONOMICS

1. As per the juridical characteristic of the Constitution it is a fundamental and supreme law. This means that it has the highest juridical power and regulates the main, most significant public relations.<sup>13</sup> Acting as a basic law, the Constitution sets the principles, starting points for the complete arrangement of the relevant social relations which, on the grounds of its regulations, is performed by the current (common) legislation'.<sup>14</sup> Such is the case with one of the main principles of the acting Bulgarian Constitution — *the free business initiative*, which is the base of the market economy of the country.

Since the beginning of its existence as institution the CC has had the possibility and the obligation to pass opinion on binding interpretation of the principle for free business initiative, as stipulated in Art. 19 of the Constitution.<sup>15</sup> The decision has been endorsed on the occasion of the correct interpretation of the notions of private and public property in connection with the organization of the governmental property's management by the executive power. The position expressed by the CC upon the interpretation of this passage of the Constitution provides the basic meaning which is later applied in all decisions subsequently enacted, in which case the court is passing judgements upon particular constitutional cases to announce the unconstitutionality of texts from the Bulgarian Legislature. Furthermore, the accepted meaning of this regulation of the Constitution by the CC has been used with the same meaning by all the state authorities and organizations.

The free business initiative is only carried out in full value upon guaranteed development of the private property, which is maintained on equal principles, regardless of its holder — natural or legal entities, the state, or the municipalities. Each of these parties shall not enjoy the legislative privileges upon the management of properties in his/ her possession, as the legislative body is obliged through particular normative acts to establish and provide equal legal conditions for business activity to all the parties by preventing misappropriation with the monopoly, unfair competitiveness and consumer protection. These constitutional guarantees are the very condition for the opening of the free business initiative, based on the private property.<sup>16</sup> The particular normative requirements are included in special laws, which on their part are subject to control for constitutionality which is carried out by the Constitutional Court with the due consideration on the part of the competent state authorities. As of the present moment there are two laws in force which establish the matter — the Law on Protection of Competition and the Consumers Protection Act. Though, what pertains to particular cases, the CC takes into consideration the conformity of the relevant law solely with regards to the Constitution but not with regards to the regulations of the ordinary legislation.

2. What pertains to the practice of the Constitutional Court, considerable number of cases has been initiated so far (more than 15), in which he had to discuss and pass judgements whether the processed (attacked) legislative norms conformed or not to the principle of free business initiative. By providing arguments in the motives of their decisions, the CC in the long run establishes whether the norm is not in conformity with the constitution by explicitly announcing it as such, and thus the regulations is suspended from application.

Art. 19 of the Constitution reads that *the law establishes and assures all citizens and legal entities with equal legal conditions for business activity by preventing misappropriation with the monopoly, unfair competitiveness and consumer protection*. Text analysis shows that the activities of the state upon guarantying the equal conditions for business development have to be carried out simultaneously, i.e. consumers to be protected and all the individuals to be protected from misappropriation with monopoly situation and unfair competitiveness. However, this does not exhaust the hypotheses of legal establishment and assuring of equal

<sup>13</sup> See Stoychev, St., Constitutional Law, S., 2002, p. 80; Spasov, B., Constitutional Law, Part One, S., 2002, p. 24.

<sup>14</sup> Spasov, B., A Study of the Constitution, S., 1997, p. 31.

<sup>15</sup> See Decision No 19 from Dec. 21, 1993 of the CC of the RB upon the const. c. No 11/93, SG, issue 4/94.

<sup>16</sup> Ibid, item 2 from the dispositive of the Decision.

legal conditions for business activity. The opposite interpretation would have limited the application of the promulgated in Art. 19, para. 1 principle, that the basis of Bulgarian economy is the free business initiative. The three stated hypotheses constitute part of equal conditions consequences but do not exhaust them.<sup>17</sup>

In conjunction with all what was said so far, it has to be noted that the Constitutional Court does not accept the right on free business initiative as a kind of peculiar arbitrariness. It states, that this right is not of absolute nature and at the same time the principles of state regulation and control of business activity are not excluded. Limitation of the freedom on business initiative is a right of the legislative authority, of course, within the frameworks of the Constitution itself. Such cases are present in respect to the state property and the state monopoly,<sup>18</sup> and also in respect to the unfair competitiveness and consumers' protection. The free business initiative can be always limited with a view to the protection of other constitutional valuables, as well — the sovereignty, for instance, state's security and independence and its territorial completeness; protection and regeneration of the environment, the maintenance and variety of the animated nature and the efficient usage of natural resources and capacities of the country; special land protection; protection of the Bulgarian language and the national historical and cultural heritage etc.<sup>19</sup> The free business initiative can be temporarily limited by law upon proclaiming of war, by martial law or other states of emergency.

3. The free business initiative should not be interpreted as absolute, uncoordinated and uncontrolled freedom of economical behavior on the part of all economic entities.<sup>20</sup> Similar opinion could have brought to a chaos, as far the business activities' regulation upon the orders of legislature represents an objective precondition for it. This is evident from some of the decisions of the CC from the past years. Thus, the legislator has limited the establishment of chemistries for free sale of medicinal products on the territory of certain health, medical and other institutions for hospital aid.<sup>21</sup> In this way the free business initiative and the requirement

for equal legal conditions for the business activity are obviously breached. However, this is justifiable as far the purpose is to be protected other, higher in ranking constitutional value what the health of the citizens is and their guaranteed accessible medical help. In this case, that legislative decision has been found reasonable by the Constitutional Court and therefore it has rejected the request the relevant legislative regulation to be promulgated as unconstitutional.<sup>22</sup>

4. The National Assembly has the right to adopt laws on any matter, without being envisaged whatever conditions or requirements in respect to their subject matter or content, provided that they are not in contradiction with the general principles and regulation of the Constitution.<sup>23</sup> This legislative expediency of the NA as per Art. 84, item 1 of the Constitution, cannot be arbitrary and unlimited. Such is the case in which the CC has refused to endorse non-constitutionality of the legislative regulation of § 9, para. 1 of the provisional and final regulations of the Environment Protection Act (EPA) (publ., SG, issue 91 from Sept. 25, 2002) by means of which different obligation have been envisaged for damages caused upon economic entities on the one side and on the state on the other. The CC admits in the motives of its decision that for the particular case the legislative approach applied has been regular from the point of view of the expediency and no violation has been present of the free business initiative and the equality of the legal conditions upon which all Bulgarian and foreign natural and legal entities-parties on privatization contracts under the EPA were to be placed. 'The Constitutional principle of the Art. 19, para. 2 shall apply upon equal condition to one and the same moment of the business activity but not for consequent and different acts. The opposite would have meant a prohibition for the legislator to alter or amend the already established legislation. In certain occasion the National Assembly can also establish variety of legal grounds for different categories of economic entities within the frameworks of the only business activity. The difference within the legislative organization at different periods of time as a rule is influenced by a number of factors

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<sup>17</sup> See Decision No 2 from March 13, 2003 of the CC of the RB upon the const. c. No 20/2002.

<sup>18</sup> As per the Art. 18, para. 4 of the CRB by Law state monopoly can be established upon the railroad transport, national postal and transmission networks, the use of nuclear energy, production of radioactive products, weapons, explosion and heavy biological action substances.

<sup>19</sup> See Decision No 6 from Feb. 25, 1997 of the CC of the RB upon the const. c. No 32/96.

<sup>20</sup> See Decision No 7 from May 20, 2003 of the CC of the RB upon the const. c. 4/2003.

<sup>21</sup> See Art. 226, para. 2 of the Medicinal Products in Human Medicine Act (prom., SG, issue 31 from April 13, 2007)

<sup>22</sup> See Decision No 9 from June 17, 2003 of the CC upon the const. c, No 10/2003.

<sup>23</sup> See Justice Hristo Danov's opinion in dissent of the upon a case Decision No 5 from Sept. 26, 2002 of the CC of the RB upon const. c. No 5/2002.

— economical, political, international etc.<sup>24</sup> due to which such a legislative decision is correct.

5. Another decision of it's the CC, following its consecutive practice (see item 2 above), enacts, that the right on social insurance is a value of higher order in respect to the right on free market initiative and has to be protected as a priority. This substantiates the state regulation conducted and the control in respect to the activity of pension insurance funds. The adopted restrictive measures as per Art. 176, para. 3<sup>25</sup> of the Social Insurance Code (SIC) are aimed at protecting the interests of the insured in the funds entities by prohibiting the insurance society to make use of the investment properties purchased on the means of insured individuals. In essence, this represents protection of consumers after the Art. 19, para. 2 of the Constitution, but not breaching the right on free business initiative in relation to insurance funds in questions which are provided with equal legal conditions to carry out their activity. What is more — the free business initiative of the pension insurance society is limited neither in respect to the use of its properties acquired on its own capitals nor in respect to the management of investment properties of the pension fund with regards to any third party. The only thing limited is the use of investment property for business transactions with related entities as this is a normative decision, consequently applied in the commercial law, containing the constitutionally guaranteed obligation of the state to prevent unfair competitiveness — Art. 19, para. 2, proposal 3 of the he Constitution.<sup>26</sup>

6. The Constitutional Court occupies a specific position within the system of state authorities. Its task is to protect the Constitution and to stand up for the principles promulgated in it. Its activity from the point of view of functionality seems quite well provided.<sup>27</sup> Though, in some cases in the CC the required majority for the general motives to be formulated for the decision upon a

particular issue cannot be met.<sup>28</sup> Similar is the case at the hearing of the constitutional argument concerning the established by means of the Power Engineering Act (prom., SG, issue 107 from Dec. 9, 2003) easier terms for collection of receivables for the electric power and natural gas supply. The request for proclaiming the relevant regulations as unconstitutional meets no the required majority and is thus rejected, but in the motives to the decision some important conclusions have been made. The created legal inequality for the privileged creditors to collect their receivables on an easier base is grounded on legislative and economic expediency as far in this way stability, security and uninterruptedness of actions on provisioning the electricity and gas supply. This on its part provides no grounds for legislative exception from the constitutional principle for establishment and assuring equal legal rights on market activity. The establishment and assuring of equal legal conditions pursuant to Art. 19, para. 2 of the Constitution envisage legal but not economical parity and such exactly has been established in this case. Besides, the requirement for protection of consumers has not been observed, as well. The National Assembly is obliged to take into consideration this element of the free business initiative upon the adoption of each legislative act which concerns the consumers. This cannot be eliminated or neglected at the expense of other considerations, as economical expediency, social demands etc.<sup>29</sup> The protection of consumers is not exhausted with the adoption and enforcing of a special law only (the Consumers Protection Act), on the contrary; there is concerned the consideration of interest and rights of the consumers made in advance in execution of the basic constitutional principle prior and during the legislative process. Consumers' protection is not a problem of a single normative act only but of a complex of rules which cover all possible domains of their rights and interests' breach.<sup>30</sup> All this is to show

<sup>24</sup> See Decision No 2 from March 13, 2003 of the CC of the RB upon the const. c. No 20/2002. Here must be noted, that Justices Nedelcho Beronov and Lyudmil Neykov's opinions of dissent of the in respect of this decision contain quite reasonable arguments in support of the opposite thesis. They state, that "no advisability considerations can be taken regulating for the legislator upon the acceptance of the regulation contested." The legislative expediency „has constitutionally admissible limit which imposes the obligation its application not to infringe the Constitution". „The free business initiative on which the economics of our country is based can be only limited with a view to protect other constitutional values. The case can be related to none of the institutional values visualized in the decision." Though, the decision of the CC has been endorsed by the necessary number of votes cast by the justices, which has made it final and implies obligation to be adhered to by everyone.

<sup>25</sup> As of the present moment the text of the regulation in question is with another edition.

<sup>26</sup> See Decision No 2 from April 20, 2004 of the CC of the RB upon the const. c. No 2/2004.

<sup>27</sup> Besides Chapter VIII of the Constitution, to CC's activity are dedicated two more normative acts — The Constitutional Court Act ((prom., SG, issue 67 from Aug. 16, 1991) and Regulations on the organization of the activities of the Constitutional Court.

<sup>28</sup> As per Art. 151, para. 1 of the CRB the Constitutional Court endorses its decision upon majority of more than the half of all the judges.

<sup>29</sup> See Decision No 11 from Dec. 18, 2007 of the CC of the RB upon the const. c. No 6/2007, again there.

<sup>30</sup> See Decision No 4 from March 15, 2007 of the CC upon c. c. No 10/2006.

that though regular in their essence, the conclusions which are being made in the motives of the CC are not sufficient in order to directly influence the legislative regulations which are in breach of the basic law. And yet, the inclusion of these conclusions in the motives of the endorsed decisions provides some kind of guarantee that those shall be adhered to by the legislator in his future activity.

7. The promulgated in Art. 6 of the Constitution equality of citizens before the Law do not exclude the right of the legislator to introduce specific conditions and requirement for exercising of certain activity. As these conditions are equal and apply to everyone who practice it, they are at equal positions, notwithstanding the fact that some of them actually cannot conform to these requirements. The fundamental principle here is within the circle of those who exercise the same activity to be put on an equal basis. The Law shall have to apply equally to citizens and the legal entities regardless of economic capacities of their particular groups.<sup>31</sup>

In the quoted decision of the CC under discussion are the disputed legal regulations for the Automobile Transport Law, by which equal legal conditions are envisaged for everyone who renders taxi services to passengers. The CC concludes that the economic possibilities of the entities to carry out this type of activity are beyond the subject of regulating as per Art. 19, para. 2 of the Constitution, and generally, beyond the scope of application of the right on free business initiative. In this case the expedient legislative decision is present which has been adopted as an expression of the discretion competence of the National Assembly to adopt, amend, supplement and abolish the laws. It is of no significant importance for the conformity of the text to the Constitution what pertains to the fact that they are not to be born equally by everybody in social aspect. Article 19, para. 2 of the Constitution does not bind the legislator to establish different legal conditions for market activity supposed to meet the financial state of particular groups of citizens and legal entities. It requires legal order for everyone regardless of their resources, which exactly is that established with the Automobile Transport Law. By analogy, similar normative requirements introduced have been introduced in respect to the exercising of different professions or activities, without being in breach to any extent of the requirement for equality in the eye of the law, promulgated through Art. 6 of the CRB.<sup>32</sup>

8. Adjudication upon particular disputes in connection with the functioning of the country's economy

makes the Constitutional Court an active participant in the social processes and the Constitution on its part is being adopted as a directly endorsed legal framework, regardless of its generally formulated and abstract sounding norms. One of the recently endorsed decisions of the Court turned to be a key decision for a large sector of the economy, and namely — the trade with medical products. According to Art. 52, para. 5 of the CRB the state carries out control over all the health institutions, as well as over the manufacturing of medications, bio-products and medical equipment and over the trade with them, including control over the retail trade with medical products with a view to the protection of citizens' health. The freedom of the business initiative does not exclude the principles of state regulation and control over the economic activity as it is not absolute and can be limited as per the legislative order when this is aimed at preventing misappropriation with the monopoly, unfair competitiveness and is meant to be consumer protective.<sup>33</sup> In executing its faculties upon Art. 52, para. 5 of the CRB, the National Assembly adopts limitation in respect to the economic entities which have no right to carry out retail trade with medical product by opening a pharmacy — this right is granted to every chemist who has Master's degree and has been registered as a trader in accordance with the Commercial Law — a sole proprietor or a single owner of a limited liability company, as per the legislature of a country-member or a country of the European Economic Area. In this case, the CC regularly admits that by limiting the legal-organizational forms through which medications retail trade can be carried out, the state in the person of the National Assembly in its nature goes beyond its powers of control granted as per the Art. 52, para. 5 of the Constitution. The control which the state is empowered to carry out upon the activity of the pharmacies, cannot serve as a grounding and justification to introduce prohibition to all the remaining trading companies, except for the EOOD and ET to carry out retail trading with medical products when they open a pharmacy. That is why, in this case the introduced limitation has been reasonably declared by the CC as unconstitutional.

#### IV. CONCLUSION

The examples presented from the practice of the Bulgarian Constitutional Court are aimed to prove in an indisputable manner the more and more increasing significance of this Institution. Secondly, but not last, it should be noted that through the CC the norms of

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<sup>31</sup> See Decision No 3 from April 13, 2006 of the CC of the RB upon const. c. No 4/2006.

<sup>32</sup> See Decision No 18 from Nov. 14, 1997 of the CC of the RB upon const. c. No 12/1997.

<sup>33</sup> See Decision No 5 from July 10, 2008 of the CC upon c. c. No 2/2008.

Bulgarian Constitution 'come back to life' as accordingly to their casual interpretation they can be applied to particular social relationships — a point, which is inconceivable and inadmissible as per the previous Constitutions of the Republic of Bulgaria. The accent of the present work is set solely on the principle of free business initiative which has been introduced for the purposes of providing the grounds for the market economy of the country. The numerous decisions of the CC and references to this significant principle of the Economics come to prove and to fasten the role of the constitutional control carried out as a fixed part of each democratic state of law.

**Dochev M., Dochev H. Constitutional control as a factor of market economy maintenance**

After the change of the social-political system in Bulgaria during the last decades of the XX century, Bulgaria has been facing a great number of difficulties in the transition from planned to market economy. The adoption of a new democratic Constitution has to do with the introduction of new functions of state authorities and the standing for new principles. The subject of this report is the activity of the Constitutional Court (CC) and its role in the enforcement of the basic principle of the market economy in accordance with the Bulgarian basic law — the free business initiative.

*Key words:* Constitutional Court, constitutional control, free business initiative, competitiveness, monopoly, consumer protection.

**Дочев М., Дочев Х. Конституційний контроль як чинник підтримки ринкової економіки**

Після зміни соціально-політичної системи в Бол-

гарії протягом останніх десятиліть XX століття, Болгарія стикається із численними труднощами при переході від економіки планової до ринкової. Ухвалення нової демократичної Конституції має відношення до введення нових функцій державних властей і підтримки нових принципів. У статті розглянута діяльність Конституційного Суду та його роль в здійсненні основного принципу ринкової економіки відповідно до Болгарського основного закону — вільна ділова ініціатива.

*Ключові слова:* Конституційний Суд, конституційний контроль, ділова ініціатива, конкурентоспроможність, монополія, захист споживача.

**Дочев М., Дочев Х. Конституционный контроль как фактор из поддержки рыночной экономики**

После изменения социально-политической системы в Болгарии в течение последних десятилетий XX столетия, Болгария сталкивается с многочисленными трудностями при переходе от плановой к рыночной экономике. Принятие новой демократической Конституции имеет отношение к введению новых функций государственных властей и поддержки новых принципов. В статье рассмотрена деятельность Конституционного Суда и его роли в осуществлении основного принципа рыночной экономики в соответствии с Болгарским основным законом — свободная деловая инициатива.

*Ключевые слова:* Конституционный Суд, конституционный контроль, свободная деловая инициатива, конкурентоспособность, монополия, защита потребителя.

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