

CONSTITUTIONAL COURTS' FUNCTIONS IN EUROPE: WHAT DO CONSTITUTIONS SAY?*

Summary

National constitutional courts in Europe are entrusted with various paramount tasks based on the provisions in their national constitutions. Numerous constitutional provisions establish the basis for the performance of constitutional justice within the framework of constitutional democracy, many of which have been examined in this paper. However, simply reading the European states' constitutions is not sufficient to fully assess the role of constitutional courts within their respective national legal and political systems. This paper explores the constitutionally provided purposes of constitutional courts.

Keywords: Constitutional Courts, European Judicial Area, Comparative Constitutional Law in Europe.

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FUNKCIJE USTAVNIH SUDOVA U DRŽAVAMA EVROPE: ŠTA PIŠE U USTAVIMA?

Sažetak

Ustavnim sudovima u Evropi ustavima su povereni različiti veoma važni zadaci. Veliki broj odredbi ustava definišu osnove za vršenje ustavnosudskih funkcija u okviru ustavne demokratije i većina tih odredbi navedene su u ovom radu. Da bi se na pravi način procenilo mesto ustavnih sudova u pravnim i političkim sistemima u Evropi nije dovoljno samo pročitati ustave evropskih država. Ipak, možemo pretpostaviti da bi sveobuhvatna analiza funkcija koje nacionalni ustavi daju svojim „čuvarima“ i isključivim ovlašćenim tumačima mogla da bude od koristi.

Ključne reči: ustavni sud, evropsko sudske područje, uporedno ustavno pravo Evrope.

1. Introduction

Constitutional courts in Europe perform a range of roles and functions as defined by their respective constitutions. They exercise constitutional judicial authority in various ways, from assessing the compliance of legislation, subnational legal acts, and international treaties with the Constitution, to integrating the European Union (the EU) law into national normative systems.¹ In addition to interpreting the Constitution, constitutional courts are authorized to resolve jurisdiction conflicts between the central and the subnational government (or self-government) levels, as well as between various branches of state power, serving in this role as key mediators in the field of constitutional law and, indirectly, national politics. Additionally, constitutional justice is responsible for implementing mechanisms to ensure the effective protection of fundamental rights and freedoms, which are broadly guaranteed by all the national constitutions in Europe.

Part One of this paper outlines the ways in which constitutional courts in Europe exercise control over the constitutionality of laws, by-laws, and ratified

¹ In this regard, some constitutional courts, such as the Germany's *Bundesverfassungsgericht*, appear to have a special responsibility to determine whether the existence of the EU, as “a form of multi-level government”, can legislate *over* and *against* a particular national law or its Member States can “retain their own sovereignty and competence to decide on conferring competences to supra-state institutions” (Busquets, 2024, p. 720). Similar conclusions have been outlined by Galimberti & Ninnati (2020, pp. 413-417).

treaties. These courts are also uniquely positioned to interpret the Constitution. The following section examines the functions of constitutional justice in establishing mechanisms for holding public officials accountable. It also discusses the role of constitutional courts as courts of appeal. Part Four explores how constitutional courts ensure the enforceability of the core constitutional values, such as the protection of fundamental rights and the rule of law. In the Conclusion, the author summarizes the key observations regarding the roles of national constitutional courts as provided across Europe.

The paper employs a comparative method to analyze and contrast constitutional provisions specifying the position and functions of the constitutional courts. It claims that the primary function of the constitutional court is to review the compliance of legal acts with the Constitution, resolve constitutional disputes, and issue decisions regarding the accountability of the highest-level public office holders. Another important function of the constitutional judiciary is the protection of individual rights and freedoms, including upholding the rule of law.

2. Constitutional Courts as Constitutional Control Bodies

Slightly more than a century has passed since the establishment of first constitutional courts in Europe. These specialized judicial bodies were first created in Austria (1919), Czechoslovakia (1920), and Spain (1931). However, “the development of constitutional courts on the European continent was only possible after World War II”, as “the painful experience of totalitarianism led to a search for effective mechanisms of constitutional protection, ensuring respect for individual rights and safeguarding minorities against the omnipotence of the majority” (Kłopotcka-Jasińska, 2022, pp. 15-16). The pivotal role of these courts was the authoritative review of the constitutionality of legislation, in accordance with the theoretical models proposed by Hans Kelsen and Charles Eisenmann (Petrov, 2022, p. 261), which, with some exaggeration, led to the 20th century being referred to as “the century of constitutional courts” (Kłopotcka-Jasińska, 2022, p. 13).

The primary role of constitutional courts in Europe is the judicial control over the constitutionality of legal acts adopted by legislative and executive bodies (Constitution of Belarus, 1996, art. 116.1; Constitution of Estonia, 1992, art. 149.3; Constitution of Georgia, 1995, art. 59.2 and art. 83.1). This authority extends to both national legislation, and federal, provincial, and local legal acts. The constitutional court bears a “specific responsibility for administering justice in matters of a legal and constitutional nature,” (Constitution of Portugal, 1976, art. 221) and is recognized “as a court of public law” (*Gerichtshof des öffentlichen Rechtes*) (Constitution

of Liechtenstein, 1921, art. 104.1) The constitutionality review is a competence exclusively vested in constitutional courts (Constitution of Cyprus, 1960, art. 136; Constitution of Ireland, 1937, art. 34.3.1; Constitution of Moldova, 1994, art. 134.1; Constitution of Spain, 1978, art. 161.1; Constitution of Ukraine, 1996, art. 147.1). In Europe, this review is often performed post-enactment, i.e., *after* the legislation has been enacted (Dahlberg & Kantola, 2024, p. 380). For example, the Monegasque Constitution states that, “in constitutional matters”, the Supreme (i.e., Constitutional) Court “rules in sovereign fashion” (*statue souverainement*) (Constitution of Monaco, 1962, art. 90A). Similarly, the Montenegrin Constitutional Court holds exclusive authority to “monitor the enforcement of constitutionality and legality” (Constitution of Montenegro, 2007, art. 149.3; similar is provided by Constitution of Croatia, 1990, art. 149.3).

Broadly speaking, the constitutional court safeguards the constitutionality of legal acts (Constitution of Andorra, 1993, art. 45.2; Constitution of Azerbaijan, 1995, art. III.4; Constitution of Cyprus, art. 142.1; Constitution of Czechs, 1992, art. 83; Constitution of Estonia, art. 107.2; Constitution of Germany, 1949, art. 93.1.2; Constitution of Greece, 1975, art. 100.1.”e”; Constitution of Hungary, 2011, art. 24.2.”b”; Constitution of Ireland, art. 26; Constitution of Luxembourg, 1868, art. 95, ter. 2; Constitution of Montenegro, art 11.6; Constitution of North Macedonia, 1991, art. 108; Constitution of Poland, 1997, art. 122.3 Constitution of Portugal, art. 223.1; Constitution of Romania, 1991, art. 77.3; Constitution of San Marino, art. 16.1; Constitution of Slovakia, 1992, art. 124; Constitution of Turkey, 1982, art. 104.7). and the legality of other normative acts (Constitution of Montenegro, art. 11.6; Constitution of North Macedonia, art. 108; Constitution of Serbia, 2006, art. 166.1) within the bounds set by the Constitution. It reviews the compliance of parliamentary decisions and acts (Constitution of Armenia, 1995, art. 100.1; Constitution of Azerbaijan, art. 130, para. III.1; Constitution of Bulgaria, 1991, art. 149, para. 1.2; Constitution of Lithuania, 1992, art. 102.1; Constitution of Moldova, art. 135.1.”a”), Constitution of Russian Federation, 1993, art. 125. 2.”a”; Constitution of Ukraine, art. 150.1.1), including the rules of procedure (Constitution of Andorra, art. 98.”a”; Constitution of France, 1958, art. 61.1; Constitution of Monaco, art. 61.1-2, art. 90A; Constitution of Romania, art. 146.”c”; Constitution of Turkey, art. 104.7), with constitutional provisions, while also exercising control over the constitutionality of executive actions. This includes legal acts issued by the President of the Republic (Constitution of Armenia, art. 100.1; Constitution of Azerbaijan, art. 130.III.1; Constitution of Belarus, art. 116.4); Constitution of Bulgaria, art. 149.1.2; Constitution of Georgia, art. 89.1.”a”; Constitution of Lithuania, art. 102.1; Constitution of Moldova, art. 135.1.”a” Constitution of Russia, art. 125.2.”a”; Constitution of Ukraine, art. 150.1.1) and by the national government (Constitution

of Azerbaijan, art. 130.III.1; Constitution of Belarus, art. 116.4; Constitution of Liechtenstein, art. 104.2; Constitution of Moldova, art. 135.1.“a”; Constitution of Russia, art. 125.2.“a”; Constitution of Slovakia, art. 125.1.“b”).

Additionally, the court may examine judicial decisions (Constitution of Belarus, art. 116.4; Constitution of Moldova, art. 135.1.“g”), ratified international treaties (Constitution of Austria, 1945, art. 140a.1; Constitution of Azerbaijan, art. 130.III; Constitution of Belarus, art. 116.4.1; Constitution of Georgia, art. 89.1.“e”; Constitution of Lithuania, art. 106.5; Constitution of Moldova, art. 135.1.“a”; Constitution of Poland, art. 133.2; Constitution of Portugal, art. 279.3; Constitution of Romania, art. 146.“b”; Constitution of Slovakia, arts. 119.“h”, 102.1.“c”; Constitution of Slovenia, 1991, art. 160. 2; Constitution of Spain, art. 95. 2; Constitution of Ukraine, art. 151. 1). The assessments of treaties have priority (*caràcter preferent*) over other processes before the country’s Constitutional Court (Constitution of Andorra, art. 101.1), provisions adopted by regional (Constitution of Azerbaijan, art. 130.III.1; Constitution of Italy, 1947, arts. 123.2-5, 127.1; Constitution of Portugal, art. 278. 2-3; Constitution of Serbia, art. 186; Constitution of Spain, art. 153.“a”; Constitution of Ukraine, art. 150.1). and local self-government units (Constitution of Albania, 1998, art. 131.“c”; Constitution of Armenia, art. 100.1; Constitution of Austria, art. 139.1; Constitution of Azerbaijan, art. 130.III.5; Constitution of Slovakia, art. 125.1.“d”; Constitution of Slovenia, art. 160.4), collective agreements (Constitution of North Macedonia, art. 110.2; Constitution of Serbia, art. 167.1.5), and established general customs (Constitution of San Marino, art. 16.3.“a”). Specifically, constitutional review is often regarded as “the core competence of a constitutional court” (Kłopotcka-Jasińska, 2022, p. 39).

In accordance with the principle enshrined in Germany’s *Grundgesetz* (GG), which states that “federal law prevails over [the federal unit’s] law” (*Bundesrecht bricht Landesrecht*) (Constitution of Germany, art. 31), the Federal Constitutional Court in Karlsruhe – arguably the most influential constitutional court in Europe (Đurić, 2015, p. 100) – assesses the compatibility of both federal and federal units’ laws with the GG and federal legislation in general (Constitution of Germany, art. 93.2.1). Similarly, the Swiss Federal Supreme Court “hears disputes concerning violations” of federal law (Constitution of Switzerland, 1999, art. 189.1.“a”). These examples reinforce the concept that judicial control of constitutionality “continues its existence in federations”, where it acquires “a special dimension” (Petrov, 2022, p. 334). The Constitutional Court of Portugal, for instance, is authorized to “review and verify any failure to comply with this Constitution by means of the omission of legislative measures needed to make constitutional rules executable” (Constitution of Portugal, art. 283.1) – a mechanism known as “unconstitutionality by omission” (*Inconstitucionalidade por omissão*). Constitutional courts are also authorized to assess whether actions taken by state institutions during times of war or state of

emergency comply with the Constitution (Constitution of Montenegro, art. 149.1.8; Slovakia Constitution of, art. 129.6). Additionally, they assess whether legal acts violate fundamental principles of equality, non-discrimination, or the right to free education (Constitution of Belgium, 1994, art. 142.2), and examine the compatibility of domestic legislation with ratified international treaties (Constitution of Albania, art. 131.“a”; Constitution of Belarus, art. 116.4.4; Constitution of Bulgaria, art. 149.1; Constitution of Hungary, art. 24.2.“f”; Constitution of Montenegro, art. 149.1.1; Constitution of Poland, art. 188.2; Constitution of Serbia, art. 167.1.1; Constitution of Slovakia, art. 125.1.“a”; Constitution of Slovenia, art. 160.1.2), and general rules or principles of international law (Constitution of Bulgaria, art. 149.1.4; Constitution of Serbia, art. 167.1.1; Constitution of Slovenia, 160.1.2).

In the realm of transnational law, constitutional courts have assumed an increasingly significant role. Specifically, they “now also seem to be more willing to refer preliminary questions to the European Court of Justice [ECJ] and enforce [EU] law – either through sanctioning ordinary courts’ duty to refer to the [ECJ] or by the direct enforcement of [EU] law” (Komarek, 2014, pp. 527-528). At the same time, constitutional courts appear to be “a natural partner to hold a dialogue with international courts” (Kłopotcka-Jasińska, 2022, p. 31), charged with the task of integrating the EU Charter of Fundamental Rights into national legal systems, thereby extending their jurisdiction and ensuring that they have “their say in European fundamental rights matters” (Schnetter, 2024, p. 282).

Whenever lower courts establish that a legal norm may be inconsistent with the Constitution, they are obligated – in accordance with the hierarchical structure of appellate procedures – to refer the case to the constitutional court (Constitution of Albania, art. 145.3; Constitution of Andorra, art. 100.2; Constitution of Austria, art. 140.1.“a”; Constitution of Belgium, art. 142.3; Constitution of Bosnia and Herzegovina, 1995, art. 6.3.3; Constitution of Cyprus, art. 144.1-2; Constitution of Georgia, art. 89.1; Constitution of Greece, art. 100.5; Constitution of Lithuania, art. 110.2; Constitution of Luxembourg, art. 95ter.2; Constitution of Montenegro, art. 150.2; Constitution of Poland, art. 193; Constitution of San Marino, art. 16.3.“a”; Constitution of Slovakia, art. 130.1.“d”; Constitution of Slovenia, art. 156; Constitution of Spain, art. 163; Constitution of Turkey, art. 152). As the effectiveness of legal norms relies on their enforcement, the constitutional court also *protects* the Constitution, guaranteeing its full and comprehensive implementation, and upholding its normative supremacy (Constitution of Albania, art. 124.1; Constitution of Croatia, art. 130; Constitution of Hungary, art. 24.1; Constitution of Moldova, art. 134.3; Constitution of Romania, art. 142.1).

It is the responsibility of constitutional courts to establish the meaning of constitutional provisions. Namely, pursuant to the relevant provisions of the European

constitutions, one of the most significant and distinctive roles of constitutional courts is *interpreting the Constitution* (Constitution of Albania, art. 124; Constitution of Andorra, art. 95.1; Constitution of Azerbaijan, art. 130.VI; Constitution of Bulgaria, art. 149.1.1; Constitution of France, art. 37.1-2; Constitution of Moldova, art. 135.1.“b”; Constitution of Russia, art. 125.5; Constitution of Slovakia, art. 128; Constitution of Ukraine, art. 147.2), as a responsive, living document – much like the function performed by the national *supreme courts* in many countries (Matić Bošković, 2023, p. 672). This interpretative authority also extends to the constitutional court's power to provide authoritative interpretations of organic (systemic) laws (Constitution of France, art. 39.4-6; Constitution of Georgia, art. 89.1.“a”, “f”; Constitution of Slovakia, art. 128), as well as ordinary legislation. This principle is enshrined in the *constitutional* framework in slightly less than two-thirds of the European national constitutions analyzed (Constitution of Albania, art. 131.“a”; Constitution of Andorra, art. 98.“a”; Constitution of Armenia, art. 100.1; Constitution of Austria, art. 148f; Constitution of Azerbaijan, art. 130.III.1; Constitution of Belarus, art. 116.4; Constitution of Belgium, art. 142.2.3; Constitution of Bosnia and Herzegovina, art. VI.3.3; Constitution of Bulgaria, art. 149.1.2; Constitution of Croatia, art. 129.1; Constitution of Cyprus, art. 6.4; Constitution of Georgia, art. 89.1.“a”; Constitution of Hungary, art. 24.2.“a”; Constitution of Ireland, art. 34.4.4; Constitution of Italy, art. 134.1; Constitution of Latvia, 1992, art. 85; Constitution of Liechtenstein, art. 104.2; Constitution of Lithuania, art. 102.1; Constitution of Luxembourg, art. 95ter; Constitution of Moldova, art. 135.1.“a”; Constitution of Montenegro, art. 149.1.1; Constitution of North Macedonia, art. 110.1; Constitution of Poland, art. 188.1; Constitution of Portugal, art. 134.“g”; Constitution of Romania, arts. 146.“a”, “d”; Constitution of Russia, art. 125.2.“a”; Constitution of San Marino, art. 16.3.“a”; Constitution of Serbia, art. 167.1.1; Constitution of Slovakia, art. 125.1.“a”; Constitution of Slovenia, art. 160.1; Constitution of Spain, art. 161.1.“a”; Constitution of Turkey, art. 104.7). In terms of the practical judicial performance of constitutional judges, it is important to note that, in order to fulfill the “substantive aims” of the constitution's drafters, judges are expected to exhibit a certain “degree of sympathy for the purposes or values underpinning the Constitution” (Dixon, 2015, p. 843).

Constitutional courts are authorized to define and protect *constitutional ideology* (Barber, 2024, p. 665) – a concept closely related to that of *constitutional identity*. In this capacity, constitutional justices occupy a privileged position in determining the fundamental essence of the Constitution, by setting boundaries of potential implicit constitutional changes introduced by political bodies exercising public power.

3. Constitutional Litigation and Ruling on Accountability of Public Officials as Core Functions of Constitutional Courts in Europe

Constitutional courts rule on appeals against lower courts' decisions (Constitution of Austria, art. 137; Constitution of Bosnia and Herzegovina, art. VI.3.2; Constitution of Malta, 1964, arts. 95.2.“c”-“f”; Constitution of Monaco, art. 90.“b”.2-3; Constitution of Portugal, art. 280) and appeals challenging the rulings issued by higher judicial councils (Constitution of Serbia, arts. 148.2, 155, 161.4; Constitution of Slovakia, art. 129.7; Constitution of Turkey, art. 85), and, in certain cases, decisions of relevant parliamentary bodies (Constitution of Georgia, art. 54.1; Constitution of Germany, art. 41.2). The Swiss Constitutional Court, for example, functions as the “supreme judicial authority of the Confederation” (Constitution of Switzerland, art. 188.1). Similarly, constitutional courts are tasked with verifying the legality of elections (Constitution of Austria, art. 141.1; Constitution of Belgium, art. 142.5; Constitution of Croatia, art. 129.9; Constitution of France, art. 7.6-8; Constitution of Georgia, art. 89.1.“d”; Constitution of Liechtenstein, art. 104.2; Constitution of Malta, art. 56.5-6; Constitution of Montenegro, art. 149.1.7; Constitution of Portugal, arts. 223.“c”, “h”; Constitution of Serbia, art. 167.2.5) and referenda (Constitution of Albania, art. 131.“ë”; Constitution of Belgium, art. 124.4; Constitution of Croatia, art. 129.9; Constitution of Portugal, art. 115.18; Constitution of San Marino, art. 16.3.“b”; Constitution of Slovakia, art. 95.2; Constitution of Slovenia, art. 82.3), ensuring they are conducted in accordance with established legal standards.

Another key function of constitutional courts is adjudicating cases that concern conflicts of competences between state bodies, which often manifest as implicit *power clashes* between the executive and the legislative branch. In such cases, the constitutional court determines *which* political institution holds the authority to regulate a specific domain of constitutional significance (Constitution of Albania, art. 131.“ç”; Constitution of Andorra, art. 103.4; Constitution of Azerbaijan, art. 130.III.8; Constitution of Bosnia and Herzegovina, art. VI.3.1; Constitution of Bulgaria, art. 149.1.3; Constitution of Croatia, art. 129.6; Constitution of France, art. 41.1-2; Constitution of Georgia, art. 139.1; Constitution of Georgia, art. 89.1.“b”; Constitution of North Macedonia, art. 110.4; Constitution of Russia, art. 125.3.“a”; Constitution of Slovenia, art. 160.9). The above function is also closely linked to the constitutional court's role in “ensuring the implementation” of the principle of separation of powers (Constitution of Moldova, Art. 134.3), as it “has the function of a smoothly designed legal corrective, entrenched into the ‘body’ of the separation of powers, with the aim of securing the constitutional expression [of this principle] and keeping it safe from emotional outbursts of the political majority” (Pejić, 2013, p. 62).

The constitutional judiciary is also empowered to resolve conflicts of competence between federal units (Austria (138.2), Germany (93.1.4a), Switzerland (189.2).. In addition, the constitutional courts adjudicate legal disputes arising between various local government units (Constitution of Slovenia, arts. 149.1.5, 160.7). They exercise what is known as *Kompetenz-Kompetenz* – the authority to determine the limits of their own jurisdiction. That means that, in the event of a jurisdictional conflict of competences between the constitutional court and any other court in the country, the constitutional court has the final and binding say (Constitution of Azerbaijan, art. 130.IX; Constitution of Austria, art. 138.1.2; Constitution of Cyprus, art. 139.2).

Constitutional courts in Europe determine whether public office holders are to be held accountable for their actions that are deemed unconstitutional. These positions include: the President of the Republic (Constitution of Albania, art. 131.“dh”; Constitution of Armenia, ar. 57.3; Constitution of Austria, art. 142; Constitution of Bulgaria, art. 149.1.8; Constitution of Croatia, art. 105.3; Constitution of Czechs, art. 65.1; Constitution of Georgia, art. 62.1; Constitution of Germany, art. 61.1; Constitution of Hungary, art. 12.5; Constitution of Italy, art. 134.3; Constitution of Montenegro, art. 98.6; Constitution of North Macedonia, art. 87.2; Constitution of Portugal, art. 223.2.“b”; Constitution of Serbia, art. 118.3; Constitution of Slovakia, art. 107; Constitution of Slovenia, art. 109; Constitution of Turkey, art. 148.6; Constitution of Ukraine art. 151.2), members of the Government (Constitution of Austria, art. 143; Constitution of Italy, art. 134.3; Constitution of Liechtenstein, art. 62.“g”; Constitution of Norway, 1814, art. 86.1; Constitution of Turkey, art. 148.6), the Parliament (Constitution of Bulgaria, art. 72.2; Constitution of Czechs, art. 87.1.“f”; Constitution of Lithuania, art. 105.3.4) and the Judiciary (Constitution of Germany, art. 98.2; Constitution of Norway, art. 86.1; Constitution of Turkey, art. 148.6). Additionally, constitutional courts are empowered to declare whether the President has become incapacitated and thus unable to fulfill the duties of office (Constitution of Albania, art. 90.2; Constitution of Armenia, art. 58; Constitution of Croatia, art. 97.2-3; Constitution of Georgia, art. 63.1; Constitution of Germany (61.1), Constitution of Italy (134.3), Constitution of Moldova (135.1“f”), Constitution of Montenegro, art. 98.5; Constitution of North Macedonia, art. 82.2; Constitution of Slovenia, art. 109). Furthermore, the Constitution provides for the constitutional court to rule on matters concerning the dissolution, suspension or disbandment of political parties (Armenia (100.9), Azerbaijan (130.III), Croatia (129.8), Montenegro (149.1.6), Serbia (167.3), Turkey (69.4). Within this context, it is important to consider the reasonable argument that “what can be argued within the legislature, for example, might not be arguable within the courts” (Barber, 2024, 668), particularly within superior or constitutional courts. However, traditionally,

some authors “fear that political issues are being translated into legal ones and decided by courts instead of by politicians” (Dahlberg & Kantola, 2024, p. 377).

Some critics point to the *self-empowering* of constitutional courts in their latent tensions with the political branches of government (Tommasini, 2024, p. 162). This dynamic is seen to enable “unelected courts to overrule elected legislatures or obstruct the outcomes of popular referenda” (Duke, 2023, p. 799). These arguments echo longstanding anxieties regarding *judicial populism*, rooted in the fear that constitutional courts may assume authority to decide, in a sideways manner, over issues that are fundamentally political rather than purely constitutional, all while operating with contested political legitimacy. Nonetheless, the claim that constitutional justices ought to exercise strict restraint in the performance of their duties can be seen as overly punitive, as it *lato sensu* contradicts both the spirit and the commonly understood intent of many of the above constitutional provisions.

4. Protection of Human Rights and the Rule of Law

The duty of constitutional courts to safeguard individual rights and freedoms is intrinsically linked to their role as guardians of the “legal-political concept of the rule of law,” a principle that constitutes a core value of the constitutional order (Jelušić & Šarin, 2015, p. 175). Some constitutions recognize the *rule of law* as one of the foundational pillars of the state and its legal framework (Constitution of Belarus, art. 7.1; Constitution of Croatia, art. 3; Constitution of North Macedonia, art. 8.1.3; Constitution of Norway, art. 2; Constitution of Portugal, art. 9.“b”; Constitution of Serbia, art. 3.1; Constitution of Ukraine, art. 8.1). In the constitutional wording, constitutional courts are entrusted with the protection of human rights and fundamental freedoms (Constitution of Liechtenstein, art. 104.1; Constitution of North Macedonia, art. 110.3; Constitution of Serbia, art. 166.1; Constitution of Switzerland, art. 189.1.“f”). Their protective function gains particular significance in the context of reviewing the constitutionality of restrictive normative acts. Thus, their role in this regard is “to protect the individual against arbitrariness and omnipotence of the parliamentary majority” (Kłopocka-Jasińska, 2022, p. 13).

Some constitutions explicitly incorporate the European Convention of Human Rights and Fundamental Freedoms as a source of constitutional law (Constitution of Albania, art. 17.3; Constitution of Bosnia and Herzegovina, art. II.1; Constitution of San Marino, art. 1.3). Regardless of this formal incorporation, there appears to be “an expansion of overlapping jurisdictions in the field of human rights law between national constitutional courts and the Court of Justice of the European Union (ECJ), even though “the functions and tasks of (...) constitutional courts and the

[ECJ] are different”, as “national courts have the right and even a duty to maintain the unity and integrity of their constitutional system, while the [ECJ] is mandated to ensure the uniform application of EU law” (Kusiņš, 2021, pp. 146-147). At the same time, the ECJ continues to exert substantial influence on national constitutional interpretation (Dahlberg & Kantola, 2024, p. 396).

The substantial role of constitutional courts in the protection of fundamental rights and freedoms has been significantly expanded through the inclusion of constitutional complaint mechanism within their scope of competence, guaranteeing effectively a genuine individual *right to a constitutional judge*. While the scope of this paper does not allow for an in-depth examination of this particular function of constitutional courts – despite its considerable importance – it is nevertheless appropriate to note that protecting rights and freedoms through adjudicating constitutional complaints has increasingly become a central component of the constitutional courts’ activities.

5. Concluding Remarks

This paper cites and analyzes constitutional provisions on the functions and roles of constitutional courts in approximately 40 European countries. It explains their role as guarantors of the conformity of sub-constitutional legal acts, as well as that of duly ratified international agreements, with the Constitution, tacitly putting the review of constitutionality at the apex of various responsibilities entrusted to constitutional courts. Furthermore, it addresses their unique and highly significant function of constitutional interpretation by highlighting relevant constitutional language across various national systems.

Although constitutional court decision-making often involves political controversy, these bodies function as appellate authorities in all constitutionally relevant judicial matters, from adjudicating appeals against decisions rendered by lower courts to resolving disputes between other constitutional actors – spanning the legislative, executive, and judicial branches, as well as federal, sub-federal, regional, and local authorities. Ultimately, the constitutional courts’ role in safeguarding fundamental rights contributes to the development of a genuinely value-oriented constitutional order. When combined, these functions underscore the central importance of constitutional courts within the framework of contemporary European comparative constitutional law.

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