



Constitutional Dignity Imperiled: A European Comparative Perspective



Vladimir Mikić

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de minimis non curat lex

Introduction

“The subject of constitutional regulation are (...) only grounds [of state and social system]. There are very few, if any, constitutions that fully satisfy these requirements.”

(Miodrag Jovičić, 1925-1999)¹

“If you seek the Constitution, look around you.
It is much bigger than you think.”

(Ernest A. Young)²

For years, I have been awarded a great pleasure to indulge in the research in the field of comparative constitutional law. However, in addition, I have strived to be a good, creative, pleasant and playful host to my brother's son and daughter, the now ten-year old twins, Iskra and Strahinja.

Iskra has a recognized talent for painting, and Strahinja, who is two minutes older than his sister, is characterized by a keen insightful spirit, often accompanied by the need to challenge his negligibly younger sister's qualities and aspirations. In the days during which I commenced collecting materials for the research to which this book is devoted, my nephews were, as always, favorite guests of my home.

Taking a model from a drawing at a children's toothpaste, Iskra painted a cheerful crocodile and began to color the

¹ Jovičić (2006), 150-151.

² Young, 473. In a similar sense, “constitutional law exists on both sides of a state”: Prélot, 38.

space between the lines outlining its body, inviting me to catch a glimpse of her most recent artistic accomplishment (presented on the back cover of this book). Disputing the highest score I gave to his sister, Strahinja remarked that she merely made a sketch after an already existing – and someone else’s – drawing found at a toothpaste. Thus, the whole venture was, according to his belief, nothing more than just a copy of another artist’s design. My concluding answer to him was that *one should at least know how to make a convincing copy*.

Many of today’s national constitutions merely represent copies of older, much complex and significantly more original patterns. However, *one should at least know how to efficiently copy a constitution*.

This book is dedicated to the research of the originality of provisions of constitutions of the European countries, presenting examples of their lack of authenticity and exploring the redundancy of the content of many among them. At the same time, constitutions, like the mentioned drawing model for children toothpaste, can also be inspiring examples for other authors. Nevertheless, such models are rare in comparative constitutionalism. We are witnessing the tendency of unauthentic rewriting of the content of – from the technical point of view – superior constitutions, as well as of the mere *constitutional downloading* of the provisions contained in international and regional legal documents. In this book, representative examples of the mentioned practice are analyzed. I tried to present modest recommendations for limiting this trend, since its outright termination appears to be an overly optimistic wish, even for the most enthusiastic supporters of the dignity of the constitution, the circle to which I wholeheartedly belong.

Constitution-making attracts manifestations of a desire – appearing to have risen to the level of an imperative – to include as much political and legal components as can be done. Nowadays, constitutions are, typically, “long and detailed”,³

³ Simović (2024), 81.

enumerating a very broad range of basic rights, political institutions, and electoral rules,⁴ because “the political space” is “the *causa finalis* of every constitutional arrangement”.⁵ I concur with the attitude that “constitutions are multidimensional documents, characterized by different levels of specificity on myriad topics,”⁶ and that “what issues are to be included in the Constitution and what is left out is a topic of great normative debate”.⁷

However, in my opinion, in the constitution-drafting process, elegance must be prized very highly. Constitutions should identify only the *key* institutional questions and procedures, as well as sufficiently fundamental topics, including the elementary provisions dedicated to the protection of human rights and freedoms. Other issues should be left to the attention of the legislator, because the constitution is “a charter of abstract principles, powers, and ends, not a code of detailed rules”.⁸

The very central reason for the afore-mentioned concern is the need to respect the *dignity of the constitution*. It is a somewhat neglected and undervalued category (and the object of a particular professional research). It would help make constitutions to be comparable to the works of sculpture, in the ways that the artisanship of normative technique might provide. This book explores the ways in which constitutional dignity is endangered in Europe (with rare insights into the *global* comparative legal framework of observation).

It is very important to try to answer the question of “what, precisely, distinguishes matters of constitutional significance from ordinary policy”,⁹ bearing in mind that “there is not and cannot be any rule as to what constitutes constitutional matter

⁴ Eshima et al. 682.

⁵ Savanović, 63.

⁶ *Ibid*, 694.

⁷ Ginsburg, 78.

⁸ Fleming, 9.

⁹ Gould, 2081.

and what, consequently, a constitution should regulate”,¹⁰ and that “if the constitution-maker would decide to put into the constitution even those topics which could be regulated by legislative and sub-legislative provisions, (...) the constitution would cease to be a fundamental act”.¹¹ At the same time, “the strengthening of the tendency to expand constitutional matter could lead to further ‘breakthroughs’ of compilatory and plagiaristic constitutionalism”.¹²

This compelling theme has only seldom been the subject of revealing discussion, and it invited the interest of no more than several dozens of authors. Many of the researchers preach for the so-called **constitutional minimalism**, which holds that a constitution should only partially, and to the extent necessary, regulate the constitutional matter,¹³ properly determining an accurate “constitutional minimum”.¹⁴ Also dubbed *constitutional reductionism*, this school of thought reminds us that “constitutional efficacy must minimally involve correspondence between the norm and the prescribed behavior”,¹⁵ demanding a renewed attention to constitutions’ volume. Put simply, “as the design of a common destiny, the cement of a Nation, fades, the constitutional, conquering norm becomes commonplace (*la norme constitutionnelle, conquérante se banalise*).”¹⁶

According to this doctrine, “a constitution has greater impact when it is shorter, and therefore [when it] only briefly defines the basic institutions”, while, “in contrast, an overly detailed constitution would be more susceptible to misapplication, or even doomed to a quick end”,¹⁷ for “the silence of

¹⁰ Jovičić (2006), 149.

¹¹ Simović, Petrov, 22.

¹² Mikić (2024c), 365.

¹³ Simović (2020a), 200.

¹⁴ Häberle, 66.

¹⁵ Pozas Loyo, 28.

¹⁶ Mathieu, 1012-1013.

¹⁷ De Vergotini, 278.

the constitution-maker, expressed in the existence of constitutional gaps, can be of great benefit, because the constitution regulates political processes, and these, by the nature of things, are not suitable for precise definition and fixation”.¹⁸ This conclusion fits nicely with the attitude in accordance to which “the tendency to give value to ideologies, while emphasizing the ‘propagandistic’ character of constitutional texts, has contributed to their significant [textual] extension”.¹⁹ By the words of Édouard Balladur, the Prime Minister of France, proclaimed on May 23, 1994 before the French National Assembly, “the proliferation of legislative and regulatory texts (...) makes the law obscure, unstable and, ultimately, unjust”.²⁰

In constitution-drafting, “brevity can be explained as a matter of style”,²¹ in particular because “the more a constitution *regulates* and *promises*, the more frequently violations of its text occur,”²² or, because a constitution “should be a masterpiece of brevity and the fruit of impeccable, devastating logic”.²³ It cannot serve as a “scrapbook” which includes provisions which, by their content and nature, are not worthy of the dignity reserved for the highest legal act;²⁴ otherwise, it would be “an administrative code, but not a constitution”.²⁵ In fact, “in principle, the special form provided for in basic or constitutional laws may cover any subject suitable for legal regulation, but the selection is made among them according to their importance or significance for the structure of the state legal order”, and this is the “appropriate content of the constitution”.²⁶ Some scholars believe that the expansion of constitutional matter may serve as a mechanism of protecting the interests of

¹⁸ Simović, Petrov, 22.

¹⁹ *Ibid*, 278.

²⁰ Bergeal, 20.

²¹ Ginsburg, 71.

²² Sartori, 224.

²³ Marković (2004), 3.

²⁴ Petrov, V. (2022), 40.

²⁵ Jovanović, 2.

²⁶ Jovanović, Dajović, Vasić, 264.

political elites.²⁷ Indeed, legal texts often contain “ambiguities, contradictions, misuse of formulas referring to other provisions”, and this *vagueness* increases “the role of the judge who, through his interpretation, replaces the will of the legislator whose poorly represented will he is supposed to reconstruct”.²⁸

At the same time, “the constitutionalization of topics that were previously regulated at the sub-constitutional level especially took off in the European constitutional area”, while “the constitutional norming of an increasing number of legal institutions and social phenomena conflicts with the dignity of the constitution, but at the same time results in a lower possibility of arbitrarily regulating numerous issues at the sub-constitutional level”.²⁹ Put in the simplest way, “constitutions seem to be getting longer over time”.³⁰ Therewith, authors of constitutions should seek the “common constitutional denominator”,³¹ not always bearing in mind the need to respect the constitutional dignity. “A lasting constitution is usually laconic”, which means that it “aims at the essential (*une Constitution laconique va à l'essentiel*)”, while not “getting lost in vain details”; the constitution „uses general and indeterminate terms and notions with variable content, which allow for better adaptability (...) to the immeasurable diversity of life circumstances“. ³² Put simply, a constitution is the “act determining basic systemic issues”,³³ getting enriched with new provisions every time the society is “faced with new challenges”.³⁴

²⁷ “In a corrupt society, constitutional drafters may include a large number of specific provisions in an attempt to protect the governing” (Bologna Pavlik, Jahan, Young, 2). For example, in India, “the Constitution drafting committee faced criticism for including such extensive details in the constitutional text instead of leaving such matters to the wisdom of subsequent parliaments” (Chandra, 146-147).

²⁸ De Vergotini, 638.

²⁹ Mikić (2024c), 361.

³⁰ Ginsburg, 72.

³¹ De Vergotini, 87.

³² Verdussen, 19.

³³ Przybojewski, 30.

³⁴ Mathieu, 1014.

On the other hand (and, perhaps, sadly), most of the European states have constitutions packed with platitudes and topics that gained constitutional status completely undeservingly. For some of the expressions and concepts, it is not at all clear how they “managed” to find their way into the constitution. This is the case with, *exempli causa*: “motor vehicle tax”, or “the beer tax” (Constitution of Germany, Article 106, Section 1, Point 3-4 [hereinafter: Germany, 106.1.3-4]), “beer”, “automobiles and their parts”, “the killing of animals”,³⁵ “free time” of “young people”, “lakes, lagoons and watercourses as are suitable for navigation or flotation, together with their beds”,³⁶ “vineyards, orchards, olive groves or similar areas”.³⁷

In accordance with *constitutional* provisions, there exists an “autochthonous flora and fauna”,³⁸ as is the place for “acknowledging our Lord Jesus Christ” as the head of the Orthodox Church,³⁹ while, in a similar way, “the State acknowledges that the homage of public worship is due to Almighty God”, holding “His Name in reverence”.⁴⁰ A provision states that “no more than 20 percent of the total stock of residential units and the gross residential floor area in any commune may be used as second homes (*Zweitwohnungen*; *résidences secondaires*; *abitazioni secondarie*; *abitaziuns secundaras*)”.⁴¹ Next, “the Riksdag Act contains 14 chapters” (as is claimed in *the very Riksdag Act*),⁴² the “Government offices shall exist for the preparation of Government business”,⁴³ while “for the purpose of designating an area as residential and of activating its urbanisation, properties included therein must participate, without compensation from the respective agencies, in the disposal of land

³⁵ Switzerland, 131.1.”c” - “d”, and 80.2.”f”.

³⁶ Portugal, 70.5.1, and 84.1.1.

³⁷ Turkey, 169.4.

³⁸ Andorra, 31.

³⁹ Greece, 3.1.

⁴⁰ Ireland, 44.1.

⁴¹ Switzerland, 75b.1.

⁴² Sweden, the Riksdag Act, Chapter 1, Art. 1.

⁴³ Sweden, the Instrument of Government, Chapter 7, Art. 1.

necessary for the construction of roads, squares and public utility areas in general, and contribute toward the expenses for the execution of the basic public urban works”.⁴⁴ (Please, read the last provision again.)

In case a constitution states that “admission to public school is open to all without distinction of birth, sex, race, estate, class, language and religion”,⁴⁵ can anyone imagine that in Austria in 2025 a child cannot be admitted to *any* school *because* it is *female* or not of *Caucasian origin*? If a constitutional document states that “no law may be amended or abrogated other than by an act of law”,⁴⁶ what does this sentence say about the legal culture of citizens of a country perceived to be one of the most democratic and human-rights oriented in the world? Or does it have a thing or two to do with the perils to which the dignity of the constitution is exposed, everywhere in Europe?

Essentially, this book aims at motivating constitution-makers to keep “hunting licences”, “weapons and explosives”,⁴⁷ “kindergartens, day homes and student hostels”,⁴⁸ “moors and wetlands of special beauty and national importance”,⁴⁹ or Constantinople (*stay tuned*) out of constitutions of European states.

Constitutional dignity was given little attention in previous decades. It has represented a relatively under-researched topic, eclipsed by other, apparently more important scholarly issues. It should be noted that, among many authors cited in this book, several of them merit special attention, for their immense contribution to the conceptualization of the ideas formulated here, presenting true landmark studies.

Followed by earlier researches lead by Kenneth Wheare, Charles Frederic Strong, Charles Beard, Raimond Carré de Malberg, and Miodrag Jovičić, the more recent **examinations**

⁴⁴ Greece, 24.3.

⁴⁵ Austria, 14.7.

⁴⁶ Sweden, the Instrument of Government, Chapter 8, Art. 17.

⁴⁷ Germany, 72.3.1, and 73.1.12.

⁴⁸ Austria, 14.7.

⁴⁹ Switzerland, 78.5.

of constitutional dignity were conducted by Jon Elster⁵⁰ (although three decades old, it does not lose its actuality, especially in the part where he writes about the complexities of constitution-making processes in the most representative constitutions), Günter Frankenberg (whose excellent and concise work may serve as a true model in the field of exploring the subject of this book, with nearly every sentence of the paper commanding attention), or Richard Albert (who compared *aspirational* with *functional constitutions*).⁵¹ It is also useful to remember that in socialist regimes, constitutions should have been shorter.⁵²

A recent wave of academic writing includes many significant conclusions on the subject. Thus, Eshima, with co-authors,⁵³ presents conclusions about citizens' impressions on the constitution, offering insights into the mindset of citizens with respect to constitutional design. Exceptional literature on constitutional dignity includes the article of Rosalind Dixon,⁵⁴ which "investigates the merits of these two different approaches to constitutional drafting" – very informative on two approaches in constitution-drafting – the 'codified' approach, and the "'framework'-style approach' (the latter being responsible for part of the title of Chapter 4 of this book). Gavison⁵⁵ explains why it is necessary for federations to have a detailed constitution, while Ginsburg⁵⁶ provides an interesting analysis of the longevity of constitutions, compared to their scope, with striking tables and graphs.

The classic paper on the topic of *the amendment culture and the constitutional amendment rate* represents the product

⁵⁰ Elster (1995).

⁵¹ Albert (2012).

⁵² Socialist constitutions, such as China's 1975 document, or Cambodia's 1976 Constitution "tended to be short and programmatic", and, maybe "this brevity [reflected the] ideal that the constitution would itself wither away with law as true communism was achieved" (Ginsburg, 71).

⁵³ Eshima, Mori McElwain, Takahashi, Winkler (2024).

⁵⁴ Dixon (2015).

⁵⁵ Gavison (2002).

⁵⁶ Ginsburg (2010).

of Ginsburg and Melton.⁵⁷ Also, an ambitious contribution was given by David S. Law,⁵⁸ who elucidates the ways by which constitutional articulation of an ideological narrative of a state is created and manifested in normative framework, with many substantial and useful references to rich literature. The same goes with a trailblazing article dedicated to the so-called *sham constitutions*,⁵⁹ dedicated to discovering and noting cases of the practical noncompliance (in “sham”, or “façade” constitutions) with guaranteed protection of rights and freedoms, on the basis of quantitative indicators of *actual* human rights performance in various countries. Although the United Kingdom (hereinafter: the UK) is not included in the constitutions analyzed (because its constitution is not codified),⁶⁰ Masterman explains the connection between the UK Human Rights Act and constitutional migrations.⁶¹ Metelska-Szaniawska and Lewczuk provide an empirical study on the *constitutional over-performance* and *underperformance*, conducted for a sample of more than a hundred countries throughout the world,⁶² while Jan Petrov dedicates his work to detecting the patterns of abusive constitutionalism and examples of abusive constitutional practices, as well as to the bad-faith intent of constitution-drafters.⁶³

In addition to the researched scientific literature, the research contained in this book is based on the study of 48 written constitutions of all of the European states. Nearly 40 sources (articles and books) out of approximately 130 of them have been published in 2023 and 2024, and about half of them were published in the five years preceeding the book’s publica-

⁵⁷ Ginsburg, Melton (2015).

⁵⁸ Law (2016).

⁵⁹ Law, Versteeg (2013).

⁶⁰ “Should the UK adopt a codified constitution? The question is one that is energetically debated. The argument for a codified constitution seems obvious.” (Murkens, 965)

⁶¹ Masterman (2023).

⁶² Metelska-Szaniawska, Lewczuk (2022).

⁶³ Petrov, J. (2024).

tion. Many sources are consulted from Europe and the United States, including authoritative journals such as the *International Journal of Constitutional Law*, the *European Constitutional Law Review*, and the *European Journal of International Law*.

The author of this book had established an interesting diversity: constitutions' texts of some European states (Sweden, Austria, Cyprus, and Portugal) surpass 30 thousand words, while some contain about six times less content (Vatican City, San Marino, Latvia, Bosnia and Herzegovina, Iceland, Denmark, and Monaco).⁶⁴ The comprehensiveness of a constitutional text is not only related to the states of Europe, but also to the unsuccessful project of a *Treaty establishing a Constitution for Europe*, which failed to be ratified during the process which ended in 2005, following unsuccessful referendums held in France and the Netherlands, two of the six founding member states of the European Union (hereinafter: the EU). According to one account, this document did not "look like a constitution", for, in its English version, it contained more than 150 thousand words, weighing "just under one kilogram".⁶⁵ As Jack Straw, Britain's Foreign Secretary of the time, explained, the Charter of the United Nations "fits easily into my jacket pocket", but he did not "have a pocket big enough for the Constitution of Europe".⁶⁶ However, after overcoming the COVID-19 pandemic, "a minimal Federal European Constitution [was] proposed, to provide a legal and democratic base for the [EU]".⁶⁷

In any case, and with certain reservations, **examples of good constitution-drafting** actually exist in Europe. Mostly short and easily comprehensible sentences are the main feature of the constitutions of: Albania, Andorra, Bulgaria, Czechs, Denmark, Estonia, Finland, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Monaco, Montenegro, the

⁶⁴ Mikić (2022), 43.

⁶⁵ Weiler, 173.

⁶⁶ Straw, 41.

⁶⁷ Schneider, 1.

Netherlands, Romania, the Russian Federation (hereinafter: Russia), San Marino, Slovakia, and Slovenia. On the other hand, **examples of sub-standard constitutional drafting** include: Austria, Belgium,⁶⁸ Germany, Ireland, Malta, North Macedonia, Portugal, Serbia,⁶⁹ Turkey,⁷⁰ and Ukraine. The latter group of documents also contains similarities with other, older constitutions of European states, a tendency that cannot represent merely a coincidence.

It should be noted that even in the countries which excel as exemplary in the context of the respect of the rule of law (Austria, Germany, France, Italy, Spain, or Switzerland), the constitutions contain too much matter. Mainly because “constitutional documents differ widely in both detail and scope”⁷¹, there is a need to identify “a clear trend worldwide toward longer or more codified constitutions”;⁷² bearing in mind that “uncodified are those constitutions whose provisions are contained in multiple legal acts”.⁷³ Naturally, European federations have more complex constitutions, mostly because they can prescribe details about the division of competences between federal and sub-federal authorities. Examples in this regard refer to the constitutions of Austria, Belgium, Germany, and Switzerland.

This book contains a somewhat *mixed analysis*, because certain constitutions contain excellent solutions, but at the same time bad ones as well. Best example in this regard can be found in the Constitution of Germany, some of whose sen-

⁶⁸ Truth be said, due to the country’s consociational system, some topics unavoidably had to be constitutionalized, as is the case with the distribution of responsibilities between the federation and units of regional decentralization and local self-governance (the same goes with constitutions of Cyprus and Switzerland).

⁶⁹ The first feature of this document is “the uneconomical drafting of its text” (Mikić [2014c], 136).

⁷⁰ The Constitution of Turkey is “too voluminous a document, which regulates to a considerable extent the matter that should be regulated by sub-constitutional acts” (Mikić [2016], 92).

⁷¹ Ginsburg, 70.

⁷² Dixon, 820.

⁷³ Fira, 26.

tences are exceedingly inspiring, while many others are simply cumbersome. On one hand, the Constitution of Austria is composed of short articles, containing only four words, while on the other more than 1400 words are held in a single article.⁷⁴ The same goes with the Constitution of Ireland: Article 4, devoted to the organization of the state, comprises merely five nouns and seven words, while Article 12, devoted to the President of the Republic, has nearly a thousand words.

The book is composed of **six sections**. After the introductory part, the notion of the dignity of the constitution is explained (Part One). Afterwards, constitutional provisions that are too similar to the provisions of some other states' models and international sources of law are elucidated (Part Two). In the most voluminous – and the very *central* – section of the book, the examples of the least recommendable solutions of unoriginal adoption of constitutional provisions of other countries are presented (Part Three). However, the reader will presumably feel slightly better after reading the next section of the book (Part Four), dedicated to citing high-quality, authentic and interesting constitutional provisions, which can serve as a model for future constitutional writers, if the latter would dare to deviate from the establish practice of imitating other nations' constitutions. The concluding part of the book is united with a section which takes a closer look at the models of constitution-drafters dedicated to determining the potentially most correct ways to ensure the dignity of the constitution, in accordance with the conclusions contained in the book's previous parts.

The research exposed in this book has nothing to do with “the consequences of constitutional design-presidential versus parliamentary systems, unicameralism versus bicameralism, and so on”.⁷⁵ The book discusses the matters regulated by constitutions, and not their more or less unique (political) solutions. Thus, it exposes “not how [the constitutions] regulate

⁷⁴ Austria, 85, and 10.

⁷⁵ Elster, 364.

but what they regulate”.⁷⁶ I do not opt for political solutions, regarding the predominant elements of the constitutional matter, as are the models of the distribution of power between the institutional actors, or between the federation and its constituent parts (the same applies to the regional or the unitary state). These are the undisputed independent constitutional identity points: form of government, state structure, territorial organisation, highest political institutions, choice of whether to have a separate constitutional court, modes of election of the president of the republic, or of the members of government, interpellation, the vote of confidence, organization of the state power, irregular circumstances, or symbols of state. As it is said, “science has no particular political agenda”,⁷⁷ particularly because “the constitution is both a means of popular expression and a reflection of the cultural heritage of the people”.⁷⁸

It is an honour for me to acknowledge the support given to me by the respected reviewers: Prof. Dr Darko Simović, Prof. Dr Vladimir Đurić, and Prof. Dr Goran Marković. In addition, I would like to express my sincere thankfulness to Prof. Dr Jelena Čeranić Perišić, the director of the Institute for Comparative Law, and Prof. Dr Vladan Petrov from the Faculty of Law of the University of Belgrade, for their committed and continuing support to the research which contributed to the publication of this book. The outcome would not have been possible without the support of the aforementioned professors, each of whom are prestigious researchers in the field of legal sciences (and, also, dear and respected friends, which has always been even more compelling for me). I cannot fully compensate any of them for the support and efforts they have invested in my scientific and professional development, and I honestly hope that my future achievements will represent the appropriate kind of gratitude to these dear and respected people.

⁷⁶ Jovičić (2006), 149.

⁷⁷ Faigman, 1071.

⁷⁸ Tribl, 224.

Dignity of the Constitution Explained

“I begin my speech by asking: What is a constitution?
What constitutes its essence?”

(Ferdinande Lassale)⁷⁹

“By the spring of 1787, Madison also had a dim view
of state legislatures. They had passed too many laws,
‘a nuisance of the most pestilent kind’. The laws, he believed,
should be one-tenth as long, in which case
they would be ten times more useful.”

(Noah Feldman)⁸⁰

Dignity of the constitution is an open-textured term in the science of law. However, when talking about the subject, one should refer to **numerous writers** who specified modalities in which this concept can actually be violated. Thus, constitutions “abound in guarantees (...) with a veritable wealth of phrases”, while “this hypertrophied guaranteeism could not have been accompanied in a short time by the spread of a culture of law”.⁸¹ According to one author, “constitutional over-performance is a common phenomenon around the globe”.⁸² It can also be claimed that the expansion of constitutional matter has been led by three main reasons: the internationalization of human rights, the emergence of new institutions designed

⁷⁹ Lasal, 20.

⁸⁰ Feldman, 96.

⁸¹ De Vergotini, 230.

⁸² Metelska-Szaniawska, Lewczuk, 289.

to protect proclaimed rights, and the introduction of political parties into constitutions.⁸³

What reputable authors suggest the topics *should* be included in a constitution? These clues concentrate around the following subjects: the key political bodies, elementary constitutional values, and guarantees of basic rights and freedoms. In accordance with the wording of Robert Badinter (the president of the French Constitutional Council – *i.e.* the constitutional court – from 1986 to 1995), “every Constitution is at the same time a political instrument, a legal architecture, a historical moment and a literary work”.⁸⁴ According to another view, a constitution should contain three elements: “regime arrangements, human rights and general values”,⁸⁵ and, in accordance with another one, any constitution should not bother above regulating “only the most important, and the utterly principal questions”.⁸⁶

Among standard candidates for inclusion in a constitutional text, the first place must be reserved for the **very essential political institutions**, or “fundamental matters”.⁸⁷ These are “basic governmental structures and the relations between the main powers and functions of government”,⁸⁸ because the primary function of any constitution is “to ‘constitute’ the government”,⁸⁹ or “to serve as an instrument of government”,⁹⁰ as well as the right of parliament to approve the budget.⁹¹ A constitution may merely outline “the framework within which relations between [the] authorities and citizens must be established”, while, at the same time, it can put in place “mechanisms for resolving internal conflicts”, including the “funda-

⁸³ Simović, Petrov, 21.

⁸⁴ Verdussen, 12.

⁸⁵ Gavison, 89.

⁸⁶ Jovanović, 2.

⁸⁷ Elster, 367.

⁸⁸ Gavison, 89.

⁸⁹ Young, 417 (very similarly: Jovanović, 1).

⁹⁰ Murkens, 970.

⁹¹ This is “the absolute right (...), a right that should be accepted for all time and included in all future constitutions” (Lasal, 69).

mental basis of the state's organisation", bearing in mind the necessity to "establish a coherence which imposes a harmonious functioning of a political society", and this is the constitution's "regulatory aspect (*l'aspect régulateur*)".⁹²

Because "constitutional ideology is a subset of state ideology, and relates to discourse within state institutions",⁹³ constitutions should also englobe "the contours of the state system",⁹⁴ "the rule of law, democratic legitimacy, and a division of power",⁹⁵ assigning powers while at the same time "ensuring that the officers and institutions exercising those powers are held in check, accountable to citizens".⁹⁶ When it comes to particularities, it appears that every constitution must include provisions dedicated to judicial bodies. Thus, "any constitution should regulate: the basic principles of the judiciary, the ways of electing judges, the highest court in the country, and the methods of termination of judicial function".⁹⁷ The same goes with the method of dismissing judges.⁹⁸ Or, by one opinion, "what should be included in the constitution regarding the constitutional court is the jurisdiction of that body, the number of its judges and the method of their election".⁹⁹ In accordance to one opinion, it is crucial for the protection of important aspects of human rights also to include in constitutions specialised institutions for the safeguard of personal data, and for the equality between citizens,¹⁰⁰ while one author suggests that the necessary public debate in the process of the constitutional revision should be included in the very text of the constitution.¹⁰¹

⁹² Verdussen, 13.

⁹³ Barber, 666.

⁹⁴ Gavison, 89.

⁹⁵ O'Donoghue, 1028.

⁹⁶ The Economist (2003), 11.

⁹⁷ Petrov, V. (2024), 108.

⁹⁸ Antonijević, 38.

⁹⁹ Marković (2012), 268.

¹⁰⁰ Tepavac, 29.

¹⁰¹ Jerinić, 45.

At the second place, **elementary values of the society** should be constitutionalised. This is the case with “basic values and commitments”,¹⁰² or with “the fundamental values of society and the legal order”.¹⁰³ A reader can hardly *walk* through any constitutional text “without admitting that it embodies substantive value choices”, because the document simply “places certain values beyond the power of any legislature”.¹⁰⁴ Any constitution should englobe “the fundamental provisions, the introduction to the constitution, the identity card of the state”, including “the name of the state, its emblems (...), the form of the state (...), possible memberships in regional or universal communities of states, the relationship between domestic and international law, and (...) what is called the ‘spirit’ of the constitution”.¹⁰⁵ In other words, “constitutions are meant to embody the basic aspirations and values of a society”.¹⁰⁶

According to one author, “there is enormous pressure on the drafters of the constitution from many sides to include certain things in the constitution, because by placing them under the constitutional umbrella they are situated beyond the reach of the law, which is always changeable because it depends on the shifting parliamentary majority”.¹⁰⁷ This is absolutely in line with the thought that detailed language can be understood as a deliberate signal by drafters that they “intend to exclude this kind of gap-filling role on the part of courts”,¹⁰⁸ and that “the written constitution is a changeable regulatory optimum”,¹⁰⁹ for “it is only a few lines of text subject to different readings because of the shifting values of readers”.¹¹⁰ It is important

¹⁰² Gavison, 89.

¹⁰³ *Ibid*, 89.

¹⁰⁴ Brennan, 150.

¹⁰⁵ Marković (2012), 265.

¹⁰⁶ Young, 416.

¹⁰⁷ Marković (2012), 264.

¹⁰⁸ Dixon, 821.

¹⁰⁹ Häberle, 16.

¹¹⁰ Brisbin, 343.

to outline that “constitutional texts may be effective only to the extent that they embody higher-order understandings”.¹¹¹ However, one source suggests that “a constitution is, first and foremost, a normative text and it is the big question whether it should give space to the (...) fundamental principles, which are figuratively called ‘window provisions’”.¹¹²

In accordance with the opinion of some scholars, indispensable task of any constitution-drafter is to include veritable guarantees for **protection of human rights** into the highest normative document of a given state. Thus, a constitution *must* include the provisions on “human rights”, “personal liberties”,¹¹³ or “the basic principles that would serve to fully protect rights and freedoms”.¹¹⁴ Constitutional documents *primarily* “limit government overreach by carving out civil liberties and rights (e.g., negative rights)”.¹¹⁵ This might be assessed as a *protective aspect* of constitutional texts.

It appears that “human rights loom so large in our modern constitutional consciousness that it would be impossible to leave them off of any reasonable list of constitutional functions”,¹¹⁶ because “conferring rights on individuals against government action is a basic function of constitutions”.¹¹⁷ Even though the European Commission for Democracy through Law operating within the Council of Europe (hereinafter: the Venice Commission) stressed that the fundamental rights is “a constitutional matter par excellence”,¹¹⁸ a constitution should *only* protect “first-rate rights (*droits de premier rang*)”.¹¹⁹ In wording of one of the constitutions, “the exercise of the fundamental rights (...) have not received the protection of any

¹¹¹ Ginsburg, 69.

¹¹² Marković (2012), 265.

¹¹³ Jovanović, 1.

¹¹⁴ Gavison, 89.

¹¹⁵ Eshima et al., 682.

¹¹⁶ Young, 423.

¹¹⁷ *Ibid*, 426.

¹¹⁸ European Commission for Democracy through Law, 13.

¹¹⁹ Verdussen, 13.

kind of general laws (*no es beneficiaven d'una regulació material concreta*).¹²⁰

On the other hand, provisions devoted to the protection of basic rights are often “just expressive, and it is hard to find any practical implication that follows from them”.¹²¹ Also, the enumeration of rights in the constitution “can turn into an overload of constitutional texts”¹²² (truth be said, the expansion of constitutional matter stands in deep connection with the will of constitution-makers to provide an extensive protection of fundamental rights, because “the less common laws are respected in a country, the more articles will need to be included in the Constitution”¹²³). According to one school of thought, there are “doubts about whether human rights should be regulated in the constitution or in a special declaration of human rights, which would be adopted through the constitutional process as a solemn and, in practice, unchangeable act”.¹²⁴ However, “the protection and realization of rights fall inside rather than outside politics”.¹²⁵

There is no clear agreement among the authors on whether political parties have a place in a constitution. The trend of constitutional regulation of political parties began after the end of the World War II.¹²⁶ The same is the case with the issue of constitutional regulation of *religious organizations*. Thus, “the concept of cooperative separation (...) starts from the assumption that religious categories (...) are largely outside the field of legal regulation, and that they are more ‘tolerated’ than regulated”.¹²⁷ However, a provision such as the one proclaiming that all parties are equal before the law¹²⁸ has no

¹²⁰ Andorra, Preamble, 3.

¹²¹ Gavison, 97.

¹²² Häberle, 71.

¹²³ Jovanović, 4.

¹²⁴ Marković (2012), 265.

¹²⁵ Foroni Consani, 240.

¹²⁶ Stanković, 115.

¹²⁷ Petrov V., Mikić, 639.

¹²⁸ Moldova, 41.2.

place in a modern constitution, because – this claim *goes without saying*. In this context, there was not an obstacle made for a constitution-drafter to determine that “the text of the Holy Scripture shall be maintained unaltered”.¹²⁹ How is a constitution-maker authorized to make such a conclusion?

Of course, there are risks of too narrow a constitutional law-making. Growing importance of laws and constitutional customs exists, but “cases in which the constitution-drafter expands the standard constitutional matter occur much more often and have far greater significance”.¹³⁰ At the same time, “reasons of a subjective nature (...) lie in the wish of the constitution makers (...) to achieve certain effects by regulating some topics, even though there may not be an objective need for such regulation”.¹³¹ If it is true that “the constitutional matter is so rich that no constitution in the world could cover it”,¹³² than a special attention must be given to *organic laws*, bearing in mind their particular role in relieving constitutions of superfluous matter.¹³³ The difficult procedure for their adoption preserves their importance, but their enactment protects the dignity of the constitution, particularly since numerous legal institutions have already been transferred to constitutions.¹³⁴ This is significant for, by exceeding *materia constitutionis*, the constitution-makers “exceed their powers, because they put something in the constitution that does not belong there”.¹³⁵

A growing number of authors warn of the risks arising from the **continuing spreading of constitutional matter**, or the *excessive constitutionalization*. Therefore, “if a constitution is to have effective power, care must be taken in selecting the issues that constitute constitutional matter” or, the document “could

¹²⁹ Greece, 3.3.

¹³⁰ Jovičić (2006), 153.

¹³¹ *Ibid*, 151.

¹³² Petrov, V. (2007), 26.

¹³³ Mikić (2022), 579-584.

¹³⁴ Mikić (2024c), 362.

¹³⁵ Jovičić (2006), 21.

be an interesting ‘mosaic’ of different elements that looks nice but is worth little”.¹³⁶ This means that “a poor nomotechnic approach can indeed dishonor a constitution as a normative act”,¹³⁷ and this approach contains the method of “the regulation of issues that by any criteria could not be understood as *fundamental rules*”.¹³⁸ Besides, “any objectively oriented constitution-maker is characterized by the choice of a narrower subject of norming”.¹³⁹ At the same time, “one can have a constitution that regulates many dimensions of public life in a very abstract manner”, but “conversely one can have a constitution that has a narrow scope but much detail”.¹⁴⁰

One of the more important functions of the dignity of the constitution consists in fulfilling the requirements of **citizens’ familiarity with the content of the constitution**, and thus the document’s broader cultural significance.

The “constitutional literacy”¹⁴¹ improves citizens’ knowledge of the constitutional text, while “the level of general political and democratic culture significantly affects the scope and quality of the necessary constitutional and normative actions”.¹⁴² If ordinary citizens “do not know the language of the law, then using the language would hinder their participation”,¹⁴³ while “the interest of public authorities in developing good normative drafting practices”¹⁴⁴ would be restrained. Being “a single political overall decision”,¹⁴⁵ any constitution “is a charter designed for the free citizens of a State”, the true “addressees” its text; this is

¹³⁶ Petrov, V. (2022), 125.

¹³⁷ Marković (2006), 44.

¹³⁸ Jovićić (2006), 21.

¹³⁹ Mikić (2014b), 691.

¹⁴⁰ Ginsburg, 82.

¹⁴¹ De Visser, Jones, 29-52.

¹⁴² Đorđević, 13.

¹⁴³ McGinnis, Rappaport, 1359. “A distinctive feature of 21st-century constitution making is the role assigned to citizens through various forms of direct participation, as well as special efforts to include groups underrepresented and marginalized in ordinary politics.” (Heiss, Suárez-Cao, 1)

¹⁴⁴ Bergeal, 23.

¹⁴⁵ Šmit, 237.

how a “close link” (*le lien étroit*) is constructed between a constitution and its recipients (*destinataires*)¹⁴⁶.

Writers of a constitution “should take care that the listing of new institutions, to the extent feasible, fulfills its original function – simplifying communication between the law and the citizens who live under the conditions set by that law”.¹⁴⁷ It is important to outline that, on the contrary, language of preambles “is often simple and accessible to citizens, so that even people who are not lawyers by profession can understand it”,¹⁴⁸ and also to remind that “whether and to what extent constitutions are integrated in the symbolic everyday depends on their popular appeal [and] readability”,¹⁴⁹ because “constitutions and their contents are central to our understanding of political order, social stability, and jurisprudence”.¹⁵⁰ Finally, the constitution “lays out the framework [*trace le cadre*] within which relations between [the] authorities and citizens must be established“, in order for it to resolve “internal conflicts”.¹⁵¹

Legal writers should take care that the “listing of new institutions, to the extent feasible, fulfills its original function – simplifying communication between the law and the citizens who live under the conditions set by that law”,¹⁵² and that “the greatest virtue of a constitution is its window into the soul of a defined community of peoples”.¹⁵³ Indeed, as a group of authors pointed out, “a key factor that should improve constitutional longevity, particularly in democracies, is civic support”.¹⁵⁴ Truly, being “an expression of the state of cultural development, a tool of cultural self-presentation of a nation”,¹⁵⁵

¹⁴⁶ Verdussen, 21.

¹⁴⁷ Mikić (2024c), 368.

¹⁴⁸ Mikić (2014a), 434.

¹⁴⁹ Frankenberg, 450.

¹⁵⁰ Eshima et al., 682.

¹⁵¹ Verdussen, 13.

¹⁵² Mikić (2024c), 368.

¹⁵³ Albert (2012), 394.

¹⁵⁴ Eshima et al., 681.

¹⁵⁵ Häberle, 232.

constitution “should be a text that is “not difficult to read even for non-lawyers and (...) easy to remember”,¹⁵⁶ because “individuals ought to have at least a basic understanding of the constitution or texts with an equivalent status”, and then one could speak about “a fundamental attribute of ‘good citizenship’”.¹⁵⁷ A legally knowledgeable reader can at least *understand* constitutional provisions, let alone interpret them or initiate their clarification. These suggestions are a welcome contribution to making constitutions more visible in a daily civic life.

A minimalist constitution should serve as the expression of its *consensual acceptance* by citizens. Therefore, “if a constitution is a basic political consensus, all disagreements should be moved to sub-constitutional legislation”.¹⁵⁸ Thus, serving as “the supposed agreement between the governed and the governors”,¹⁵⁹ the constitution can preserve its role of “a rallying point, a symbol of unity”.¹⁶⁰

Whenever it comes to disputable topics, “constitutional norms ought to recognise rather than decide conflicts”,¹⁶¹ because “‘constitutionalizing conflict’ involves combining statecraft and constitution-making to address violent conflict”, with the aim to “reshape political and legal institutions to better manage inter-group conflict”.¹⁶² A minimalist constitution should regulate “only what can be explicitly or implicitly agreed upon by all”.¹⁶³ Finally, “the dosed scope of the norming of social relations is connected with the idea of inevitable imperfection and incompleteness of legal regulation” at whole.¹⁶⁴ Within the context of the social contract theory, a constitution should be elevated “above the horizon of partisan inter-

¹⁵⁶ Marković (2012), 266.

¹⁵⁷ De Visser, Jones, 30.

¹⁵⁸ Savanović, 64-65.

¹⁵⁹ De Visser, Jones, 33.

¹⁶⁰ Friedman, 116.

¹⁶¹ Dani, 49.

¹⁶² Bell, 1190.

¹⁶³ Savanović, 63.

¹⁶⁴ Tomić, 307.

ests and thus to dignify its contents”.¹⁶⁵ In the examples of the states reflecting the *consociative* political and constitutional arrangement, the protective function of constitution is presented (avoiding the risk of potentially reemerging societal conflicts, based primarily on national or religious grounds). This may be referred to as “the art of concealment and omission”,¹⁶⁶ with the aim of protecting national and confessional diversity.

Any constitution should prosper in its significance from the **degree of sanctity** it derives being a distinct governing code, and “legally, normatively, and spiritually higher law”.¹⁶⁷ This is what is meant when one writes about “the sacred words of the Constitution”,¹⁶⁸ which, “as a basic law”, truly “has a more significant subject of regulation”,¹⁶⁹ denying other legal provisions a similar role, because a constitution “which regulates legal and subordinate legislation, loses its function as a fundamental act”.¹⁷⁰

Constitutions “express the distinctive identity, character, and values of the nations that adopt them”,¹⁷¹ while “metarules” contained in them “are designed to defend a constitution’s dignity as ‘supreme law’ vis-à-vis ordinary law interpretation and lawmaking by adding ‘interpretation in conformity with the constitution’ to the canons meant to define and elicit the scientific nature of legal interpretation.”¹⁷² Therefore, “the constitution is treated as a sacred text, never to be touched except for matters of major importance”,¹⁷³ while “beyond the contents of a constitution, much will depend on how the document interacts with particular constitutional cultures at particular moments in a nation’s history”, because “it matters (...) whether

¹⁶⁵ Frankenberg, 452.

¹⁶⁶ Van den Berg, 56.

¹⁶⁷ Brisbin, 293.

¹⁶⁸ Friedman, 129.

¹⁶⁹ Zdravković, 117.

¹⁷⁰ Petrov, V. (2022), 29.

¹⁷¹ Law (2013), 155.

¹⁷² Frankenberg, 457.

¹⁷³ Ginsburg, Melton, 700.

a political culture views its constitution as an object of reverence, and disparagement of it as blasphemy, or whether it views its constitution as an imperfect and temporary settlement".¹⁷⁴ An important trait of provisions contained in constitutions is "their generality, which makes them applicable to a wide variety of situations that could not possibly have been foreseen at the time they were passed".¹⁷⁵

To explain how even non-lawyers sometimes implicitly understand the constitutional matter, and what its importance is, I would enjoy to conclude this part of the book by citing a bit *vulgar* words of a relatively young but prominent Serbian journalist: "We could write in the Constitution of Serbia our inalienable right to colonize Mars. It would not be worth of a pissing cone."¹⁷⁶

¹⁷⁴ Seidman, 568.

¹⁷⁵ Voigt, 164.

¹⁷⁶ Rujević.

Constitutional Provisions Mirroring Foreign Experiences and International Perspectives

*Ein Kranz ist gar viel leichter binden,
als ihm ein würdig Haupt zu finden.*

(“It is very much easier to bind
a wreath than to find a head worthy to wear it.”)

(Johann Wolfgang von Goethe, 1749-1832)

Many topics *contaminate* constitutional texts. Constitution-makers steal from each other, looking up to superior models, or, simply, searching the simplest solutions, without showing an express desire to put the provisions into practice. They also *mechanically* adopt solutions contained in basic-rights-oriented international documents, even though there is no necessity for doing so. Finally, the nature of supra-national law correlates to national law, most often by the way of communicating with constitutional courts. Today, for example, certain countries have specific constitutional provisions dealing with the transfer of national powers to the EU,¹⁷⁷ which was not the case several decades ago.

From the technical point of view, there is truth in the attitude according to which “there are no two constitutions which are exactly alike”.¹⁷⁸ The same experience illustrated the adoption of the constitution of the first members of the US, for “no two state constitutions were exactly alike”, but, on the

¹⁷⁷ De Witte, 41; Mikić (2022), 189-193.

¹⁷⁸ O'Donoghue, 1031.

other hand, “no constitution was pure innovation”,¹⁷⁹ because certain institutions and constitutional provisions simply impose themselves as models.¹⁸⁰ Constitution-making, still, creates an *automated content* of certain constitutions. Thus, “in Europe, there are quite a few constitution-drafters who are too busy with unoriginal work such as copying other states’ constitutional formulations”.¹⁸¹

Although the old wording reminds us that *regnum regni non praescribit leges*, “countries routinely imitate one another in matters of constitutional drafting”.¹⁸² It was once said that “to use borrowed law was like buying clothes off the rack, or renting a whole suite of furniture at once”,¹⁸³ but those words no longer have the same impact as before. Unoriginal solutions and partial receptions of the genuine model are a very common occurrence in nowadays comparative constitutional law in Europe (and throughout the globe). *Borrowing* constitutional provisions from other states is a commonplace.

There is, naturally, a factor of aggregation of various *policies* into particular constitutional choices. The trouble is when it seems that there is no such thing, but, instead, foreign (national, regional, or *universal* constitutional solutions) are automatically copied, as if there exists a sort of list of choice from constitutions lying on the shelf (*carte des vins constitutionnelle*, so to say), a *constitutional hitch-hiking tour* suggesting a true “presumption of similarity”.¹⁸⁴ In addition, “the universalist ar-

¹⁷⁹ Friedman, 124. In addition, “these ‘constitutions’, to be sure, were mostly copycats; they borrowed provisions from existing constitutions, taking a phrase here, a clause there, and making whatever changes were considered appropriate” (*Ibid*, 117). This is a veritable process of “constitutional transplantation” (Masterman, 95).

¹⁸⁰ De Vergotini, 57.

¹⁸¹ Mikić (2024c), 365.

¹⁸² Law (2016), 159.

¹⁸³ Friedman, 166.

¹⁸⁴ Frankenberg, 443. “Perhaps this activity originated from the reasons of utility of using methods of rapid preparation for the adoption of a constitutional act, but comparing copies with the originals certainly did not contribute to the authentic constitutional development of any European state” (Mikić [2024c], 364).

chetype” involved “an ideological commitment to the notion that there exist universally applicable constitutional norms that all states must respect”.¹⁸⁵

Needless to say, certain models have – comparatively – proved very useful in establishing new constitutional systems. This tendency was particularly efficiently demonstrated in Central and Eastern Europe, where “the experience of other European countries helps [the ‘fresh’ constitution-makers to] choose the solution which best suits their own legal traditions”.¹⁸⁶ It is important to outline that “such forms of transfer of provisions are more likely to achieve satisfactory success when applied in systems which share constitutional principles with the system from which a given institution originates”.¹⁸⁷ However, “the safest and easiest thing for states to do is to employ some version or combination of what is tried”.¹⁸⁸

On European soil **imposed constitutions** exist as well. This calls into question the possibility of choosing authentic solutions related to national constitutional and general legal traditions and incentives. Thus, constitutions of Germany and Bosnia and Herzegovina “were not freely drafted by relevant domestic political representatives”, but were, instead, “inspired, conceived, or, in fact, written by (...) occupying powers”,¹⁸⁹ written in the context of a “partial sovereignty”, recognized to (the earlier) West Germany.¹⁹⁰ However, generally speaking, “if comparative analysis suggests the adoption of a particular solution to a problem arrived at in another system one cannot reject the proposal simply because the solution is

¹⁸⁵ Law (2016), 164.

¹⁸⁶ Zweigert, Kötz, 17.

¹⁸⁷ De Vergotini, 58.

¹⁸⁸ Law (2016), 160.

¹⁸⁹ Mikić (2024a), 133. Revealingly, Germany’s constitution includes “robust rhetorical assertions of popular sovereignty”, despite its “far-from-democratic provenance” (Duke, 818).

¹⁹⁰ Dubil, 40.

foreign and *ipso facto* unacceptable”.¹⁹¹ National authenticity of constitution-writing does not bring guarantees of any kind, bearing in mind that the “Germany’s 1871 Constitution devoted a quarter of its space to provisions on the telegraph and railroad”.¹⁹²

When it comes to certain constitutional provisions, in a significant number of cases they *imitate* chronologically older provisions, those which were written earlier and have, in terms of time lapse, more continuous legal force.

These **strangely imitative constitutional rules** are spread across the European continent. Such is the case between the constitutions of: Moldova and Romania (it suffices if a researcher reads the two documents, provision by provision, at the comparable time),¹⁹³ Bulgaria and Serbia (when it comes to the point of imposing a ban on political parties or state institutions to express the national sovereignty),¹⁹⁴ Italy and Malta,¹⁹⁵ Serbia and Montenegro,¹⁹⁶ but also: Slovenia (or

¹⁹¹ Zweigert, Kötz, 17.

¹⁹² Ginsburg, 78.

¹⁹³ Mikić (2022), 20.

¹⁹⁴ “No part of the people, no political party nor any other organization, state institution or individual shall usurp the expression of the popular sovereignty.” (Bulgaria, 1.3) “No state body, political organization, group or individual may usurp the sovereignty from the citizens, nor establish government against freely expressed will of the citizens.” (Serbia, 2.1).

¹⁹⁵ “Italy is a democratic Republic founded on work” (Italy, 1.1); “Malta is a democratic republic founded on work (...)” (Malta, 1.1). The same conclusion applies to most of the structure of the text of the Constitution of Malta, bearing in mind the fact that Italy has a measured and concise constitution, while its Maltese copy represents one of the most excessive deviations from the appropriate constitutional matter. In addition, the primary promotion of workers’ rights within the section consecrated to basic rights in Italy’s constitution is copied in its Maltese “younger sibling” (compare Italy, 4.1, with Malta, 7). The same goes with the provisions dedicated to underlining the importance of the state’s support to hardworking pupils and students. Thus, “capable and deserving pupils, including those lacking financial resources, have the right to attain the highest levels of education” (Italy, 34.3), while “capable and deserving students, even if without financial resources, are entitled to attain the highest grades of education.” (Malta, 11.1).

¹⁹⁶ “Any intervention aimed at creating a human being that is genetically identical to another human being, living or dead shall be prohibited” (Montenegro, 27.2), com-

Ukraine) and Serbia,¹⁹⁷ Italy and Croatia, Croatia and Montenegro (and North Macedonia), Germany and Austria, Denmark and Iceland, Belgium and Luxembourg (and Monaco), Russia, on one hand (as the role-model), and Azerbaijan, Belarus, Georgia and Ukraine, on the other hand.¹⁹⁸ There has also been a noticeable influence of constitutions of Germany and France on constitution-makers in post-socialist Eastern Europe,¹⁹⁹ or that of the *uncodified* British constitutional system on several other countries, maybe Belgium in the first place.²⁰⁰ For most cases, A is reminiscent of the B, concluding a top-down exercise, which sometimes reproduces certain original provisions in grotesque forms. As it was once written by an authoritative Serbian constitutional scholar, these examples constitute nothing more (nor less) than “loans derived from misunderstanding”.²⁰¹

In *echoing* other models, there are differences in “the strength and significance of imitation, which can lead to spontaneous adoption but also to imposition”,²⁰² in which case we

pared to: “Cloning of human beings shall be prohibited.” (Serbia, 24.3). In addition, “the relationship between powers shall be based on balance and mutual control” (Montenegro, 11.4) should be interpreted in the context of the following provision: “Relation between three branches of power shall be based on balance and mutual control” (Serbia, 4.3).

¹⁹⁷ “No human right or fundamental freedom regulated by legal acts in force in Slovenia may be restricted on the grounds that this Constitution does not recognise that right or freedom or recognises it to a lesser extent.” (Slovenia, 15.5); “The content and scope of existing rights and freedoms shall not be diminished in the adoption of new laws or in the amendment of laws that are in force” (Ukraine, 22.3); Human and citizen’s rights and freedoms enshrined by this Constitution are not exhaustive.” (Ukraine, 22.1); “The Constitution of Ukraine shall not be amended, if the amendments foresee the abolition or restriction of human and citizen’s rights and freedoms.” (Ukraine, 157.1) Acting in a rather unimaginative way, the constitution-drafter asserts that “attained level of human and minority rights may not be lowered” (Serbia, 20.2).

¹⁹⁸ Mikić (2022), 20. Additionally, the Constitution of Russia has been imitated by “other constitutions of post-Soviet Asia”, in general (De Vergotini, 123).

¹⁹⁹ Häberle, 65.

²⁰⁰ Van Kanegem, 45.

²⁰¹ Jovanović, 15.

²⁰² De Vergotini, 42.

can, somewhat cynically, speak of a “theft of someone else’s copyright”.²⁰³ From the general (not only the *constitutional* point of view), at the level of the EU, the legislation of its member-countries has been developing, “to an increasing extent, both on the basis of the development of the national legislation of other states (for example due to the imitation of particularly reliable or efficient foreign models), and to the extent that the legislation produced by the [EU] is being developed”.²⁰⁴

Copying other normative authors’ achievements unfolds in three ways: one can ‘download’ any given foreign constitution-maker’s suggestions, or he (she) can simply ‘copy and paste’ a textbook protecting human personality and all of its rights and freedoms, and, finally, a constitution-drafter might imitate universally binding documents, replacing original provisions with those contained in the most influencing international legal charters.

Other nations’ constitutions represent an exemplary part of the source from which appropriate *fruits* can be harvested. This comes in the process of “the mechanical adoption of ‘ready-made’ solutions”.²⁰⁵ Indeed, there is a “widespread reliance on a handful of basic models or archetypes”²⁰⁶ in the comparative constitutional law, so that many European constitution-makers cannot lay a strong claim to originality.

The internal proximity between the constitutions is highly visible, whether their provisions are presented in slightly different wordings, or not. This tendency is called “constitution migration”,²⁰⁷ or “constitutional borrowings”, in the sense that “constitutions appear to be more and more similar one to another”.²⁰⁸ The result for any reader is “a continual sense of *déjà vu*”, for, “in matters of both institutional design and rights protec-

²⁰³ Marković (2012), 266.

²⁰⁴ Bennachio, 158.

²⁰⁵ Mikić (2025), 452.

²⁰⁶ Law (2016), 160.

²⁰⁷ Masterman, 91.

²⁰⁸ Mikić (2024g), 248.

tion, constitutions tend to recycle familiar parts and themes.”²⁰⁹ Reception of foreign constitutional solutions might lead to adopt “satellite” constitutions, whose text represents a discreet refrain of the ‘mother country’s solution and is an example of passive imitation of a given model”;²¹⁰ creating a whole breed of *stereotypical constitutions*. Indeed, “the regulation of law at the national and international levels has over time facilitated the spread of consented models of law, which are now common at least in cultural areas characterized by liberal principles.”²¹¹

There is also another reason for emulating foreign constitutional models – the wish for new democratic states to integrate fully in reputable regional and international political organisations. The post-socialist systems in Europe copied the solutions which already existed in “Western constitutions”, among other motives, “to satisfy the parameters imposed in order to join international organizations that states intended to join”, and, thus, “choosing the Western model” became “an inevitable condition for joining the circle of international organizations in which Western democratic states already existed”.²¹² Whatever the reason, the younger constitutions became no more than “offsprings” of other constitutions, whose authors simply “clinged” to their role models’ coattails, like a *professional tribute band*, occupied by imitating the original. The same pattern works in Western parts of Europe. Namely, when the potential foundations for an independent Scottish state are discussed, visible foreign designs, already tried out elsewhere, were “at the table”, and could readily be put in place if, once, Scotland gains independence.²¹³

When it comes to assessing whether **basic rights** represent a veracious constitutional matter, it is noticeable to outline that “the idea of enshrining fundamental rights in a

²⁰⁹ Law (2013), 158.

²¹⁰ Mikić (2022), 20.

²¹¹ De Vergotini, 368.

²¹² *Ibid*, 228.

²¹³ Mikić (2024d), 42.

Constitution is not new”, because “it dates back mainly to the 18th century.”²¹⁴ However, today countries’ authorities facilitate “reliance on rights originating in the European Convention of Human Rights and decisions of the European Court of Human Rights” (hereinafter: the ECtHR),²¹⁵ as well as other international judicial bodies and committees.²¹⁶ In fact, “as both the national and European systems for the protection of human rights perform the same function, it comes as no surprise” that the national bill of rights – or constitutions – are “broadly similar in substance” with human rights treaties.²¹⁷

Today there exist “twin systems of domestic and international constitutional law protecting fundamental rights”,²¹⁸ creating true “small’ conventions of rights and freedoms incorporated into constitutional texts”, which happened because, apparently, “the constitution is not, nor can it be, the exclusive legal source of human rights”.²¹⁹ Increasingly, “with the internationalization of human rights, which began after World War II, human rights were transformed from an internal issue into a transnational issue, so that international legal acts became their most important legal source”.²²⁰ Therefore, “empirically, newer constitutions tend to enumerate a wider variety of human rights”,²²¹ although constitutional law is “usually seen as formalistic, devoid of any candour or flourish”,²²² while “the process of internationalization of human rights has signifi-

²¹⁴ Mathieu, 1014.

²¹⁵ Masterman, 88.

²¹⁶ “The intertwining of (...) constitutional arrangements (...) is particularly noticeable in the area of fundamental rights”, thanks mostly to the “decisions of international courts which (...) act as a factor in unifying national systems” (De Vergotini, 42).

²¹⁷ Velaers, 266. Therefore, “the rights contained in the international human rights instruments “are broadly similar in substance to the rights contained in most modern constitutions” (Gardbaum, 750-751).

²¹⁸ Gardbaum, 752.

²¹⁹ Simović (2024), 87.

²²⁰ *Ibid.*

²²¹ Eshima et al., 684.

²²² Schnetter, 289.

cantly influenced the fact that constitutional catalogues of human rights increasingly resemble each other”²²³

A sort of a direct transfer of the content of international human rights legal framework into constitutions is perceptible, with an accompanying harmful shift of the focus of the constitutional text being attached to the protection of human rights, as if this was the *primary* task of a constitution.²²⁴ In this way, the drafters compose a sort of ‘*unicorn*’ constitutions, proclaiming *nice wishes* in the field of human rights, the further, active protection of which must be upheld by judicial bodies and the constitutional court in particular. In this regard, one can always be safely reminded of the existence of “a sharp distinction between the periods of constitutional creation and constitutional interpretation”.²²⁵ To this challenge succumbed even the eldest living constitution in Europe, that of Norway (adopted in 1814), which during the first two centuries of its application did not contain an appropriate catalogue of human rights, so that such a catalogue “would find its place in the constitutional text only after the constitutional reform of 2014”.²²⁶

As a consequence, the internationalization of constitutional law makes it necessary for the drafters to write more voluminous texts. One of the unwilling outcomes of the process represents the *devaluation* of constitutions,²²⁷ particularly because almost all EU member states had to amend their constitutions in order to successfully complete the process of joining

²²³ Simović (2018), 19.

²²⁴ Mikić (2024c), 361. “If the modernity of a constitution is determined by how rich the list of guaranteed human rights is, modern constitutions are not lacking in this respect. They are often burdened with provisions on human rights, so that provisions on the system of government have somewhat taken on secondary importance.” (Petrov, V. [2022], 29).

²²⁵ Ewing, 1132. “The inclusion of detailed Bills of Rights does not guarantee an adequate protection of human rights. This is true for both democracies and non-democracies: the presence of glorious Bills of Rights in a country’s constitution does not, in itself, guarantee their actual protection.” (Gavison, 96).

²²⁶ Stanković, 64.

²²⁷ Petrov, V. (2024), 24.

the EU.²²⁸ It is not unimportant to remind that in constitutions of European states, basic rights-related provisions sometimes make up half of the entire text,²²⁹ while, on the wider comparative scale, these provisions contain approximately 20 percent of constitutions of European states.²³⁰ Overall, it could be said that “external and internal factors have created constitutional texts that abound in guarantees (...) with a veritable wealth of phrases”, while this “hypertrophied guaranteeism could not be accompanied in a short time by the spread of a culture of law”.²³¹ From the historical point of perspective, the 1936 Constitution of the Soviet Union was “well known as a major step in the ideological development of communism in that it incorporated many rights that were never implemented”.²³² Although “all new constitutions contain detailed Bills of Rights, (...) the idea that states should constitutionalize Bills of Rights is not free of controversy”.²³³ A fine exception in this field comes from the Czech constitution-maker, who, in Article 3 of the Constitution, provided that the Charter of Fundamental Rights and Freedoms of the European Union (hereinafter: the EU Charter) represents a part of the domestic constitutional system.²³⁴

Even though the mentioned type of approach reflects the necessary concessions to a state’s international obligations (“any country aspiring to become a full member of the EU is presumed to have adopted an adequate constitutional frame-

²²⁸ Evropski pokret u Srbiji, 7.

²²⁹ Marković (2012), 265.

²³⁰ Mikić (2022), 46.

²³¹ De Vergotini, 230.

²³² Rockmore et al., 492.

²³³ Gavison, 95.

²³⁴ Simović (2024), 87-88. “If he had already sought to establish a list of human rights that was as detailed and exhaustive as possible, the Serbian constitution-maker could, in order to avoid unnecessary accumulation and burdening of the constitutional text, for example, have followed the somewhat more elegant approach of the Czech constitution-maker.” (Ibid) Similar conclusions, from the historical perspective, can be drawn by reading: De Vergotini, 278.

work for the protection of human rights and liberties”),²³⁵ creative drafters should *try better* than just copy the content of international human rights treaties, including the European Convention of Human Rights and Fundamental Liberties (hereinafter: the ECHR), and place them into a national constitution,²³⁶ infiltrating domestic constitutional orders. One source states that “because there is no space for any type of selection of provisions of the [ECHR], they are mainly incorporated in the constitutional documents of particular European states”, and “the same is applicable to certain provisions of the Treaty of the [EU], although indirectly”.²³⁷ A clear reflection of this way of establishing the relationship between domestic and international law is contained in the provision according to which “no act of law or other provision may be adopted which contravenes [the country’s] undertakings under the [ECHR]”.²³⁸

As it was mentioned in the introductory part, *one should at least know how to make a convincing copy*. He or she should not just produce a sort of *cascade constitutionality*, the one that merely reproducing the content of the ECHR, the EU Charter, and the like documents, including the Universal Declaration of Human Rights,²³⁹ creating the “rights terminology which owes its heritage to the [ECHR]”.²⁴⁰

Today we can speak of a genuine proliferation of texts addressing the protection of human rights. One author addresses the role of that protection in national constitutions, asking whether it still delivers “an added value, or is it redundant”.²⁴¹ The true challenge in this field rests in making a choice how

²³⁵ Mikić (2024d), 47.

²³⁶ There is a “deep structural impact” of the EU law and the ECHR on national constitutions (Scholtes, 535).

²³⁷ Mikić (2024g), 251.

²³⁸ Sweden, the Instrument of Government, Chapter 2, Art. 23.

²³⁹ Andorra, 5, Portugal 16.2.

²⁴⁰ Masterman, 101.

²⁴¹ Velaers, 265.

best to encapsulate provisions on basic rights and freedoms in specific, short and summary sentences contained in constitutional provisions. The aim of this book is not to obscure fundamental rights, nor to render them unenforceable, but, on the contrary, to try and find the most appropriate way how to protect them on the constitutional level, and yet not to divorce constitutions from their dignity.

Important place in this context belongs to the dialogue between the ECtHR, the European Court of Justice and – on the other side – national constitutional and supreme courts, including the German Constitutional Court, being “the most influential constitutional court in Europe”.²⁴² Apparently, there is a particular gravitational force of the ECHR, and that of the EU Charter, more or less in the same wording translated into constitutions of European states. Additionally, if the constitutionally-proclaimed basic rights are truly *inherent*,²⁴³ what is a constitution-maker precisely doing while enacting an elaborate list of these rights?²⁴⁴ This is of particular importance if we note that “the countries participating in the system of the [ECHR] are liable to experience transformations of their human rights law that are not brought about pursuant to their own constitutional procedures but merely reflect developments in other countries participating in the same regime”.²⁴⁵

The third way in which constitutions lose their authenticity is by copying the solutions contained in other, not necessarily hu-

²⁴² Đurić, 100.

²⁴³ Azerbaijan 24.1, Bulgaria 57.1, Germany 1.2, Russia 17.2, Serbia 3.1, Slovakia 12.1, Turkey 12.1, Ukraine 21.

²⁴⁴ Sherry, Suzanna, “The Founders’ Unwritten Constitution”, in: *It is a Constitution we are expounding: Collected writings on Interpreting Our Founding Document*, pp. 128–140, p. 130. Comparable findings are laid out in: Petersen, Chatziathanasiou, 1826. In case of Serbia, one of the main reasons for the nomotechnical weaknesses “of its Constitution is that its human-rights provisions “were taken from international human rights conventions without any editing. It is precisely because of such a mechanical adoption of fragments of international legal documents that a text burdened with ambiguities and terminological inconsistencies was created” (Simović [2024], 88).

²⁴⁵ Somek, Paar, 488.

man-rights related, **international legal acts**. This tendency goes by different names. It is truly a multi-level constitutional setting, dubbed also as supranational, or multilevel constitutionalism.

Scholars have been writing about “the constitutional ecosystem” becoming “plural, composite and fragmented”, with “polymorphic” values of constitutionalism.²⁴⁶ Driven by globalization-related complexities, “constitutionalism has developed beyond its traditional confinement *i.e.* nation-states”.²⁴⁷ This phenomenon is described as the “transnational”,²⁴⁸ postmodern”,²⁴⁹ “post-Westphalian and supranational”,²⁵⁰ or “global constitutionalism”,²⁵¹ “constitutional pluralism”,²⁵² “plural, composite constitutional ecosystem”,²⁵³ “a common constitutional law, based on shared legal principles (*principes juridiques partagés*)”,²⁵⁴ or “the global convergence of constitutions”, which “has given rise to a common set of constitutional languages”.²⁵⁵

More or less recently, the context of the “globalization of constitutionalism”²⁵⁶ and of “the internationalisation of the constitutional law”²⁵⁷ is created. It “has placed on the agenda of constitutional law the issue of redefining many classical concepts such as state sovereignty, the constitution and supremacy of the constitution, constitutional and legislative power”.²⁵⁸ This “globalization of constitutional culture is favored by the growing permeation (*imprégnation*) of international law into internal legal orders”,²⁵⁹ so that “sovereign boundaries, against

²⁴⁶ Celeste, 28.

²⁴⁷ Yeh, Chang, 91.

²⁴⁸ O'Donoghue, 1029, Somek, Paar, 486-487.

²⁴⁹ Basta Fleiner, 17 *et seq.*

²⁵⁰ Belov, 73.

²⁵¹ Petrov, J., 195, Teubner, Golia, 2.

²⁵² Basta Fleiner, 21.

²⁵³ Celeste, 28.

²⁵⁴ Verdussen, 17.

²⁵⁵ Yeh, Chang, 98.

²⁵⁶ De Búrca, Weiler, 10.

²⁵⁷ Simović (2024), 79 and 102.

²⁵⁸ Petrov, V. (2022), 22.

²⁵⁹ Verdussen, 17.

which traditional constitutions are drawn, are gradually being crossed”.²⁶⁰ Truly, more than a century has passed since one distinguished author claimed that the subject of any constitution laws is “so determined by the political development of a concrete people that among contemporary constitutions there could not be found two that would completely coincide in content”.²⁶¹

Other names for the afore-mentioned tendency are “global, supranational and post-national constitutionalism,” the “EU constitutionalism,” “multilevel constitutionalism”,²⁶² “the ‘Europeanisation’ of constitutional law”,²⁶³ “international constitutionalization”,²⁶⁴ or even “universalism’s generic constitutional vocabulary”.²⁶⁵ One author claims that “by frequently practicing borrowings of institutional models and precise dispositions one from another, constitution-makers have been contributing to deepening the problem of mostly unchecked internationalization (Europeanization, or globalization) of national constitutional law”.²⁶⁶ The “migration of constitutional ideas”²⁶⁷ leads to accepting foreign and international receipts ready for easy deployment. It is possible that it is all about “unstoppable epochal changes of the nation-state foundation of modern constitutionalism”,²⁶⁸ while “the europeanisation and internationalization” of constitutions have led to establishing a “cooperative constitutional state”.²⁶⁹

In any case, it is recognized that there exists a true “transnational supermarket for constitutional merchandise”,²⁷⁰

²⁶⁰ Yeh, Chang, 90.

²⁶¹ Jovanović, 5.

²⁶² Belov, 75, 78, and 89.

²⁶³ Masterman, 90.

²⁶⁴ O’Donoghue, 1031.

²⁶⁵ Law (2016), 227.

²⁶⁶ Mikić (2024g), 247.

²⁶⁷ Petrov, J., 195.

²⁶⁸ Basta Fleiner, 19.

²⁶⁹ Häberle, 54.

²⁷⁰ Frankenberg, 442.

while “the rising use of this common language by constitutional drafters since World War II has been a quantitative indicator of the growing extent to which constitutional law and public international law influence each other”.²⁷¹ A particularly important role in this area is played by the Venice Commission, for the exercise of constitution-drafting is “conditioned by ‘soft constitutionalism’, the supervisory activity carried out by the Venice Commission”, because, “entrusted with the task of giving legal advice on the democratic functioning of institutions”, this body is “requested to scrutinise constitutional politics in the light of ECHR and European standards of democracy and rule of law”.²⁷²

The tendency of international constitutionalism is inspired by “the universalist paradigm”, which “generates legitimacy by holding the state to norms and principles of a universal character that stand over and above the state”.²⁷³ In the process, “instead of referring only to guiding principles, the constitutions contain entire units within which solutions prescribed by relevant international documents are copied *ad verbum*”.²⁷⁴ Because “universalist constitutions look generic in the sense that they embrace norms and principles that are very widespread and not unique to any particular country or territory” (the *universalist archetype*),²⁷⁵ “the modern nation-state is no longer a “privileged place” for solving basic constitutional problems”,²⁷⁶ and, consequently, a deceptively simple concept arose – taking over the full content of provisions of international legal documents. In accordance with one suggestion, “the rising use of this common language by constitutional drafters since World War II is a quantitative indicator of the growing extent to which constitutional law and public

²⁷¹ Law (2016), 154.

²⁷² Dani, 44.

²⁷³ Law (2016), 174.

²⁷⁴ Mikić (2024c), 363.

²⁷⁵ Law (2016), 181.

²⁷⁶ Basta Fleiner, 21.

international law influence each other”,²⁷⁷ while one source claims that, “as long as state’s actions as part of an international constitutional order remain unresolved, the process of constitutionalization itself cannot said to be complete or indeed legitimate”.²⁷⁸ Thus, the content of the international law spilled over into national constitutions, endangering constitutional dignity in a very particular way. Instead of specifying special rights, not contained in international documents, the constitutions only *rewrite* them.

²⁷⁷ Law (2016), 154.

²⁷⁸ O’Donoghue, 1021.

“In Accordance With This Constitution”: How a Constitution’s Authenticity Fades

“In the Lex Salica, it was precisely prescribed what should be defined as the theft of pigs, cattle, sheep, goats, dogs, birds and bees.”

(Raul Van Kanegem, 1927-2018)²⁷⁹

Constitutions should not “define concepts”, but instead regulate “social relations”, and are not to, “like encyclopedias and lexicons, define the concept of these principles”.²⁸⁰ However, constitutions of many European states include the provisions not appropriate for constitutional regulating. Thus, “the expansionism of constitutional law appears as a simplified reflection of needs that were recognized elsewhere and in other, quite specific, political circumstances and social situations,”²⁸¹ while “empirical evidence shows constitutions have progressively expanded in length and scope”.²⁸²

Despite the justified expectations of respected authors in the field of constitutional legal science, constitution-makers were not guided by the rather straightforward and easy-to-understand instructions. Thus, **constitutions, unfortunately, do define a number of notions.** Put in alphabetical order, these are the following: autonomous provinces,²⁸³

²⁷⁹ Van Kanegem, 49.

²⁸⁰ Marković (2012), 265.

²⁸¹ Mikić (2024c), 361.

²⁸² De Visser, Jones, 34.

²⁸³ Serbia, 182.1, Spain, 141.

capital of the state,²⁸⁴ citizens' participations in politics,²⁸⁵ the *constitution* itself,²⁸⁶ democracy,²⁸⁷ family,²⁸⁸ freedom of the press,²⁸⁹ land,²⁹⁰ local authorities,²⁹¹ local self-government,²⁹² marriage,²⁹³ municipality,²⁹⁴ parliamentary inquiry (and a written question),²⁹⁵ political parties,²⁹⁶ political pluralism,²⁹⁷ principal domicile of a person,²⁹⁸ region,²⁹⁹ religious group,³⁰⁰ right to education,³⁰¹ ruling dynasty,³⁰² schools and universities,³⁰³ strike,³⁰⁴ territory,³⁰⁵ territorial units' representative bodies,³⁰⁶ trade unions,³⁰⁷ and – even – treason.³⁰⁸

Constitutions also contain definitions of state institutions, such as: the Court of Audit,³⁰⁹ the Constitutional Court,³¹⁰ the

²⁸⁴ Lithuania, 17.

²⁸⁵ Portugal, 109.

²⁸⁶ "The constitution of Finland is established in this constitutional act." (Finland, 1.2)

²⁸⁷ Finland, 2.2.

²⁸⁸ Azerbaijan, 17, pt. "i", Greece, 21.1, Italy, 19.1, Ireland, 41.1, and 42.1, Portugal, 57.1, Turkey, 41.1.

²⁸⁹ Portugal, 38.2, Sweden, the Freedom of the Press Act, Chapter 1, 1.1.

²⁹⁰ Ukraine, 14.1.

²⁹¹ Portugal, 235.1, Turkey, 127.1.

²⁹² Armenia, 179.1, Ukraine, 140.1.

²⁹³ Georgia, 30.1, Poland, 18.

²⁹⁴ Austria, 116.1.

²⁹⁵ Turkey, 98.2-5.

²⁹⁶ Romania, 8.2, Spain, 6, Sweden, the Instrument of Government, Chapter 3, 7.1, Turkey, 68.2.

²⁹⁷ Moldova, 5.1.

²⁹⁸ Austria, 6.3 (this is the *Hauptwohnsitz*).

²⁹⁹ Slovenia, 143.1.

³⁰⁰ Cyprus, 2.3.

³⁰¹ Andorra, 20.1.

³⁰² Spain, 57.1.

³⁰³ Austria, 14.6, and 81c.1.

³⁰⁴ Greece, 23.2.

³⁰⁵ Belarus, 3.1.

³⁰⁶ Ukraine, 140.4.

³⁰⁷ Portugal, 55.1, Romania, 9.

³⁰⁸ Ireland, 39.

³⁰⁹ Serbia, 96.1, Slovenia, 150.1, Spain, 136.1.

³¹⁰ Hungary, 24.1, Portugal, 221, Romania, 142.1; Russia, 125.1, Serbia, 166.1, Slovakia, 124.

courts and the Council of State,³¹¹ the Supreme Court,³¹² the ombudsman,³¹³ and the public prosecution system.³¹⁴ In one case, a national state even regulates the functioning of an international institution. Thus, “the European Central Bank (...) is independent and committed to the overriding goal of assuring price stability”.³¹⁵ In the other, a tragic historic event, “the Chernobyl catastrophe” (Чорнобильська катастрофа), was defined as “a catastrophe of global scale (катастрофа планетарного масштабу)”.³¹⁶

Regrettably, constitutions in Europe contain the matter which could more appropriately be regulated by the **rules of procedure of parliament**. Besides it is by definition the set of notions *extra materiae constitutionis*, regulating these matters in the constitution by definition reduces the autonomy of the parliament. Constitutions contain provisions which regulate: the way of the adoption of the parliament's standing orders,³¹⁷ method of electing the Speaker, the Deputy Speaker, or, “in the absence of the Speaker and the Deputy Speaker, such member of the House”,³¹⁸ the “rights” of parliamentary groups (no less than 11 competences are enumerated),³¹⁹ or the right of every member of parliament (hereinafter: the MP) to speak “for at least four minutes”.³²⁰ One provision proclaims that “in the event of a tie, the [Chairman] shall have the casting vote after the third round of voting for an election and after the first round in all other cases”.³²¹

³¹¹ Portugal, 202.1, and 141.

³¹² Russia, 126.

³¹³ Serbia, 138.1, Slovakia, 151a.1.

³¹⁴ Russia, 129.1.

³¹⁵ Germany, 88.

³¹⁶ Ukraine, 16.

³¹⁷ Austria, 37.2.

³¹⁸ Malta, 69.1.

³¹⁹ Portugal, 180.1.1-11.

³²⁰ Sweden, the Riksdag Act, Chapter 6, 21.3.

³²¹ Liechtenstein, 58.2.

Constitutional provisions also regulate: the keeping of the proceedings of parliamentary meetings,³²² the appeals to the decision made in relation to confirmation of the MPs' terms of office,³²³ the obligation of MPs to indicate the financial consequences of implementation of a bill they present,³²⁴ the amount of indemnities to be given to the MPs,³²⁵ with a precision that "a maximum of three months' salaries and travel allowances may be paid in advance,"³²⁶ as well as "a special identity card (*cartão especial de identificação*)" as a personal privilege of every MP.³²⁷ It is of particular importance to note that one constitution demands the same majority for *adopting the rules of procedure* of the parliament, as for the adopting organic law on the basis of which the competences of the Länder (the federal units) are restricted.³²⁸ One provision orders that "a scientific service to the Parliament may be established (...) to assist Parliament in its legislative work".³²⁹ A record should be kept of parliamentary sessions, including any dissenting opinion, and orders that "elections for the [parliament] or for decision-making local government assemblies may not be held in occupied territory".³³⁰

All this has for an effect to confer constitutional status on provisions which do not deserve it. This conclusion is derived from the attitude in accordance to which "scope and detail are separate dimensions of a single overall concept of

³²² "A verbatim record shall be kept of proceedings in the Chamber. (...) A decision may not be altered when the record has been confirmed." (Sweden, the Riksdag Act, Chapter 6, 24.1)

³²³ Serbia, 101.4.

³²⁴ Poland, 118.3.

³²⁵ "Each member of the House of Representatives has an annual indemnity of twelve thousand francs." (Belgium, 66.1); "The monthly amount of the salary [of an MP] shall not exceed the salary of the most senior civil servant; the travel allowance shall not surpass half of that salary" (Turkey, 86.1).

³²⁶ Turkey, 86.3.

³²⁷ Portugal, 158, Pt. 3.

³²⁸ Austria 44.2.

³²⁹ Greece, 65.5.

³³⁰ Sweden, the Instrument of Government, Chapter 7.6, and Chapter 13.10.3.

specificity”, and that “one can have a constitution that regulates many dimensions of public life in a very abstract manner; conversely one can have a constitution that has a narrow scope but much detail”.³³¹ However, in the houses of Parliament, “during two weeks of sittings out of four, priority shall be given, in the order determined by the Government, to the consideration of texts and to debates which it requests to be included on the agenda”.³³²

Many provisions of European constitutions are redundant, exceeding constitutional boundaries and creating true “small utopias”.³³³ This is the case with the so-called *nominal* constitutions, which are “aspirational but unrealistic”,³³⁴ and are not corresponding “to social circumstances”.³³⁵ Any constitutional transition “can take a long time, while the replacement of one constitutional text by another is instantaneous”, and while “the phase of constitutional implementation is always characterized by processes of adapting facts to principles (...), it is always in this phase that the difference between what the framers of the constitution wanted and what the actual situation allows for becomes apparent over time”.³³⁶ It is true that “sometimes, constitutions lie”,³³⁷ but their provisions cannot be “magic words’ that become effective simply through their pronouncement”.³³⁸ Indeed, in accordance with the view of Pierre Mazeaud (the President of the French Constitutional Council, 2004-2007), “the law is not made to (...) express wishes or outline the ideal state of the world”, and it “must not be an incantatory rite (*un rite incantatoire*)”.³³⁹

³³¹ Ginsburg, 82.

³³² France, 48.2.

³³³ Häberle, 82.

³³⁴ Law, Versteeg (2013), 869.

³³⁵ Petrov, V. (2007), 26.

³³⁶ De Vergotini, 227.

³³⁷ Law, Versteeg (2013), 865.

³³⁸ Ginsburg, 69.

³³⁹ Bergeal, 199-200.

Forgetting that “a good constitution must not be ‘autistic’”³⁴⁰ constitution-drafters have started an unwanted evolution which has been occurring for decades, dishonoring the constitution as a normative act.³⁴¹ For example, one provision states that “the Federation, the Länder, and the municipalities must aim at the securement of an overall balance and sustainable balanced budgets in the conduct of their economic affairs”.³⁴² This is an emblematic *nominal* provision, aiming to make the reality more like the image.

Limited attention, with extensive digression, accompanied by heavy bureaucratic jargon, seems to be the favored technique in this regard, no matter a reputational cost, recognized by constitutional theorists. Examples of bad constitutional technique are numerous. Thus, in some constitutions one of the factors for the termination of the term of a public office is, in quite a bizarre way, determined by the fact of the *death* of its holder. This refers to the discontinuation of the term of office of: the president of the republic,³⁴³ the vice president of the republic,³⁴⁴ a member of the constitutional court,³⁴⁵ or the prime minister.³⁴⁶ In addition, many European constitutions proclaim that, on a certain subject, “details shall be prescribed by law”.³⁴⁷ In very reputable Constitution of Germany, the expression in accordance to which “details shall be regulated by a federal law” appears in more than 40 provisions.

Constitutions also reflect a true *Rococo* (exceptionally ornamental and excessive) normative method,³⁴⁸ with labyrin-

³⁴⁰ Petrov, V. (2020), 18.

³⁴¹ Marković (2006), 44.

³⁴² Austria, 13.2.

³⁴³ Bulgaria, 97.1, Cyprus, 44.1, “a”, Greece, 32.1; Estonia, 82, pt. 3; Finland, 55.3, Hungary, 12.3, “b”; Iceland, 7; Ireland, 12.3, 1, and 14.1; Italy, 86.2; Lithuania, 88, pt. 4; Moldova, 90.1; North Macedonia, 82.1; Romania, 97.1; Slovenia, 106.1; Ukraine, 108.2.4.

³⁴⁴ Bulgaria, 97.1.4; Cyprus, 44.1, “a”.

³⁴⁵ Bulgaria, 148.1. “b”; Lithuania, 108, pt. 2.

³⁴⁶ Hungary, 20.2. “e”.

³⁴⁷ For example: Armenia, 36.3.

³⁴⁸ Friedman, 444.

thine provisions by which the mere notion and purposes of a constitution become defaced. With their “clumsy wording”, “overlong sentences, and repetitions”, the drafters write “adrenaline” constitutions, and “normative solutions inspired by ideology”.³⁴⁹ Constitutional texts appear to be contaminated³⁵⁰ by “relatively esoteric provisions”³⁵¹, and are “too detailed”.³⁵² This reflects the tendency of “the extension of constitutional jurisdiction”,³⁵³ and the appearance of “mega-constitutions”,³⁵⁴ characterized by elimination of “the elegance of the proportions of constitutional regulation”, and by “petty solutions”, which “are not supported by a sense of synthesis to penetrate the *materia constitutionis*”.³⁵⁵

So, what do the provisions that are not worthy of constitutional regulation look like? The range of issues governed by these provisions is very wide. Reading constitutions of European states often attracts impression of unnecessary complexity, or that of a blatant irrelevancy of *suffocating* provisions. In them one can read about: “alpine guidance and skiing instruction”, “burial and disposal of the dead”, “an unfettered, single-headed, black, gilt-armed and red-tongued eagle” as the symbol of the state, as well as “crops protection police” (*Flurschutzpolizei*),³⁵⁶ and “footpaths, hiking trails and cycle paths”.³⁵⁷ In another, a city which had lost its previous historic name six centuries ago, “Constantinople” (*Κωνσταντινούπολη*), is mentioned.³⁵⁸ Furthermore, a provision claims that “everyone shall be responsible for him- or herself”,³⁵⁹ while another reminds us of “the two

³⁴⁹ Mikić (2022), 18.

³⁵⁰ Mikić (2024c), 362.

³⁵¹ Law, Versteeg (2011), 1170.

³⁵² Loughlin, 924.

³⁵³ *Ibid*, 927.

³⁵⁴ Ginsburg, 78.

³⁵⁵ Mikić (2022), 20.

³⁵⁶ Austria, 11.1.2, 10.1.12, 8a.2, and 118.3.5.

³⁵⁷ Switzerland, 88.1.

³⁵⁸ Greece, 3.

³⁵⁹ Hungary, “O”.

superpowers”,³⁶⁰ in a world which had already survived a unipolar and, afterwards, a multipolar system of international politics (the same goes with “occupation zones [*Besatzungszonen*]”,³⁶¹ and “the deported peoples” [*депортованих народів*]).³⁶²

Additionally, “ballot papers shall be drawn up in such a manner as to enable illiterates to distinguish between the political parties to which candidates belong”.³⁶³ Also, what would be the place of Brunei Darussalam, Kenya, or Saint Vincent and the Grenadines in the constitution of a European country?³⁶⁴ Particularly puzzling provisions contain references to: “the emancipation and progress of mankind”,³⁶⁵ “system of production, sale, possession and use of arms and explosives”,³⁶⁶ “the use of water for the production of energy and for cooling purposes”, and even “birds”, “the jackpot systems in casino”, and “narcotics”.³⁶⁷ Also, it cannot be easily answered to the question of “what is the purpose of the provision according to which a certain constitutional body performs other tasks specified by the constitution”.³⁶⁸

Important elements of the process of endangering dignity of the constitution are contained in **preambles**. One can justifiably say that, marked by “creativity and originality”,³⁶⁹ preambles contain general and overly poetic expressions fol-

³⁶⁰ Malta, 1.3, “e”.

³⁶¹ Germany, 125.1.

³⁶² Ukraine, 138.1.9.

³⁶³ Malta, 56.11.

³⁶⁴ List of Commonwealth Countries (Fourth Schedule of the Constitution of Malta).

³⁶⁵ Portugal, 7.1.

³⁶⁶ Spain, 149.1.xxvi.

³⁶⁷ Switzerland, 76.2-3, 76, 106.3. “a”, and 118.2. “a”. “A licence from the Confederation is required in order to establish and operate a casino. In granting such a licence, the Confederation shall take account of regional circumstances. It shall levy a revenue-related tax on casinos; this tax must not exceed 80 per cent of the gross revenues from gambling. It shall be used to fund the Old-age, Survivors’ and Invalidity Insurance.” (Switzerland, 106.2)

³⁶⁸ Mikić (2022), 18.

³⁶⁹ Law (2016), 162. In preambles, “sometimes there are euphoric, almost anthemic features” (Häberle, 184).

lowed by the the lack of credible enforcement, and that there is room for criticism in terms of determining their adequate content. On the other hand, we should not forget that there exists “a long-standing debate (...) over whether the Constitution is written in ordinary or legal language”.³⁷⁰ Because they are imagined as constitutional storytelling, and marked by a preferred representation of the national past (a reflection of somewhat impulsive passions combined with historical nostalgia), there is no place for elaboration of preambles’ content. However, bearing in mind that “constitutional documents bear a close relationship to politics and ethics – closer than most other laws”, and that, as such, “they are permeated by ideas, ideals, and ideology”,³⁷¹ and “a more flexible language style”,³⁷² it must be noted in this context that preambles “enjoy a reputation for expressing uniquely national values, identities, and narratives”.³⁷³

Constitutions contain many useless and purposless provisions. Thus, a newly elected parliamentary session “shall assemble at twelve o’clock noon on the twelfth week-day after the day of election”,³⁷⁴ “the day of election must be a Sunday or other public holiday”,³⁷⁵ “elections for the [parliament] shall be held on the first Saturday in October”,³⁷⁶ “August 1 is the National Day of the Swiss Confederation”, and “in terms of employment law, it is regarded as equivalent to a Sunday, with equivalent rights to pay”.³⁷⁷ Additionally, “the State bears responsibility towards the citizen to create the conditions for the free and honorable development of his identity”, while, on

³⁷⁰ McGinnis, Rappaport, 1321.

³⁷¹ Frankenberg, 440.

³⁷² Mikić (2014a), 433. “The preamble can be understood as a kind of precursor to a legal act in which its author introduces those elements that are inappropriate for the content of the legal act itself” (Simović [2020b], 18).

³⁷³ Law (2016), 154.

³⁷⁴ Denmark, 35.1.

³⁷⁵ Austria, 26.3.

³⁷⁶ Latvia, 11.

³⁷⁷ Switzerland, 110.3.

the other hand, “the citizen bears a responsibility towards the State to discharge unwaveringly the duties imposed upon him by the Constitution”³⁷⁸, and “militaries who have resigned are barred from returning to active service”.³⁷⁹

Constitutions contain plain **ideological settings**, which cannot be in concord with the sanctity of constitution. Here is the list of such provisions: “the people of Azerbaijan shall be united,”³⁸⁰ “the construction of minarets is prohibited”,³⁸¹ there is to be a “simultaneous and controlled general disarmament, the dissolution of the political-military blocs and the setting up of a collective security system, all with a view to the creation of an international order with the ability to ensure peace and justice in the relations between peoples”.³⁸²

Furthermore, **components of identity of state** are mentioned in a way which constitutional dignity is put to peril. Thus, “the coat-of-arms is designed in accordance with a set standard of geometry and colour”,³⁸³ “‘Georgia’ is the name of the state of Georgia”,³⁸⁴ and “the name of OUR COUNTRY shall be Hungary”,³⁸⁵ while “the Federal territory comprises the territories of the Federal *Länder*”.³⁸⁶ Here is the content which should, eventually, be placed in the preamble, and not the normative part of the constitution: “The Russian Federation, united by the millennium history, preserving the memory of the ancestors who conveyed to us ideals and belief in God, as well as continuity of development of the Russian state, recognises the unanimity of the State that was established historically”, and it “honours the memory of the defenders of the Fatherland, ensures protection of historical truth”, while “diminution

³⁷⁸ Belarus, 2.2.

³⁷⁹ Greece, 56.1.

³⁸⁰ Azerbaijan, 5.1.

³⁸¹ Switzerland, 72.3.

³⁸² Portugal, 7.2.

³⁸³ Slovenia, 6.1.

³⁸⁴ Georgia, 2.1.

³⁸⁵ Hungary, “A” (uppercase is put in the original, of course).

³⁸⁶ Austria, 3.1.

of the heroic deed of the people defending the Fatherland is precluded”.³⁸⁷ Similarly, “freely and independently determining their destiny and establishing their own form of governance is the sovereign right of the people”.³⁸⁸ The same goes with the provision which states that “the Republic of Turkey is (...) loyal to the nationalism of Atatürk”.³⁸⁹ In one case, the country “shall have a coat of arms, a flag and a national anthem”, and this provision is followed by the one defining *exactly* these state symbols.³⁹⁰ Why, then, there exists no provision stating that the country “shall have the capital and the Old Royal Capital”, bearing in mind that there exists a provision proclaiming a city to be the capital, and another one to be “the Old Royal Capital”?³⁹¹ In another example of endangering constitutional dignity, “the names Russian Federation and Russia are equipollent (*равнозначны*)”.³⁹² In some European constitutions there is an intriguing lack of coherence in using the country’s name.³⁹³ In consociational states (for, example, in Bosnia and Herzegovina and Cyprus), “sometimes, it is too difficult to agree on common symbols and stories, and hence their omission can be agreed upon”,³⁹⁴ in order not to displease anyone.

A reader might be surprised that constitution-drafters pay unsuitably grand attention to the **economic and financial affairs**. Thus: “the costs of public transport shall be covered to an appropriate extent by the prices paid by users”,³⁹⁵ and “debts incurred with the intention of assisting insurrection against the state (...) and coup d’état may not be acknowledged as liabilities of the [state] and paid”,³⁹⁶ while “foreign investors shall be

³⁸⁷ Russia, 67¹.2-3.

³⁸⁸ Azerbaijan, 2.I.

³⁸⁹ Turkey, 2.

³⁹⁰ Montenegro, 4.1, and 4.2-4.

³⁹¹ Montenegro, 5.1-2.

³⁹² Russia, 1.2.

³⁹³ Mikić (2024f), 4.

³⁹⁴ Van den Berg, 37.

³⁹⁵ Switzerland, 81a.2.

³⁹⁶ Azerbaijan, 20.

guaranteed free repatriation of profits and invested capital”.³⁹⁷ In addition, the Government issues decrees “on securities up to 250,000 francs, on the acquisition and alienation of landed property belonging to the financial assets up to 1,000,000 francs and belonging to the administrative assets up to 30,000 francs as well”,³⁹⁸ “assets in state property shall belong to the state”,³⁹⁹ “the budget year shall begin on the 1st of January and shall end on the 31st of December”,⁴⁰⁰ “5 per cent of the non-earmarked revenues shall be used to reduce the health insurance premiums of persons on low incomes, unless an alternative method of assisting such persons is provided for by law”,⁴⁰¹ and autonomous provinces “shall have direct revenues”.⁴⁰² At the same time, the national bank “shall create sufficient currency reserves from its revenues”, and “part of these reserves shall be held in gold”.⁴⁰³

Additionally, “for the protection of the economy, private property and shareholders, and to guarantee sustainable corporate governance, the law shall regulate [national] companies limited by shares listed on stock exchanges in [the state] or abroad”, while “the Confederation may levy value added tax on the supply of goods, on services, including goods and services for personal use, and on imports, at a standard rate of a maximum of 6.5 per cent and at a reduced rate of at least 2.0 per cent”.⁴⁰⁴ The state “shall undertake a policy that works towards the establishment of a rental system (*um sistema de renda*) which is compatible with family incomes and access to individual housing”,⁴⁰⁵ and “in the economic and social field the state shall be under a *primary* duty” (13 specific points

³⁹⁷ Croatia, 49.5.

³⁹⁸ Liechtenstein, 93, pt. “a”.

³⁹⁹ Montenegro, 141.

⁴⁰⁰ Lithuania, 129.

⁴⁰¹ Switzerland, 130.4.

⁴⁰² Serbia, 183.5.

⁴⁰³ Switzerland, 99.3.

⁴⁰⁴ Switzerland, 95.3, pt. “d”, and 130.1.

⁴⁰⁵ Portugal, 65.3.

of competence follow).⁴⁰⁶ Finally, “the budget of the Autonomous Province of Vojvodina shall amount to at least 7% in relation to the budget of the Republic of Serbia, bearing in mind that three-sevenths of the budget of the [Province] shall be used for financing the capital expenditures”,⁴⁰⁷ and “a minimum of two thirds of the net profits made by the Swiss National Bank shall be allocated to the Cantons”.⁴⁰⁸

Provisions of certain European constitutions represent a true miniature code of **criminal procedure**. In this way, “all reports assessing sex offenders or violent offenders must be drawn up by at least two experienced specialists who are independent of each other”, and “persons convicted of harming the sexual integrity of a child or of a dependent person shall permanently lose the right to carry on a profession or voluntary activity involving minors or dependent persons”.⁴⁰⁹ Further, “weapons may not be used against a person except as prescribed by law in cases of self-defense, necessity, apprehension and arrest of criminals, preventing the escape from a place of detention, suppressing insurrection against the state or preventing coups d’état, or military aggression against the country”,⁴¹⁰ while “in case of riots the armed forces, unless attacked, may take action only after the crowd in the name of the King and the Law has three times been called upon to disperse, and such warning has been unheeded”.⁴¹¹ In addition: “no one may be obliged to testify against himself or his family or to confess his guilt”,⁴¹² “the law shall provide for the investigation of paternity”,⁴¹³ “no one is obliged to execute rulings or orders that are manifestly criminal”,⁴¹⁴ “foreign nationals who

⁴⁰⁶ Portugal, 81, pts. 1-13.

⁴⁰⁷ Serbia, 184.4.

⁴⁰⁸ Switzerland, 99.4. Similar provisions are contained in: 128.1, pts. “a”-“b”, 128.4, 132.2, and 135.3.

⁴⁰⁹ Switzerland, 123a.3, and 123c.

⁴¹⁰ Azerbaijan, 27.iv.

⁴¹¹ Denmark, 80. Similar provision is contained in: Norway, 25.3.

⁴¹² Albania, 32.1.

⁴¹³ Spain, 39.2.

⁴¹⁴ Ukraine, 60.1.

lose their right of residence and all other legal rights to remain in Switzerland (...) must be deported (...) by the competent authority and must be made subject to a ban on entry of from 5 to 15 years”, while “in the event of reoffending, the ban on entry is for 20 years”.⁴¹⁵ Finally, “if the life, health, freedom or property of individuals are actually in danger or such danger is directly impending, security officials are, irrespective of the competence of another authority for repulse of the hazard, competent to render primary assistance till the intervention of the respective competent authority”.⁴¹⁶

Additionally, “all citizens annually file declarations with the tax inspection at their place of residence, on their property status and income for the previous year, by the procedure established by law”,⁴¹⁷ “everyone shall have the right to refuse to give testimony, which might cause a danger of criminal proceedings against that person or a person akin”,⁴¹⁸ while “if a sex offender or violent offender is regarded in the reports required for sentencing as being extremely dangerous and his or her condition assessed as untreatable, he or she must be incarcerated until the end of his or her life due to the high risk of reoffending”, and “early release and release on temporary licence are not permitted”. However, “only if new scientific findings prove that the offender can be cured and thus no longer represents a danger to the public can new reports be drawn up”, and “if the offender is released on the basis of these new reports, the authorities granting his or her release must accept liability if he reoffends”.⁴¹⁹

Completely pleonastic content can also be found in provisions dedicated to the protection of **fundamental rights**. Whether it is said that “the state shall guarantee the protection of rights and freedoms of everyone”,⁴²⁰ “the allocation of a sin-

⁴¹⁵ Switzerland, 121.5.

⁴¹⁶ Austria, 78a.2.

⁴¹⁷ Ukraine, 67.2.

⁴¹⁸ Slovakia, 47.1.

⁴¹⁹ Switzerland, 123a.1-2.

⁴²⁰ Azerbaijan, 26.ii.

gle national number (*um número nacional único*) to any citizen shall be prohibited”,⁴²¹ “each elector has the right to only one vote”,⁴²² “all individuals shall take responsibility for themselves and shall, according to their abilities, contribute to achieving the tasks of the state and society”, “the essence of fundamental rights is inviolable”,⁴²³ and that they “must be upheld throughout the legal system”, or that “every person shall be entitled to his or her rights”,⁴²⁴ constitution-drafters make a big mistake when they enter the area of defining basic concepts related to human rights.

In one case it is said that “the fundamental rights (...) shall not be regulated by a presidential decree”,⁴²⁵ directly compromising the very notion of the constitution as the highest law. In another, a constitution-maker gives himself (or herself) the freedom to, outside the framework of his or her competences, establish human rights as “the basis of every community, of peace and of justice in the world”.⁴²⁶ If “laws that restrict rights (...) shall possess an abstract and general nature and shall not possess a retroactive effect or reduce the extent or scope of the essential content (*conteúdo essencial*) of the provisions of this Constitution”,⁴²⁷ one might ask: which provisions do not represent ‘essential content’ of the Constitution? Similarly, if “every person is entitled to bring cases before the courts for the defence of his legitimate rights, liberties and interests”, what is the purpose of the rule in accordance to which “the exercise of this right shall not be restricted by any law”?⁴²⁸ In addition, “manifestations of any nature whatsoever in favour of or against a political party by magistrates and by those serving in

⁴²¹ Portugal, 35.5.

⁴²² Belgium, 61.2.

⁴²³ Switzerland, 6, 35.1, and 36.4.

⁴²⁴ Slovakia, 14.

⁴²⁵ Turkey, 104.17.

⁴²⁶ Germany, 1.2.

⁴²⁷ Portugal, 18.3.

⁴²⁸ Romania, 21.1-2.

the armed forces and the security corps, are absolutely prohibited (*απαγορεύονται απολύτως*):⁴²⁹ what is the difference between *simply* “prohibited” and “absolutely prohibited”? It seems needless to attract the reader’s attention to the repetition in accordance to which the state “guarantees the freedom of the arts and sciences, *which may be freely taught*”,⁴³⁰ and that “the authorities of the Roman Catholic Apostolic Church have the duty and the right to teach *which principles are right and which are wrong*”.⁴³¹

Constitutional dignity is also jeopardized when it comes to the determination of the **composition, functioning, and limitations of actions of state bodies**. Thus, the national government, as well as regional governments, “include both women and men”, and the former “is composed of no more than fifteen members”,⁴³² the parliament “shall have an independent budget”,⁴³³ “a Minister is the Head of his Ministry”, and “the seat of the Supreme Constitutional Court shall be in the capital of the Republic”,⁴³⁴ while “the Ministers shall be Finnish citizens known to be honest and competent”,⁴³⁵ “no person shall be entitled to be appointed to the office of judge or magistrate unless that person (...) is able to work in a collegial environment”,⁴³⁶ and “husband and wife, parent and child or two siblings may never sit at the same time in the Council of State”.⁴³⁷

In one case, there is an unnecessary repetition of the competences of the President of the Republic, in two places in the Constitution, with separate 11 points, and then again with another 11 points.⁴³⁸ Additionally, “a Representative

⁴²⁹ Greece, 29.3.

⁴³⁰ Italy, 33.1.

⁴³¹ Malta, 2.2.

⁴³² Belgium, 11bis.2, and 99.1.

⁴³³ Bulgaria, 62.2.

⁴³⁴ Cyprus, 58.1, and 139.2.

⁴³⁵ Finland, 60.1.

⁴³⁶ Malta, 96B, “1”.

⁴³⁷ Norway, 12.3.

⁴³⁸ Czechs, 62, and 63.1.

shall not be prevented from carrying out his or her duties as a Representative”,⁴³⁹ “the number of presidential candidates shall not be limited”,⁴⁴⁰ “the Princess or Prince who has once made the oath shall not repeat it later”,⁴⁴¹ and the parliament “shall declare, *in the name of the Republic of Poland*, a state of war and the conclusion of peace”.⁴⁴² One provision superfluously states that a referendum “may be held in respect of *matters of particular importance to the State*”, while the other sets the procedural grounds for calling a referendum by the very same body.⁴⁴³

Comparably: “the Government’s Programme shall set out the main political guidelines and the measures that are to be adopted or proposed *in the various areas of governance*”,⁴⁴⁴ the President “shall address Parliament by messages *on the main political issues of the nation*”,⁴⁴⁵ the Republic “shall organise and provide for: (...) organisation, competences and work of *the bodies of the Republic*”,⁴⁴⁶ “remuneration of judges of the Constitutional Court (...) is defined by the law on the Constitutional Court (...)”.⁴⁴⁷ If the parliament “may subject the Government to no confidence motions in relation to the implementation of its Programme or to any important matter of national interest”,⁴⁴⁸ why the legislators should be constitutionally limited to only certain issues of political significance, which are difficult to define anyway? According to one example, “the President may *in his absolute discretion* refuse to dissolve” the upper house of parliament,⁴⁴⁹ while, in accordance to another

⁴³⁹ Finland, 30.

⁴⁴⁰ Lithuania, 79.2.

⁴⁴¹ Norway, 44.3.

⁴⁴² Poland, 116.1.

⁴⁴³ Poland, 125.1-2.

⁴⁴⁴ Portugal, 188.

⁴⁴⁵ Romania, 88.

⁴⁴⁶ Serbia, 97, pt. 16.

⁴⁴⁷ Ukraine, 148.2.

⁴⁴⁸ Portugal, 184.1.

⁴⁴⁹ Ireland, 13.3.2.

provision, “*within the scope of their powers*, the Government and individual ministers are independent and accountable to the National Assembly”,⁴⁵⁰ and “the rights appertaining to Parliament may only be exercised in its lawfully constituted assembly (*nur in der gesetzlich konstituierten Versammlung*)”.⁴⁵¹

One constitution states that “a person who holds, or who has held, office as President, shall be eligible for re-election to that office once, *but only once*”⁴⁵² (what is the purpose of the last three words of the provision?). The same goes with the rule claiming that “the National Parliament shall be *called and known*, and is in this Constitution generally referred to, as the Oireachtas”,⁴⁵³ or that “there shall be an Attorney General whose office shall be a public office”.⁴⁵⁴ What can be made of the provision which claims that “alterations to the Constitution shall be inserted *in the correct place by means of such replacements, eliminations and additions as may be necessary*”?⁴⁵⁵

Constitutions irresponsibly regulate the obligation related to the **obedience to law**. Thus, since “constitutions even explicitly require members of the polity to abide by and respect the constitution”,⁴⁵⁶ “persons present within the borders of the Principality shall be bound to observe its laws and shall be entitled to the protection afforded by the Constitution and the other laws”⁴⁵⁷ (which laws would be endangered from being implemented if this constitutional provision is absent?), “every-one shall comply with his responsibilities and public duties”,⁴⁵⁸ “in all public activity, the law shall be strictly observed”,⁴⁵⁹ “citizens and public authorities are bound by the Constitution and

⁴⁵⁰ Slovenia, 110.

⁴⁵¹ Liechtenstein, 45.2.

⁴⁵² Ireland, 12.3.2.

⁴⁵³ Ireland, 15.1.1.

⁴⁵⁴ Malta, 91.1.

⁴⁵⁵ Portugal, 287.1.

⁴⁵⁶ De Visser, Jones, 34.

⁴⁵⁷ Liechtenstein, 28.3.

⁴⁵⁸ Poland, 84.

⁴⁵⁹ Finland, 2.3.

all other legal provisions”,⁴⁶⁰ and – as a reflection of a completely unnecessary constitutional-drafting – “this Constitution Act shall apply to all parts of the Kingdom”.⁴⁶¹ Similarly, “the Principality of Liechtenstein shall serve to enable the people within its borders to live together in freedom and peace”,⁴⁶² the executive authorities “shall provide for the implementation of the powers of federal State power on the entire territory” of the state,⁴⁶³ the sovereignty of the state “extends throughout its entire territory”,⁴⁶⁴ and “in its own territory, the state shall protect human rights and fundamental freedoms”.⁴⁶⁵ In a particularly unenforceable provision, it is stated that “state institutions and private persons shall act in good faith (*Treu und Glauben; la bonne foi; la buona fede; la buna fai*)”.⁴⁶⁶

In the world of inappropriate provisions, **education, science and sports** also have their place. Thus, “the Confederation and Cantons shall encourage musical education”, as well as “film production and film culture (*Filmangebot; la culture cinématographique; la cultura cinematografica; la cultura da film*)”,⁴⁶⁷ “the right of individuals and legal entities to set up educational centres is recognised, provided they respect constitutional principles”,⁴⁶⁸ “with a view to ascertaining and improving the performance of their administrations, the Federation and the Länder may conduct comparative studies and publish the results thereof”,⁴⁶⁹ and “the decisions of sport federations relating to administration and discipline of sport activities may be challenged only through compulsory arbitration”.⁴⁷⁰ What a

⁴⁶⁰ Spain, 9.1.

⁴⁶¹ Denmark, 1.1.

⁴⁶² Liechtenstein, 1.

⁴⁶³ Russia, 78.4.

⁴⁶⁴ Ukraine, 2.1.

⁴⁶⁵ Slovenia, 5.1.

⁴⁶⁶ Switzerland, 5.3.

⁴⁶⁷ Switzerland, 67a.1, and 72.1.

⁴⁶⁸ Spain, 27.6.

⁴⁶⁹ Germany, 91d.

⁴⁷⁰ Turkey, 59.3.

“person of unsound mind, an alcoholic or a drug addict”,⁴⁷¹ or “alcoholics and work-shy persons (*arbeitsscheuen Personen*)”,⁴⁷² have to do with a constitution? In addition, one constitution *defines* the functions of universities,⁴⁷³ and the other one claims that “the state shall be charged with (...) preventing violence in sport”.⁴⁷⁴

Many constitutions have provisions repeating the phrase: “**in accordance with this Constitution**” (an expression borrowed to be included in the title of this chapter of the book). This is connected to the scope of competences and responsibilities of **state authorities** in general,⁴⁷⁵ those of the **head of state**⁴⁷⁶ (in the Constitution of Turkey, *four times* within the same article, the same thing is claimed,⁴⁷⁷ and, for the fifth time, in a separate provision),⁴⁷⁸ the **government**⁴⁷⁹ (the prime minister),⁴⁸⁰ the **parliament**⁴⁸¹ (in one case, the referral

⁴⁷¹ Estonia, 20, pt. 5.

⁴⁷² Liechtenstein, 18.

⁴⁷³ “For the purpose of training manpower to meet the needs of the nation and the country under a system of contemporary education principles, universities comprising several units and having scientific autonomy and public legal personality shall be established by the State” (Turkey, 130.1).

⁴⁷⁴ Portugal, 79.2.

⁴⁷⁵ Belgium, 33.1-2, Georgia, 4.4, Liechtenstein, 2, Lithuania, 5.2, Ukraine, 6.2.

⁴⁷⁶ Belgium, 105, Finland, 57, Greece, 50, Ireland, 12.1, Liechtenstein, 11, Malta, 78.2, Montenegro, 95, pt. 10, North Macedonia, 79, and 84, pt. 10, Poland, 126.3, Russia, 78.4, Serbia, 109.5 and 112.1, pt. 8, Spain, 56.1, 62, pt. “b”-“d”, 63.2, and 99.1, Turkey, 104.20, Ukraine, 106.1, pt. 6-8, and 106.3.

⁴⁷⁷ “No presidential decree shall be issued on the matters which are stipulated in the Constitution to be regulated exclusively by law. No presidential decree shall be issued on the matters explicitly regulated by law. In the case of a discrepancy between provisions of the presidential decrees and the laws, the provisions of the laws shall prevail. A presidential decree shall become null and void if the Grand National Assembly of Turkey enacts a law on the same matter. (Turkey, 104.17)

⁴⁷⁸ “The president of the Republic may issue by-laws in order to ensure the implementation of laws, provided that they are not contrary thereto.” (Turkey, 104.18)

⁴⁷⁹ Croatia, 107, Montenegro, 100, pt. 10, North Macedonia, 88, and 91, pt. 14, Russia, 78.4, Sweden, the Instrument of Government, Chapter 4.3.1, Ukraine, 113.2-3, 116, pt. 10, and 120.2.

⁴⁸⁰ Russia, 113, Ukraine, 115.3, Vaticane City, 5.1.

⁴⁸¹ Lithuania, 59.4, Malta, 65.1, Poland, 95.2, Serbia, 99.3, Slovakia, 84.2, Sweden, the Instrument of Government, Chapter 4.3.2, Ukraine, 83.4, 85, pts. 1, 7, 10, and 13, and

to the constitutional provisions in this area is mentioned *four times*),⁴⁸² the MPs,⁴⁸³ and the chairman of the parliament,⁴⁸⁴ the **judicial system**,⁴⁸⁵ the **constitutional court**,⁴⁸⁶ the **public administration**,⁴⁸⁷ the **federal**,⁴⁸⁸ **regional**⁴⁸⁹ (again, four times in a single constitution)⁴⁹⁰ and **local authorities**,⁴⁹¹ and **other state bodies**⁴⁹² (including such a vague term as is “the political power”),⁴⁹³ and even the “nation”.⁴⁹⁴ Maybe the most exceptionally badly written provision in this regard is the one which stipulates no less than *two* express constitutional limits, based on its other provisions, on the exercising of the Cabinet of Ministers’ functions: this body “is guided in its activity by this Constitution and the laws of Ukraine and also by decrees of the President of Ukraine and resolutions of the [Parliament] of Ukraine adopted in accordance with the Constitution”.⁴⁹⁵

Besides the enjoyment of **basic rights and freedoms**⁴⁹⁶ (including minority rights),⁴⁹⁷ other topics are subjected to be

33, 85.2, 89.1, and 135.2 (*nine* almost identical and therefore superficial provisions found their place in the same *constitutional* document).

⁴⁸² Liechtenstein, 45.1, 60.1, 60 pt. “a”, and 62 pt. “b”.

⁴⁸³ Sweden, the Instrument of Government, Chapter 4.3.1.

⁴⁸⁴ Ukraine, 88.3, and 112.

⁴⁸⁵ Russia, 118.3, Slovakia, 144.1.

⁴⁸⁶ North Macedonia, 110, pt. 8, Turkey, 148.10, Ukraine, 147.1, and 153.

⁴⁸⁷ North Macedonia, 96, Slovenia, 120.2, Turkey, 129.1.

⁴⁸⁸ Switzerland, 46.1.

⁴⁸⁹ Spain, 143.1, and 147.1, Ukraine, 135.2.

⁴⁹⁰ Serbia, 179, 182.1, 183.1, and 183.5.

⁴⁹¹ Armenia, 179.1, North Macedonia, 117, Portugal, 241, Serbia, 179, Ukraine, 19.2.

⁴⁹² This is the case with: the Defense and Security Council (Montenegro, 130, pt. 6), the Public Prosecutor (the Attorney General) (Ireland, 30.1, North Macedonia, 106, Ukraine, 131.5), Council of State (Ireland, 31.1), the High Council (Ukraine, 131.1.9), “the bodies that exercise sovereign power” (Portugal, 110.2), “state bodies” (Slovakia, 2.2), “public authorities” (Spain, 9.1), “bodies of state power” (Ukraine, 19.2), “the organs contemplated by this Constitution” (Albania, 6), and even the “Republic” (Serbia, 97, pt. 17), or the “Confederation” (Switzerland, 42.1) themselves.

⁴⁹³ “The political power shall lie with the people and shall be exercised in accordance with this Constitution. (Portugal, 108).

⁴⁹⁴ Turkey, 6.2.

⁴⁹⁵ Ukraine, 113. 3.

⁴⁹⁶ Liechtenstein, 29.1, Serbia, 20.1, and 75.1, Slovenia, 15.3, Ukraine, 64.1.

⁴⁹⁷ Serbia, 79.2.

resolved *in accordance with the constitution*. These are: “the presence of conflict of interest and liability for its resolution”,⁴⁹⁸ and the use of secondary languages (other than the official one).⁴⁹⁹ In a spectacular violation of basic nomotechnic requirements, constitutions also tend to refer to *their own provisions*.⁵⁰⁰ One constitutional *article* contains two provisions that cannot go further from each other in terms of content, saying that “the general confiscation of property is prohibited”, and that “the death penalty shall not be imposed”.⁵⁰¹ In another example, if “the Evangelical Lutheran Church shall be the State Church in Iceland and, as such, it shall be supported and protected by the State”, while “this may be amended by law”,⁵⁰² how can a constitutional provision be altered by a law?⁵⁰³

Constitutions also contain **typical legislative, and not constitutional procedural provisions**, although “where constitutional provisions are designed to settle the basic procedural rules for democracy there will be relatively little room for debate about how specific the constitution should be: pro-

⁴⁹⁸ Serbia, 6.2.

⁴⁹⁹ Serbia, 10, Ukraine, 10.5.

⁵⁰⁰ “The Coprinces may perform the following acts of their free will: The appointment of the members of the Tribunal Constitucional, in accordance with article 96.1 of the Constitution” (Andorra, 46.1.4); “The Reigning Prince shall appoint the Judges in accordance with the provisions of the Constitution (Article 96)” (Liechtenstein, 11); “Bodies that exercise sovereign power shall not jointly or separately suspend the exercise of rights, freedoms and guarantees, save in the case of a state of siege or a state of emergency declared in the form provided for in this Constitution”, and “Declarations of a state of siege or a state of emergency may only alter constitutional normality (*a normalidade constitucional*) in the manner provided for in this Constitution and the law” (Portugal, 19.1, and 19.7). “Constitutional normality” will attack again in the following sentence: “Declarations of a state of siege or a state of emergency shall grant the public authorities the power and responsibility to take the appropriate steps needed to promptly restore constitutional normality.” (Portugal, 19.8)

⁵⁰¹ Greece, 7.3.

⁵⁰² Iceland, 62.1-2.

⁵⁰³ The same goes with the following phrasing: “A person who is not a member of any religious association shall pay to the University of Iceland the dues that he would have had to pay to such an association, if he had been a member. This may be amended by law.” (Iceland, 64.3)

visions of this kind must be relatively specific and unambiguous if they are to perform their functions”.⁵⁰⁴ Even though procedural provisions should be reduced (limited), the modern European constitutionalism proves that logical assumptions appeared to be wrong in practice. When it comes to the organization of public institutions, other examples of superfluous constitutionalism arise. Therefore: regular parliamentary elections “take place on the last Sunday of October of the fifth year of the term of authority” of the parliament, and “the title” of the President “is protected by law and is reserved for the President for life”, unless, of course, the person was “removed from office by the procedure of impeachment”.⁵⁰⁵

In one particularly redundant case, recourse to the Constitutional Court shall be upon the request of the twelve enumerated subjects, including “religious communities forums”, “political parties”, and “organizations”, but then, to *all* “individuals”.⁵⁰⁶ This means that *everyone* can recourse to the Constitutional Court, and that there was no need to make specifications as those which were made in the previous points of the same article of the Constitution. According to another, “the mayor (...) shall be elected by the municipality inhabitants permanently residing therein”, while on the other hand, “a law shall specify details relating to the election of the Members of Parliament”.⁵⁰⁷ There is, therefore, no selection of a particular electoral system, but, however, a provision is dedicated to the direct election of mayors. Finally, the provision which commands that the MPs “must disclose their links to interest groups”⁵⁰⁸ belongs not to constitution, but to law.

Constitutions dedicate attention to truly **nonessential institutions**, the competences and responsibilities of

⁵⁰⁴ Dixon, 825.

⁵⁰⁵ Ukraine, 77.1, and 105.3.

⁵⁰⁶ Albania, 134.1, pts. “g”, “gj”, “h”, and “i”. Similar provision is contained in: Armenia, 169.1.

⁵⁰⁷ Slovakia, 69.3, and 74.3.

⁵⁰⁸ Switzerland, 161.2.

which can easily (and more suitably) be regulated by sub-constitutional normative acts. This is the case with, again in the alphabetical order, the following institutions: the Advisory Council on Foreign Affairs,⁵⁰⁹ the Asylum Court,⁵¹⁰ the “Atatürk High Institution of Culture, Language and History”,⁵¹¹ the Central Electoral Commission,⁵¹² the Council of Higher Education,⁵¹³ the Council of the National Bank,⁵¹⁴ the Deputy Ombudsman,⁵¹⁵ the Federal School Authorities,⁵¹⁶ the parliamentary Committee on the Constitution,⁵¹⁷ the Presidency of Religious Affairs,⁵¹⁸ the Radio and Television Supreme Council⁵¹⁹ (the Television and Radio Commission),⁵²⁰ the Secretariat General of the Council of Judges and Prosecutors,⁵²¹ the Secretary General of the parliament,⁵²² the State Supervisory Council⁵²³ (attached, and completely and directly *submerged* to the Office of the Presidency of the Republic,⁵²⁴ which makes it even more dispensable, in the sense of the constitutional matter), the teachers’ associations, and the workers’ committees.⁵²⁵

Constitutions also contain completely unimportant **repetitions**. Thus, eligibility for the elections for the European Parliament is reserved to “men and women who have completed their sixteenth year of life on the day of election”, although there already exists a provision saying that “the Fed-

⁵⁰⁹ Sweden, the Instrument of Government, Chapter 10, Art. 7.

⁵¹⁰ Austria, 129c-129f.

⁵¹¹ Turkey, 134.1.

⁵¹² Armenia, 194-195.

⁵¹³ Turkey, 131.

⁵¹⁴ Ukraine, 100.1.

⁵¹⁵ The Netherlands, 57.2.

⁵¹⁶ Austria, 81a-81b.

⁵¹⁷ Sweden, the Instrument of Government, Chapter 12, Art. 1-3.

⁵¹⁸ Turkey, 136.

⁵¹⁹ Turkey, 133.2.

⁵²⁰ Armenia, 196.6.

⁵²¹ Turkey, 159.12.

⁵²² Albania, 147.4-7 *et seq.*

⁵²³ Turkey, 108.1.

⁵²⁴ Turkey, 108.3-4.

⁵²⁵ Portugal, 77.2, and 54.

eration, the Länder and Municipalities commit themselves to the actual equal standing of man and women”.⁵²⁶ Similarly, the provisions of the Constitution “shall constitute the fundamental principles of the constitutional order”, and they “may not be changed except in accordance with the procedure established by this Constitution”, while, in addition, it is stipulated that “the provisions of this Chapter shall constitute the fundamental principles of the legal status of the individual” and “may not be changed otherwise than in accordance with the procedure which is established by this Constitution.”⁵²⁷ One constitution states that “whenever the term “citizen” is used in (...) this Constitution, it means a citizen of the Slovak Republic”. At the same time, it simultaneously stipulates that “a constitutional law on joining a union with other states or the secession from it, shall be confirmed by a referendum”, which “may also be used to decide on other crucial issues of the public interest”, including the one which is declared by the President of the Republic upon a qualified petition.⁵²⁸ By the wordings of one provision, “the constitutional composition” of the parliament consists of 450 MPs.⁵²⁹ It is not easily explainable what is the purpose of the expression claiming that there exists “the constitutional composition” (*конституційний склад*) of a parliament.

There is no shortage of further bad examples. Thus, the state “applies international law *that is binding upon it*”,⁵³⁰ and “elections of [the MPs] are direct”, while “[the MPs] are elected by citizens *directly*”.⁵³¹ The status as a citizen is “acquired, kept and lost according to rules established by civil law”, while “naturalisation is granted by the federal legislative power”. (In addition, *identical* four conditions for membership in the

⁵²⁶ Austria 23a.1, and 7.2.

⁵²⁷ Russia 16. 1, and 64.

⁵²⁸ Slovakia, 52.1, 93.1-2, and 95.1.

⁵²⁹ Ukraine, 76.1.

⁵³⁰ Albania, 5.

⁵³¹ Belarus, 67.

lower house and in the upper house are required).⁵³² The parliament shall “pass, amend, supplement, and repeal the laws”, and it shall – surprisingly enough – “pass laws, resolutions, declarations and addresses”.⁵³³ The candidate for the office of the Prime Minister shall seek the support of the parliament upon the programme of the Government,⁵³⁴ which shall, “in accordance with *its government programme accepted by Parliament*, ensure the implementation of the domestic and foreign policy”.⁵³⁵ The parliament shall “adopt and *amend* the Constitution”, and it “shall decide on *amending* the Constitution”,⁵³⁶ but it shall, also, “elect the Government”, and “vote on the Government’s Programme and *election* of the Prime Minister and members of the Government”.⁵³⁷ The Confederation is obliged to “protect the constitutional order of the Cantons”, and, at the same time, to “*protect the existence* (...) of the Cantons”.⁵³⁸ If the president “shall promulgate laws”, what is the function of the provision proclaiming that he or she “shall *promulgate the laws* adopted” by the parliament”?⁵³⁹ The same goes with the provisions proclaiming that “everyone is obliged to strictly abide by the Constitution”, and that the Constitution “has the highest legal force”.⁵⁴⁰

How can a conflict of jurisdiction between different levels of political institutions be avoided, if the constitution asserts in one place that the Government ensures “the execution of the Constitution and the laws”, while, at the same time, “local state administrations on their respective territory ensure the execution of the Constitution and the laws”?⁵⁴¹ It is the

⁵³² Belgium, 8.1, 9, 64.1, and 69.

⁵³³ Bulgaria, 84, pt. 1, and 86.1.

⁵³⁴ Romania, 103.2

⁵³⁵ Romania, 103.2, and 102.1.

⁵³⁶ Serbia, 99.1.1, and 203.2.

⁵³⁷ Serbia, 99.2.1, and 127.3.

⁵³⁸ Switzerland, 52.1, and 53.1.

⁵³⁹ Turkey, 104.5, and 89.1.

⁵⁴⁰ Ukraine, 68.1, and 8.2.

⁵⁴¹ Ukraine, 116.1, and 119.1.

same with provisions in accordance to which “the legislative power shall be exercised by the Parliament”, the body which, *76 articles later*, is said to “adopt laws”,⁵⁴² or with the ones due to which the acts that the President of the Republic undertakes “shall require counter-signature by the Government”, whilst “in the event that the Government does not counter-sign any such act, the said act shall be legally invalid”.⁵⁴³ Comparably, the President of the Republic “is a guarantor of the implementation of the strategic course of the state for gaining full-fledged membership of Ukraine in the [EU] and the North Atlantic Treaty Organization [hereinafter: the NATO]”, while, at the same time, the Government “provides the implementation of the strategic course of the state for gaining fullfledged membership of Ukraine in the [EU] and the [NATO]”.⁵⁴⁴ When a constitution-drafter, devoted to confirm at several places the right to local self-government, but still decides to claim that “local self-government in Slovenia is guaranteed”,⁵⁴⁵ how can it be marked but as putting the constitutional dignity at an *indirect* risk? Similar are the provisions in accordance to which “the Constitution guarantees the autonomy of the municipalities”,⁵⁴⁶ and that “the Confederation shall protect the constitutional order of the Cantons”.⁵⁴⁷

Constitutions deliver certain elements to the *indignity of the constitutions* by phrasing **oaths of office**. Therefore, refusals to take it result in the loss of the mandate of an MP, the president of the republic, constitutional justices, or the regular judges,⁵⁴⁸ but this is not the case with the members of the Government.⁵⁴⁹ So, why is there an obligation to respect the constitutional oath of office, if there are already provisions in which

⁵⁴² Montenegro, 11.2, and 87.2.

⁵⁴³ Portugal, 140.1-2.

⁵⁴⁴ Ukraine, 102.3, and 116.1.

⁵⁴⁵ Slovenia, 9.

⁵⁴⁶ Spain, 140.

⁵⁴⁷ Switzerland, 52.1.

⁵⁴⁸ Slovakia, 75.2, 104.2, 134.5, 145.5, and 112.

⁵⁴⁹ Slovakia, 112.

the general obligation of *everyone* to respect the constitution is mentioned? Finally, the Council of State, provided for by the Constitution of Ireland, exercises the functions conferred on it by the Constitution, advising the president, who could be advised by the Council, in the matters provided for by the Constitution (the latter expression was mentioned twice in the document).⁵⁵⁰

⁵⁵⁰ Ireland, 31.1.1-4.

“In Fine Examples of the “Framework’-Style Approach”

“It is not worth it for a modern constitution
to ‘die in the beauty’ of grand proclamations“

(Vladan Petrov)⁵⁵¹

Too much loquacious and seductive (*sweet-talking*) constitutions are a tendency in most of the European countries nowadays. Nevertheless, there are, fortunately, examples of constitutions marked by sheer quality, and clear, concise, and instructive norms, contained in succinct sentences. This chapter of the book is devoted to exploring the rules contained in such constitutions and their provisions, and to promote their comparative value.

As one author wrote, constitution-makers “can either choose to adopt either a highly ‘codified’ or detailed approach to constitutional drafting, or rely on a more ‘framework’-style approach, which places greater trust in constitutional courts as partners in the process of constitutional interpretation”⁵⁵². Thus, the “‘framework-style’ approach (...) provides only quite general textual guidance as to the meaning or operation of particular constitutional norms”, while “a more ‘codified’ approach (...) provides far greater detail or specificity regarding the intended meaning and operation of relevant constitutional norms”, giving “broad discretion to judges to shape

⁵⁵¹ Petrov, V. (2017), 32.

⁵⁵² Dixon, 819 et seq.

constitutional meaning”.⁵⁵³ In addition, “wherever possible (...) constitutional design should be based on a model of trust rather than distrust toward judges: drafters should both ensure that they have good reason to trust constitutional judges as partners in the process of constitutional design, and approach the task of drafting relevant provisions accordingly”.⁵⁵⁴ For example, in the Netherlands, “the northern members of the constitutional committee were reluctant to abandon their distinct traditions in favour of a new encompassing constitutional identity”, so, consequently, the Constitution of 1815 became “a relatively sober document”,⁵⁵⁵ representing a “more scarce, and restrained” approach in terms of constitutional regulation.⁵⁵⁶ Similarly, “the provisions of the Belgian Constitution have a special value when one takes into account the fact that the proclaimed human rights are precisely formulated and that they are not presented in a solemn way, burdened with abstract principles of natural law theory”.⁵⁵⁷

Some of the European constitutions are marked by a true (and *positive*) comparative distinctiveness. They represent carefully phrased and skillfully elaborated legal monuments, from the comparative vantage point, containing no more than “constitutional basics”.⁵⁵⁸ As I had written earlier, “reading some provisions of the constitution, one comes across very unusual, pleasant, almost melodic formulations”, which contribute to the creation of “a true *lyrical constitutionalism*, characterized by the simplicity and accessibility of the text”.⁵⁵⁹ At the same time, “some constitution-drafters value conciseness and orderliness, so the constitutions that are the product of their work are sparingly written and textually rationalized”, containing”

⁵⁵³ *Ibid.*, 820.

⁵⁵⁴ *Ibid.*, 821.

⁵⁵⁵ Van den Berg, 30.

⁵⁵⁶ Häberle, 155.

⁵⁵⁷ Stanković, 65.

⁵⁵⁸ Albert (2012), 390.

⁵⁵⁹ Mikić (2022), 17-18.

“unusually energetic, sharp, and sonorous expressions”,⁵⁶⁰ creating a very sober thematic constitutional register. It is, therefore, very important that “that the author of the constitution be a supreme master of nomotechnic skills”.⁵⁶¹

Adhering to a much more modest approach to what constitutes the constitutional matter, a constitution-drafter of the described type aims at adopting what is called “the optimal constitution”.⁵⁶² This approach can be illustrated with examples of the provisions which “speak” flatly, and with a sufficient degree of comparative originality. They offer a promising alternative to the prevailing trend in constitution-writing, without falling into the trap of being oddly confined to an overly restrictive approach to choosing the topics which should be included in the highest national legal document.

These constitutions, fortunately, do not fit the pattern. In them, constitutional matter is appropriately assessed and adequately addressed. From that fact, positive externalities (those of good examples) of these “discrete” constitutions⁵⁶³ could, hopefully, be attained. It is true that “some constitutions mainly entrench the political status quo”, while “constitutionalization is meant to achieve unity and the additional stability allowed by [this] entrenchment”.⁵⁶⁴ In these constitutions “there is no need for great detail”.⁵⁶⁵ Perhaps somewhat oddly, these documents “enrich the *acquis constitutionnel*”,⁵⁶⁶ in Europe and on the global scale. At the same time, one should take care of *local* and actual political needs for constitutional regulation, because “demand for constitutionalization will depend on the particular time and place in which the constitution is being written”.⁵⁶⁷

⁵⁶⁰ *Ibid.*

⁵⁶¹ Petrov, V. (2022), 40.

⁵⁶² Elster, 365.

⁵⁶³ Ginsburg, 73.

⁵⁶⁴ Gavison, 92.

⁵⁶⁵ *Ibid.*

⁵⁶⁶ Klopocka-Jasińska, 14.

⁵⁶⁷ Ginsburg, 78.

There are, fortunately, numerous constitutional provisions distinguished by their authenticity, undemanding commitments, and clear, albeit tacit, loyalty to the dignity of the constitution. These are, at the first place, the provisions dedicated to the protection of **fundamental rights and freedoms**. For start, five opening words (actually, when translated to English – *four*) of the Constitution of Germany claim that: “Human dignity shall be inviolable (*Die Würde des Menschen ist unantastbar*)”, followed by the provision in accordance to which “to respect and protect it shall be the duty of all state authority”.⁵⁶⁸ This is a classic example of a *catchy introduction* into a constitutional act. Another example of a striking opening sentence is the following: “All persons in the Netherlands shall be treated equally in equal circumstances. Discrimination on the grounds of religion, belief, political opinion, race or sex or on any other grounds whatsoever shall not be permitted”.⁵⁶⁹

Provisions dedicated to the protection of basic rights and freedoms can be written in a particularly inspiring way. Thus, “man, his rights and freedoms shall be the supreme value (*высшей ценностью*)”, “human and civil rights and freedoms shall have direct force”,⁵⁷⁰ “infliction or encouragement of hatred or intolerance on any grounds shall be prohibited”,⁵⁷¹ while “the respect and protection of the individual shall constitute the foremost duty of the State”,⁵⁷² which “shall protect the liberty and rights of the people”.⁵⁷³ In addition, “special ombudsmen (*posebni varuhi pravic državljanov*) for the rights of citizens may also be established by law for particular fields”,⁵⁷⁴ and “the basic rights and freedoms shall also extend to legal

⁵⁶⁸ Germany, 1.1.

⁵⁶⁹ The Netherlands, 1.

⁵⁷⁰ Russia, 2, and 18.

⁵⁷¹ Montenegro, 7.

⁵⁷² Moldova, 16.1.

⁵⁷³ Switzerland, 2.1.

⁵⁷⁴ Slovenia, 159.2.

persons to the extent these rights and freedoms, by virtue of their nature, are applicable thereto”.⁵⁷⁵

Similarly, “no one may be obliged, except when the law requires it, to make public the data connected with his person”.⁵⁷⁶ In an authentic act specifying the earliest exercise of the right to vote guaranteed by the Constitution, a provision *reminds* what every constitution (or, rather, a relevant legislative act) should claim: “Every citizen who has attained the age of 18, *even on the date of the elections*, has the right to elect and be elected”.⁵⁷⁷ There are also breakthroughs in the field of digital law, for a provision states that “everyone has the right to access and freely use the internet”.⁵⁷⁸ An example of a magnificent constitution-writing style can be found in the provision which claims that “the care and upbringing of children is the natural right (*das natürliche Recht*) of parents and a duty primarily incumbent upon them”.⁵⁷⁹ Also, “concealments or distortions of information regarding the elements that are harmless to human health are prohibited”.⁵⁸⁰

In certain constitutions, it is expressly stated that anything **not prohibited by law** is legal. Thus: “a human being shall be free to do anything that does not violate the rights of others and does not contradict the Constitution and laws”; “no one may bear obligations that are not prescribed by law”,⁵⁸¹ “no one is above the law”,⁵⁸² “everyone has the right to protect his or her rights and freedoms ways and means not prohibited by law”,⁵⁸³ “everyone may do what is not forbidden by a law and no one may be forced to do what the law does not enjoin”,⁵⁸⁴ “no one shall be forced to

⁵⁷⁵ Armenia, 74.

⁵⁷⁶ Albania, 35.1.

⁵⁷⁷ Albania, 45.1.

⁵⁷⁸ Georgia, 17.4.

⁵⁷⁹ Germany, 6.2.

⁵⁸⁰ Moldova, 37.3.

⁵⁸¹ Armenia, 39.

⁵⁸² Romania, 16.2.

⁵⁸³ Azerbaijan, 26.I.

⁵⁸⁴ Slovakia, 2.3.

do what is not envisaged by legislation”,⁵⁸⁵ “anything not prohibited by the Constitution and the law shall be free”,⁵⁸⁶ and “no one shall be compelled to do that which is not required by law”.⁵⁸⁷ Additionally, “the law shall only act for the future, except for the more favourable criminal or administrative law”.⁵⁸⁸

Any discrimination on the grounds of **disability** of a person is prohibited.⁵⁸⁹ In this sense, “no one shall be discriminated against because of his disability (*Behinderung*)”,⁵⁹⁰ “women, minors and disabled persons shall enjoy more extensive health protection at work and special working conditions”,⁵⁹¹ while “every person in the situation of invalidity has the right to the full inclusion in the society”,⁵⁹² and “the state provides “the accomplishment of a national policy of equal opportunities, disability prevention and treatment, so that disabled persons can effectively participate in community life”.⁵⁹³ In a comparable set of words, “special measures which the [state] may introduce to achieve full equality of individuals or group of *individuals in a substantially unequal position* compared to other citizens *shall not be deemed discrimination*”.⁵⁹⁴ When it comes to **minority groups**, “membership in any national minority or ethnic group may not be used to the detriment of any individual”,⁵⁹⁵ and their

⁵⁸⁵ Ukraine, 19.1.

⁵⁸⁶ Montenegro, 10. This provision almost certainly followed the model of the rule ordering that “anything that is not prohibited by the Constitution or by law is permitted” (North Macedonia, 8.2).

⁵⁸⁷ Poland, 31.2.

⁵⁸⁸ Romania, 15.2.

⁵⁸⁹ A beautiful formulation is contained in Art. 26 of the Charter of the EU. In it it is said that “the Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community”.

⁵⁹⁰ Austria, 7.1.

⁵⁹¹ Slovakia, 38.1.

⁵⁹² Belgium, 22ter.1.

⁵⁹³ Romania, 50.2.

⁵⁹⁴ Serbia, 21.4.

⁵⁹⁵ Slovakia, 33.

members “have a right to *undisturbed* relations and cooperation with their compatriots” outside the frontiers of the state.⁵⁹⁶

In the field of the submitting to assumed obligations in the area of **international law**, certain constitutional provisions strive to support international cooperation. In this sense, “associations whose aims or activities contravene the criminal laws or that are directed against the constitutional order or the concept of international understanding (*das Gedanke der Völkerverständigung*) shall be prohibited”,⁵⁹⁷ and “where any inconsistencies exist between the covenants and treaties on the fundamental human rights [the state] is a party to, and the national laws, the international regulations shall take precedence, unless the Constitution or national laws comprise more favourable provisions”.⁵⁹⁸

As a reflection of a particularly specific constitutional regulation, a provision claims that there is the *prohibition of statute of limitations* for a very specific type of criminal offense. Thus, “the statute of limitations shall not apply to the criminal offences of *war profiteering*, or any criminal offences perpetrated in the course of *economic transformation and privatisation* and perpetrated during the period of the Homeland War and peaceful reintegration, in wartime (...), or those not subject to the statute of limitations under international law”, while “any gains obtained by these acts or in connection therewith shall be confiscated”.⁵⁹⁹ In the field of political pluralism, another distinctive solution arrives from the shores of comparative constitutionalism: “Legal regulation of all political rights and freedoms and the interpretation and use thereof shall enable and protect free competition of *political forces* (*politických síl*) in a democratic society”.⁶⁰⁰

⁵⁹⁶ Serbia 80.3.

⁵⁹⁷ Germany, 9.2.

⁵⁹⁸ Romania, 20.2.

⁵⁹⁹ Croatia, 31.4.

⁶⁰⁰ Slovakia, 31.

The **public administration and public authorities** also deserve the attention of a particularly careful author of the constitution. Thus, “civil servants are exclusively at the service of the Nation”,⁶⁰¹ and “institutions of power shall serve the people”,⁶⁰² just as the “law emanates from the people (*Recht geht vom Volk aus*)”.⁶⁰³ A useful example is also in promoting the idea that “the legal authorities (*l'autorità giudiziaria*) have direct use of the judicial police (*polizia giudiziaria*)”,⁶⁰⁴ and that the “control of financial management is ensured by a Higher Audit Commission”.⁶⁰⁵ And this is perfectly *enough*: there are no provisions dedicated to the composition and the ways of functioning of the bodies, because these are the subjects that are ought to be left to the law-maker to regulate them precisely.

The public authorities are *ordained* “to promote conditions which ensure that the freedom and equality of individuals and of the groups to which they belong may be real and effective (*reales y efectivas*)”.⁶⁰⁶ Similarly (and – speaking of constitution-copying practice), “public authorities shall create the conditions such that the equality and the liberty of the individuals may be real and effective”.⁶⁰⁷ This sounds familiar to the expression according to which “every person has the right to be treated by state authorities in good faith and in a non-arbitrary manner” (*ohne Willkür; sans arbitraire; senza arbitrio; senza arbitrarietà*)”,⁶⁰⁸ or with the one which claims that conditions are to be created “for mutual trust (*для взаимного доверия*) between the state and the citizens”.⁶⁰⁹

One group of particularly modern constitutional provisions remains focused on the sustainable development and

⁶⁰¹ Italy, 98.1.

⁶⁰² Lithuania, 5.2.

⁶⁰³ Austria, 1.

⁶⁰⁴ Italy, 109.

⁶⁰⁵ Monaco, 42.

⁶⁰⁶ Spain, 9.2.

⁶⁰⁷ Andorra, 6.2.

⁶⁰⁸ Switzerland, 9.

⁶⁰⁹ Russia, 75¹.

the **protection of the natural environment**, answering to the academic question whether there is “a constitutional duty to pursue sustainability”.⁶¹⁰ Thus, the state takes care about the “sustaining development”, which “takes into account the solidarity between generations (*la solidarité entre les générations; die Solidarität zwischen den Generationen; de solidariteit tussen de generaties*)”.⁶¹¹ On constitution relies on the provisions of the Charter for the Environment of 2004 (*Charte de l’environnement*),⁶¹² while others claim that “public authorities shall support the activities of citizens to protect and improve the quality of the environment”,⁶¹³ and stipulate that every person has the right to “*reliable* information on the state of the environment”,⁶¹⁴ or “*timely* information about the environmental situation *and about the reasons and consequences thereof*”.⁶¹⁵ As well, the state “shall endeavour to achieve a *balanced and sustainable relationship* between nature and its capacity to renew itself and the demands placed on it by the population”.⁶¹⁶

One of the more justified intrusions into the area of constitutional matter concerns the promotion of **education and science**. Thus, it is more than welcome, from the comparative point of view, when a *constitutional* provision (which appears particularly pleasing for a scientific researcher to read) stipulates that “the state shall protect scientific, cultural and artistic assets as *national spiritual values (duhovne narodne vrednote)*”.⁶¹⁷ It is the same with the norm stipulating that “education shall aim at the full development of the human character with due respect for the democratic principles of coexistence and for the basic rights and freedoms”.⁶¹⁸ According to

⁶¹⁰ Herlin-Karnell, 125.

⁶¹¹ Belgium, 7bis.

⁶¹² France, Preamble, Para. 1.

⁶¹³ Poland, 74.4.

⁶¹⁴ Russia, 42.

⁶¹⁵ Slovakia, 45.

⁶¹⁶ Switzerland, 73.

⁶¹⁷ Croatia, 68.3.

⁶¹⁸ Spain, 27.2.

other interesting and instructive examples: “education shall be the subject of ongoing concern (*voorwerp van de aanhoudende zorg*) of the Government”,⁶¹⁹ “arts and sciences, research and teaching shall be free”, while “the freedom of teaching shall not release any person from allegiance to the Constitution (*die Treue zur Verfassung*)”.⁶²⁰ An avant-garde breakthrough of new constitutional ideas, seeming to arrive from the shores of tomorrow is underway, claiming that the state “promotes the learning of languages of international communication (*міжнародного спілкування*)”.⁶²¹

The *youngest* are the subject of special constitutional protection. This concern is expressed in inspiring terms: “for actions and decisions that affect **children**, the best interests of the child shall be a fundamental consideration (*grunnleggjande omsyn*)”,⁶²² and the protection of their interests is a matter of concern of “the Commissioner for Children’s Rights (*Rzecznik Praw Dziecka*)”.⁶²³ In addition, “with a view to their integral development, children shall possess the right to protection by society and the state, especially from all forms of abandonment, discrimination and oppression and from the abusive exercise of authority in the family or any other institution”, while “the state shall ensure special protection for children who are orphaned, abandoned or deprived of a normal family environment in any way”.⁶²⁴

Certain constitutions contain very **useful** **precisions** and **elegant formulations**. Thus, “the President may be prosecuted only for a *willful* infringement of the Constitution”, and the Constitutional Court “shall give an interpretation of the Constitution or constitutional law *if the matter is disputable*”,⁶²⁵

⁶¹⁹ The Netherlands, 23.1.

⁶²⁰ Germany, 5.3.

⁶²¹ Ukraine, 10.4.

⁶²² Norway, 104.2.

⁶²³ Poland, 72.4.

⁶²⁴ Portugal, 69.1-2.

⁶²⁵ Slovakia, 107, and 128.

or: “Court hearings shall be public”, while “judgments shall be pronounced publicly”, and “exceptions shall be provided by law”.⁶²⁶ Although the rules on the duty of adult children to take care of their elderly parents repeatedly catch a reader’s attention,⁶²⁷ one provision seems to be of particularly high-quality, due to the following, and comparatively *unique*, specification: “*able-bodied (трудоспособные)* children over 18 years of age must take care of disabled parents”.⁶²⁸ Similarly, in another game of words in which a single adjective significantly facilitates the work of the authorized interpreter of the constitution, “it is a requirement for any research project that the participants or their legal representatives have given their *informed consent (consentement éclairé)*”, or, as it is written in the German, Italian, and Romansh versions of the document, “if they have given their consent after *sufficient information (nach hinreichender Aufklärung; sufficientemente informata; infurmada suffizientamain)*”.⁶²⁹

Constitution-making reflects “the need to draft a carefully measured text”,⁶³⁰ because it “should be a ‘great outline’, and not a detailed legal code”.⁶³¹ Rationalization of expression in constitutional texts is also recognizable in the type of the formulations in accordance to which “property entails obligations (*Eigentum verpflichtet*)”.⁶³² This phrasing was also transferred, by the means of *constitutional transplantation*, into other highest national legal documents,⁶³³ so that it seems that

⁶²⁶ Slovenia, 24.

⁶²⁷ From the comparative perspective, children, *generally*, are obliged to take care of their parents (Armenia, 36.3, Azerbaijan, 34.V, Belarus, 32.3, Croatia, 64.3, Hungary, XVI.4, Lithuania, 38.7, Moldova, 48.4, Montenegro, 72.3, North Macedonia, 40, Ukraine, 51.2).

⁶²⁸ Russia, 38.3.

⁶²⁹ Switzerland, 118b.2. “a”.

⁶³⁰ Mikić (2024b), 233.

⁶³¹ Fleming, 9.

⁶³² Germany, 14.2.

⁶³³ “The ownership is binding.” (Slovakia, 20.3); “Property entails obligations.” (Croatia, 48.2, Ukraine, 13.3).

this type of a provision is ‘up for grabs’. Indeed, a constitution “should restrict itself to the definition of legal provisions only, and should not expose opinions, aspirations, directives, or politics”, because in it “there is no room for emotions or eloquence”.⁶³⁴

Good constitutions also bring **new constitutional categories**. They are useful and innovative, although it seems that they expand the constitutional matter. It appears veracious that “a host of new issues have arisen that are addressed in constitutions”,⁶³⁵ referring to contemporary issues deserving to be included in the field of the constitutional regulation and protection. One should particularly bear in mind that “to condense the constitutional matter into unnecessarily tight and narrow ‘gutters’ is not the way to properly regulate the scope of constitutional matter”.⁶³⁶ New institutes address to: the need of protecting animals’ safety,⁶³⁷ the prohibition of human trafficking,⁶³⁸ use of water resources,⁶³⁹ the guarantees of the supply of food,⁶⁴⁰ and strategic demographic politics.⁶⁴¹ The “fringes” of constitutional law are currently being occupied by: the ban on cloning, public notary services, the protection of sign language and writing, the right to conscientious objection,⁶⁴² and other topics that right up “until yesterday” were regulated exclusively by law. It is possible that in the next generation of (inventive) constitutional

⁶³⁴ Marković (2004), 2.

⁶³⁵ Ginsburg, 79.

⁶³⁶ Mikić (2024c), 368.

⁶³⁷ Mikić (2022), 259.

⁶³⁸ Serbia, 26. 2.

⁶³⁹ “The Confederation shall within the scope of its powers ensure the economic use and the protection of water resources (...)” (Switzerland, 76.1).

⁶⁴⁰ Switzerland, 104a.

⁶⁴¹ The state ensures “decentralised population settlement of the country” (Switzerland, 104.1.“c”).

⁶⁴² “The right to conscientious objection is recognized by the constitutions of 48 countries. The largest breakthrough (...) was achieved in Europe, where out of 48 analyzed constitutions, conscientious objection is recognized in 21 states” (Mikić [2024e], 212).

writers, the obligation to declare the assets of public officials or the prohibition of unjust enrichment in office will emerge as an important institution,⁶⁴³ as well as the Internet-technologies-component (in particular the *artificial intelligence*) would arrive as an important piece of the new constitutional matter.

The mentioned subjects appear as a legitimate extension of the constitutional content, as is the case with **digital rights**. Nowadays, “the digital space is the new non-state sector of global society that needs comprehensive constitutionalization”,⁶⁴⁴ and because “a multiplicity of normative counteractions is emerging to address the constitutional challenges of the digital revolution”, while these counteractions “attempt to reaffirm our core fundamental rights in the digital context and to rebalance new asymmetries of power”, *de facto* influencing the way in which the citizens enjoy these rights,⁶⁴⁵ because “digital constitutionalism, an emerging strand of constitutional scholarship, raises the question of whether fundamental principles of constitutionalism (...) can also be established in the digital world”.⁶⁴⁶ One should also bear in mind that, within the “complex process of constitutionalisation of the digital society”,⁶⁴⁷ the protection of digital rights “may require unconventional forms of competition enforcement”,⁶⁴⁸ particularly when one reads a *constitutional* provision claiming that “every citizen shall possess the right to access to all computerised data (*dados informatizados*) that concern him”,⁶⁴⁹ and another norm stating that “the digital transformation should not entail the regression of rights”, as is said in the Para. 3 of the Preamble of the European Declaration on Digital Rights and Principles for the Digital Decade. Also,

⁶⁴³ Mikić (2022), 21.

⁶⁴⁴ Teubner, Golia, 3.

⁶⁴⁵ Celeste, 24.

⁶⁴⁶ Teubner, Golia, 1.

⁶⁴⁷ Celeste, 24.

⁶⁴⁸ Dawson, 472.

⁶⁴⁹ Portugal, 35.1.

in the field of the EU law, “the main priority areas” are those of “climate transition and digitalization”.⁶⁵⁰

Some of the more progressive provisions proclaim the prohibition of cloning human beings and their protection against the misuse of reproductive medicine and gene technology,⁶⁵¹ as well as the consumer protection⁶⁵², for “the increasingly frequent constitutionalization of the role of independent regulatory authorities is noticeable, as well as the gradual elevation of consumer protection norms (...) to constitutional status”.⁶⁵³ A new potential field of constitutional regulation may be appearing: the bioethics, for “care as a constitutional value should be regarded as complementing express constitutional commitments to freedom, dignity, and equality”, increasingly during the COVID-19 pandemic.⁶⁵⁴ Incorporating this type of *care* into the sphere of constitutional concern could help one of the provinces in which constitutional matter might legitimately spread in future.

⁶⁵⁰ Dawson, 477.

⁶⁵¹ Mikić (2022), 337-338.

⁶⁵² Ibid, 654.

⁶⁵³ Mikić (2024c), 361.

⁶⁵⁴ Fredman, 741-742.

Concluding remarks, or a Practical Guide in the Process of Constitutional Design

“Drafting texts intended to become rules
of law is a difficult art and constitutes
a perilous undertaking which must be approached,
as everyone knows, ‘with a trembling hand.’”

(Catherine Bergeal)⁶⁵⁵

“A Constitution should be short and obscure.”

(Napoleon Bonaparte)⁶⁵⁶

The criticism by itself probably would never suffice. Guided by good examples of constitutional texts, a set of proposals appears to be helpful for future constitution-makers. Constitutional *imagination* may provoke approaches to make clearer and easily comprehensible documents, creating meaningful contents, recognizing limits of constitutional regulation, making credible commitments, and remedying the existing deficiencies of the constitution-writing. This statement in no way diminishes the risks brought upon a constitution to become relatively irrelevant because it ignores some important political and normative questions.

Constitution-makers should walk through a true *goldilocks zone*: neither too many nor too few provisions should

⁶⁵⁵ Bergeal, 7.

⁶⁵⁶ Čerčil, 16.

be contained in the document. Needless to say, the desired constitution-writing practice cannot be created overnight. The concluding part of the research does not offer any toolbox for solutions in individual constitutions, particularly because an independent constitution-making approach may be perceived to be illusion, in the context of the internationalization of constitutional law.

In this regard, the aim of the book is not to place basic rights and freedoms at stake, nor to show disregard for institutional procedures constituted for their protection. Instead, its author looks for a more considerate exercise of constitutional politics, calling for the entire infrastructure of constitutions to be revisited and searching for the most limited extent necessary of the constitutional matter, reminding that “constitutions do not, and cannot, exhaustively regulate all facets of the constitutional order”.⁶⁵⁷ To “reenergize comparative constitutional law”, to make it more interesting and less predictable, and thus move its theory and method “from rags to riches and, by the same token, kiss awake the dormant ideas and projects”,⁶⁵⁸ is one of the key duties which lay behind this book. Therefore, not naive ideals, but legitimate aspirations and first-order (and, more or less, identifiable) political objectives, and soberly measured content are to be contained in constitutions.

From the theoretical point of view, there exists a vital dilemma: is constitution a document in which *all* provisions are equally important? It is highly appropriate to assess that some constitutional provisions are paramount – those relevant for the functioning of government – while some of the others appear to be merely symbolic.⁶⁵⁹ However, “normatively elegant solutions, based on the broadest political consensus, should always be pursued”.⁶⁶⁰ In this regard, priorities, according to one

⁶⁵⁷ De Visser, Jones, 37.

⁶⁵⁸ Frankenberg, 446.

⁶⁵⁹ Albert et al. (2024), 19.

⁶⁶⁰ Petrov, V. (2024), 78.

comprehensive and most recent research which included consultations with constitutional experts throughout the world, pertain to four specific topics: the constitutional amendment procedure, secrecy of elections, existence of an electoral commission, and the structure of the executive branch. These provisions represent “the most high-stakes constitutional design choices for constitutional governance”.⁶⁶¹ On the other hand, the least important provisions are those which refer to “symbolic provisions that do not shape institutions”,⁶⁶² while “drafting general legal acts, especially the most important ones – constitutions and organic laws, is a relatively rare skill possessed only by exceptional lawyers,”⁶⁶³ who tend to gain “the optimal level of constitutional specificity”.⁶⁶⁴

When it comes to the revision of a constitution, “the adoption of a completely new constitution is a rare opportunity for an intelligent creator, which may arise once or twice in a lifetime for a skilled lawyer, to embody his [or her] particular views on the state system and basic legal and political institutions in the highest law of the land”.⁶⁶⁵ Thus, I do not have excessive pretensions, because “for those seeking to reshape societies and the way they are governed, there is nothing quite like the concreteness of rewriting higher law”.⁶⁶⁶ I strongly believe that the reductionist approach serves to make constitutions more rationalized and perfected documents in the long-term perspective (although plans of constitution-makers are rarely measured in centuries).

Constitutional amendment or replacement serves as a contribution to constitutional longevity (the lifespan of constitutions). Thus, “fossil constitutional clauses”⁶⁶⁷ can never

⁶⁶¹ Albert et al. (2024), 21.

⁶⁶² *Ibid*, 26.

⁶⁶³ Čavoški, 309.

⁶⁶⁴ Ginsburg, 86.

⁶⁶⁵ *Ibid*, 309.

⁶⁶⁶ Elkins, Ginsburg, 322.

⁶⁶⁷ Friedman, 354.

serve to any constitution's primary purposes, particularly because the terms "hard" and "soft" constitutions have no value in themselves,⁶⁶⁸ adding nothing to "the problem of constitutional maintenance",⁶⁶⁹ and bearing in mind that "the probability that an amendment will be adopted increases along with the length and detail of the constitutional text".⁶⁷⁰ In addition, "frequent complete constitutional revisions that took place 'as if on tape' in countries with an underdeveloped tradition of democratic constitutionalism were a consequence of the constitution's deprivation of any valuable status in society".⁶⁷¹

Readers should also be reminded that "the amendment provisions form a vital part of most modern constitutions",⁶⁷² and that "a hermeneutical critique conceptualizes the constitution as "a kind of institutionalized and formalized site of power struggles" rather than as a set of rules that discipline politics".⁶⁷³ Amendment procedures ought to be "designed for the purpose of adapting a constitution to new circumstances without affecting its legal continuity",⁶⁷⁴ and "the critical moment in the design of constitutional arrangements occurs when drafters confront the vexed issue of how much freedom to extend to subsequent amenders of their handiwork".⁶⁷⁵ Although stringent amendment procedures prevail in the European constitutional space, "even constitutions that are popular at the time of ratification may ossify due to changes in human rights norms, political balances of power, and geopolitical contexts".⁶⁷⁶

In this context, a legitimate question can be posed: why neither of the constitutions in Europe has been subject of a to-

⁶⁶⁸ Marković (2012), 49.

⁶⁶⁹ Seidman, 576.

⁶⁷⁰ Schnelle, 3.

⁶⁷¹ Mikić (2014b), 688.

⁶⁷² Fridrih, 129.

⁶⁷³ Brisbin, 343.

⁶⁷⁴ Negretto, 2.

⁶⁷⁵ Jacobsohn, 483.

⁶⁷⁶ Eshima et al., 682.

tal revision ever since 2011? The last *entire* constitution adopted in Europe was the Constitution of Hungary, ratified not less than 14 years ago. In the last quarter of the century, out of 48 states, constitutions of merely six European states have been adopted from the scratch.⁶⁷⁷

On the other hand, relative stability of the constitution is guaranteed by its disburdened text, because “constitutions exhibit a tradeoff between specificity and flexibility: those that are more detailed should allow for more amendments, lest they risk obsolescence”.⁶⁷⁸ In accordance with “an old joke, a patron goes into a library and asks for a copy of the French Constitution, only to be told that the library does not stock periodicals”.⁶⁷⁹

In the context of global anti-democratic and authoritarian tendencies, “questions are heightened by a progressive sense that urgent challenges require energetic government”, and, there is also “a fear (...) that such energy could be deployed toward conservative or antidemocratic ends”.⁶⁸⁰ Off course, a constitution cannot be a creation *ex nihilo*, because, “when convenient patterns were readily at hand, it was inefficient to start drafting from scratch”.⁶⁸¹ While “constitution-making holds great promise”,⁶⁸² the process reminds us that constitutions need a *facelift*.⁶⁸³

However, on the global scale, “of the some 198 written constitutions now in force, more than half were promulgated during the past sixty years”.⁶⁸⁴ In this context, “the concept of militant constitutionalism (...) suggests [that] a number of constitutional rules (...) could make constitutions more resilient

⁶⁷⁷ Mikić (2022), 29.

⁶⁷⁸ Eshima et al., 682.

⁶⁷⁹ Ginsburg, Elkins, Melton.

⁶⁸⁰ Gould, 2054.

⁶⁸¹ Friedman, 124.

⁶⁸² Landau, 613.

⁶⁸³ Velaers, 275.

⁶⁸⁴ Gluck, 41.

to attempts to undermine them”.⁶⁸⁵ The *amendment culture* is, therefore, defined as “the set of shared attitudes about the desirability of amendment, independent of the substantive issue under consideration and the degree of pressure for change”.⁶⁸⁶ Naturally, reconciling two important demands – the quality of a current constitution and the need for its revision – is marked by inevitable mutual tensions, and is not a low-hanging fruit.

Constitution should be *optimal*. This means that they regulate a moderate, sufficient level of detail, containing the optimal level of flexibility and, as much as possible, open-ended terms. This demand requires, so to say it, a *fit* constitution, the one in good shape, because “clear and well-written laws are the right answer to our desires”.⁶⁸⁷ Constitution-drafters should “understand the nature of the task they are undertaking when opting for a highly codified approach to constitutional drafting – i.e., that the approach they are adopting is one based on necessity, rather than optimal principles of constitutional design, and one that, in many instances, will likely fail to achieve its full range of desired objectives”.⁶⁸⁸ Naturally, a *political* give-and-take over particular constitutional topics is necessary, for “negotiating textual detail is costly”, and “it requires careful drafting and hard bargaining, both of which take time”,⁶⁸⁹ but, at the same time, it helps in the process of “successfully pursuing the inquiry into constitutional essentials”.⁶⁹⁰

Local necessities (needs determined by *local* factors) must be taken into account when a constitution is written. Every constitution should be tailored to a particular context. It has to be endogenous, because “one size does not fit all” constitutions.⁶⁹¹ There is no *panacea* for a constitutional model,

⁶⁸⁵ Gutmann, Voigt, 377.

⁶⁸⁶ Ginsburg, Melton, 689.

⁶⁸⁷ Van Kanegem, 204.

⁶⁸⁸ Dixon, 821.

⁶⁸⁹ Ginsburg, 77.

⁶⁹⁰ Jacobsohn, 460.

⁶⁹¹ Fleming, 7.

although, as was exclaimed in this book, many unsuccessful *constitutional copies* have been made in Europe. Still, heterogeneity of solutions is rather helpful when a constitution is to be written (or read). As a more than welcome dissimilarity, the document, serving as an *indigenous* constitutional text, needs to act as a bridge between specific national identities and the content of a constitution.

This process does not necessarily require a singular approach; it is better that it reflects an organic constitutional development. Indeed, “questions about constitutions can never be answered for all societies and states, for all times”,⁶⁹² and “although the existence of conditions arising from integration into the wider international community cannot be ignored, each state claims the right to have an order that stems from its own normative sources, such that it meets all the needs of its community”.⁶⁹³ As one author writes, “if constitutions lose their national specificity, they remain empty ‘shells’, condemned to a short and demanding life”,⁶⁹⁴ and the other one said that “determining the content of the constitution is the exclusive domain of each constitution maker for himself”.⁶⁹⁵

Truly, any constitutional model “must encompass national constitutional values, because constitutions are to be appreciated as shaping culture and cultures as shaping constitutions”.⁶⁹⁶ In the absence of the normative protection of these values, “the constitutional model may be appealing and seductive, modern and progressive, but it will remain only a ‘frame for a picture’ that has not been painted”.⁶⁹⁷ In fact, even in an official EU document it is stated that the EU “contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of

⁶⁹² Gavison, 90.

⁶⁹³ De Vergotini, 35.

⁶⁹⁴ Petrov, V. (2020), 18.

⁶⁹⁵ Jovičić (2006), 149.

⁶⁹⁶ Frankenberg, 446.

⁶⁹⁷ Petrov, V. (2024), 20.

Europe as well as the national identities of the Member States”, as is stated in the EU Charter, which reminds us of “the rights” which „result (...) from the *constitutional traditions* (...) common to the Member States”.⁶⁹⁸ Truly, “the question of intervention in the area so closely related to the sovereignty of the nation state”, as is the case with constitution-writing, “is a difficult nut to crack,”⁶⁹⁹ for “the nation-state has proved to be (...) the largest one compatible with creating and sustaining a feeling of community and solidarity.”⁷⁰⁰

From the historical perspective, “in the early 19th century, the Napoleonic Codes served as a symbol of clarity and order.”⁷⁰¹ At the same time, Jean Portalis (1746-1807), one of the authors of the *Code civile* (1804) pointed out that the codes should not deal too much with details, in order to leave enough space for the development of jurisprudence.⁷⁰² It turned out that “the Puritan Democrats [mid-17th century] literally envisioned a pocket edition of the *Code civile* because the original editions (...) were very small (and conveniently sized) so that citizens could easily put them in their pockets: a large number of these booklets were bought by interested citizens.”⁷⁰³

Defective writing of the constitutions can also be avoided by not repeating other authors’ mistakes, particularly when it comes to the scope of the constitutional regulation. Thus, “the idea of minimalism in the scope of the constitutional document is far from being realized”,⁷⁰⁴ as, for example, the actual Constitution of France does not determine the duration of the term of office of the houses of parliament, the number of their members, nor the method of election, leaving those matters

⁶⁹⁸ Charter of the EU, Preamble, Paras. 2 and 5.

⁶⁹⁹ Bugarić, 10.

⁷⁰⁰ Hosking, xxi.

⁷⁰¹ Friedman, 108-109.

⁷⁰² Van Kanegem, 72.

⁷⁰³ *Ibid*, 66.

⁷⁰⁴ Mikić (2024c), 362.

to the organic law for regulation.⁷⁰⁵ And, “when it comes to the constitution as a short and clear legal document, a modern constitution-maker should be measured”, because “he should know what and how much to say, and when to remain silent”.⁷⁰⁶ To give one example, instead of individual provisions (repeatedly) stating that activities of particular institutions will be regulated by law in more details, it can (and should) be regulated by one single provision, claiming that all the other powers of the bodies listed in the Constitution will be regulated by law. Obviously, there are topics on which constitutions *must* be silent, in order for their dignity to be safeguarded or enhanced.

The principal purpose of this study is to assess the state of affairs in the field of constitutional law in Europe. The art of drafting a constitution must be related to the process of simplifying unsuitable or outdated provisions, which have become irritatingly inflated, creating *extensive* documents, produced in the process of constitutional micromanagement. The quantitative augmentation of constitutional norms deserves not just a mere criticism, and to try and build a plausible alternative is a rewarding task for any author in the field of comparative law. If a constitution is to perform its function, its provisions have to “maintain their ambiguous meaning”.⁷⁰⁷

The aim of this book is to help the proponents of the constitutional dignity to take the high ground in any debate, and to express the same level of determination as the opponents of this idea. No attempt is made to any shift in comparative legal thinking, for the book attempts to avoid “routines of higher lawmaking”.⁷⁰⁸ In it, it is claimed that enriching conversation in the field of comparative law, perpetuating principled resistance to commonality across constitutions, and suggesting that old-fashioned verbal patterns, rich in ideological content, navigating

⁷⁰⁵ Jovićić (2006), 152.

⁷⁰⁶ Simović, Petrov, 22.

⁷⁰⁷ Loughlin, 927.

⁷⁰⁸ Frankenberg, 453.

on the usual comparative course, and merely reproducing generic constitutional language, is an unwelcome practice. Championing the cause of *condensed* constitutions is a mission for itself, regardless of whether the advice given will be realized, or, more likely, not.

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