

CONFERENCE PROCEEDINGS

ICON-S CEE 2026 Annual Conference

CONSTITUTIONAL  
COURTS

X

CONSTITUTIONAL  
SCHOLARSHIP

*IN CENTRAL AND EASTERN EUROPE*



Ljubljana 2026  
14-15 May

**ICON-S** International Society for Public Law  
Central and Eastern European Chapter  
*Annual Conference*

**CONSTITUTIONAL COURTS x  
CONSTITUTIONAL SCHOLARSHIP**  
In Central and Eastern Europe

Editors:  
*Dr. Samo Bardutzky,  
Dr. Tilen Štajnpihler Božič,  
Dr. Marjan Kos,  
Kristina Krajnc*

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Ljubljana 2026

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**ij** inštitut za primerjalno pravo



1986  
DRUŠTVO ZA  
USTAVNO PRAVO  
SLOVENIJE

day 2

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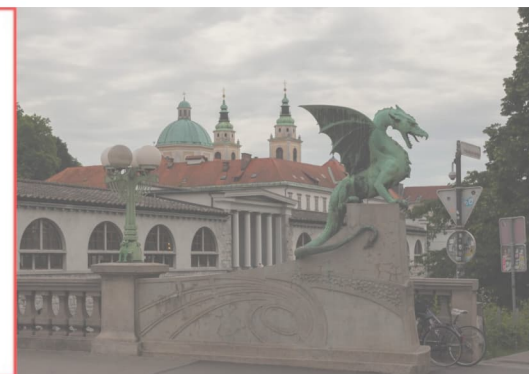
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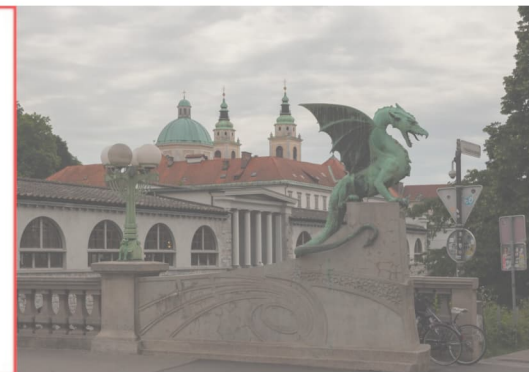
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- ▶ Abstracts
  - Individual papers*
  - Pre-formed panels*
  - Project presentation*

## About the ICON-S CEE Chapter



The Chapter was established in April 2018. Its mission is to promote the values of the International Society of Public Law and, in particular, its commitment to an interdisciplinary approach to public law that engages constitutional, European, administrative, and international law scholars and practitioners so as to better understand global and transnational legal developments. It endeavours to create a space for Central and Eastern European legal scholarship to grow and enter into a global dialogue.

day



## Conference Theme

The theme of the CEE Chapter's 2026 conference brings together two elements. First, it touches upon **constitutional courts**, institutions that is frequently researched and studied as well as a phenomenon characteristic of the region and a part of its story of post-authoritarian, legal constitutionalism(s). The second element of the conference theme is public law or **constitutional scholarship** - a social institution that is present, influential and impactful in this part of Europe, but rarely itself the object of academic attention.

Our ambition is to interconnect the two elements in several different ways. This is what the 'x' in the title of the conference stands for: in an American address, it can mean "at the intersection of"; in a French textbook, it would read "multiplié par"; and at the end of a text message, it can even be a kiss.

As for the convenors, we will try to connect the two elements through a string of three plenary events, linked together by the emphasis on Central and Eastern Europe and focus on constitutional adjudication and constitutional scholarship. The three plenary events will tell stories of three roles that often interconnect in their search for a meaning.

day 2



## Conference Committee

**Samo Bardutzky** is Associate Professor of Constitutional Law at the University of Ljubljana Faculty of Law and Head of Constitutional Law at the Faculty of Law's Institute of Comparative Law. Previously, he was Fulbright Research Scholar at the University of Michigan Law School and Postdoctoral Research Associate at the University of Kent Law School. Samo co-ordinated the Jean Monnet module on »Migration and Refugee Law in Europe« and was principal investigator of »Judicial Selection under Scrutiny (JUDGMENT)«. He serves as Vice-Chair of the Slovenian Constitutional Law Association.

**Djordje Gardašević** is Professor of Constitutional Law at the University of Zagreb, Faculty of Law (Croatia). He earned his L.L.M. degree at the Central European University in Budapest and his PhD at the University of Zagreb, Faculty of Law. He participated, among other events, at the ICONS Annual Conferences, the World Congresses of the International Association for Constitutional Law, the Congresses of the International Political Science Association, the APSA Annual Meeting and the ASN World Conventions. His research interests include: states of emergency, fundamental rights and freedoms, constitutional theory and comparative constitutional law.

**Gloria Golmohammadi** is a postdoctoral researcher and Lecturer-in-Law at Stockholm University and visiting researcher at University of Ljubljana. Her work focuses on EU constitutional and administrative law, particularly democratic and citizen participation in multi-level settings, participation rights and the EU legislative process. She earned her PhD in European law in 2023 and holds an LL.M. from Columbia Law School, where she was a Fulbright Scholar. She previously worked as an Associate Judge at the Administrative Court of Stockholm. Her book, The Principle of Participatory Democracy in the European Union, is forthcoming with Hart Publishing.

**Barbara Havelková** is an Associate Professor at the Faculty of Law, University of Oxford, and a Law Fellow at St Hilda's College. Barbara's research and teaching interests include gender legal studies and feminist jurisprudence, equality and anti-discrimination law, constitutional law, EU law and law in post-socialist transitions. Her book, 'Gender Equality in Law: Uncovering the Legacies of Czech State Socialism', was published by Hart/Bloomsbury in 2017, and a volume on 'Anti-Discrimination Law in Civil Law Jurisdictions', she co-authored and co-edited, came out in 2019 with Oxford University Press.

**Marjan Kos** is an assistant professor of administrative law and public administration at the Department of Administrative Law. Since 2024, he has acted as the head of the Department. He holds a PhD in constitutional law and specializes in issues related to EU public law, especially fundamental rights protection and EU administrative law, to transparency, integrity and the prevention of corruption, administrative procedure and dispute as well as tax law.

**Kristina Krajnc** is a PhD candidate and teaching assistant at the Faculty of Law, University of Ljubljana. She teaches tutorials in sociology of law and anti-discrimination law and co-coordinates the faculty's Anti-Discrimination Legal Clinic. Building on her experience in civil society activism, her academic work explores questions of anti-discrimination law and social justice.

**Mojca Mauhler** is a teaching assistant in constitutional law at the Faculty of Law, University of Ljubljana. She holds a law degree from the University of Ljubljana (2011) and an LL.M. from Harvard Law School (2015). Before entering academia in 2025, she practiced law for more than a decade at Slovenia's largest law firm. She also completed a judicial traineeship at the High Court in Ljubljana and worked as a legal adviser supporting asylum seekers and NGOs. Her doctoral research focuses on judicial deference in constitutional adjudication.

**Silvia Suteu** is Professor of Law at the European University Institute, Florence, Italy, having previously worked at University College London and the University of Edinburgh, UK. Her areas of expertise lie in comparative constitutional law, constitutional theory, and gender law. She has a special interest in the theory and practice of constitutional change, in particular from deliberative and feminist perspectives. Her work has appeared in leading academic journals and includes the monograph *Eternity Clauses in Democratic Constitutionalism* (Oxford University Press 2021). She currently co-leads the *Feminist Judgments in Central and Eastern Europe Project* and a collaborative project on unwritten constitutionalism.

**Anna Śledzińska-Simon** is a Professor at the University of Wrocław with an SJD in Comparative Constitutional Law from Central European University. Her research includes comparative constitutional law, gender constitutionalism, and equality law, with interdisciplinary approaches. She is a founding member of *ICON-S CEE* and serves on editorial and advisory boards in public law. She has held fellowships at leading institutions including NYU, EUI, and Max Planck Institutes. Her recent work examines abortion, democratic backsliding, and human rights in populist contexts.

**Tilen Štajnpihler Božič** is an Associate Professor in the Department of Legal Theory and Sociology of Law at the Faculty of Law, University of Ljubljana. He earned his PhD in legal theory and philosophy of law in 2011 and has since focused on the interdisciplinary field of the sociology of law. In his research and teaching, he explores law through the prism of sociological theory and social and political philosophy, with particular attention to issues of social (in)equality and the role of (anti)discrimination law.

# Conference Programme



Ljubljana 2026

14 May

## DAY 1

- |             |  |
|-------------|--|
| 9:00–9:30   | Opening: handover of the banner  |
| 9:30–11:00  | Keynote discussion: <b>What does it mean to be a constitutional court judge in CEE?</b>    |
| 11:00–11:30 | <i>Coffee Break</i>  |
| 11:30–13:00 | Parallel Sessions 1  |
| 13:00–14:00 | <i>Lunch (provided by the Institute for Comparative Law IPP-PF)</i>                        |
| 14:00–15:30 | Parallel Sessions 2  |
| 15:30–16:00 | <i>Coffee Break</i>  |
| 16:00–17:30 | Distinguished speaker address: <b>What does it mean to be a public law scholar in CEE?</b> |
| 17:30–18:00 | <i>Break</i>   |
| 18:00–19:30 | Parallel Sessions 3  |

## What does it mean to be a constitutional court judge in CEE?

Keynote discussion

among constitutional court judges or former judges from the region with different ties to the legal academia:

- **Jiří Příbáň** (Czech Constitutional Court/Cardiff),
- **Goran Selanec** (Croatian Constitutional Court/Zagreb),
- **Katja Šugman Stubbs** (Slovenian Constitutional Court/Ljubljana),

hosted by *Samo Bardutzky*.

**Jiří Příbáň** is a Czech-British academic, author, translator and essayist. He was appointed professor at Charles University and Cardiff University and a justice of the Constitutional Court of the Czech Republic in 2024. He specialises in sociology of law, jurisprudence, legal and constitutional theory and philosophy of law. In 2014, he co-founded the Centre of Law and Society at Cardiff University, which he led until his appointment as a Justice of the Constitutional Court. Příbáň authored and edited dozens of books and hundreds of studies, including *Sázka na svobodu* [The Freedom Gamble] (2024), *The Defence of Constitutionalism* (2014 in Czech, 2018 in English). His notable works include a trilogy of monographs on constitutional semantics: *Legal Symbolism* (2007), *Sovereignty in Post-Sovereign Society* (2015), and *Constitutional Imaginaries* (2022) as well as *Dissidents of Law* (2002) which explores political dissent in communist regimes and its theoretical and philosophical significance.

**Goran Selanec** graduated in Law from the University of Zagreb and then went on to obtain his LL.M and SJD degrees from the University of Michigan. From 2001 to 2009 he worked at the Faculty of Law of the University of Zagreb, first in the Department of Constitutional Law, then in the Department of European Public Law. He also lectured at other departments of the University of Zagreb as well as at the ERA European Legal Academy in Trier. In 2012 he was appointed Deputy Ombudsman for Gender Equality, a position he held until his election as judge of the Constitutional Court of Croatia in October 2017.

**Katja Šugman Stubbs** is Professor of Criminal Law and Associate Professor of Criminology at the Faculty of Law, University of Ljubljana, Slovenia. She is focusing her research on different topics in the fields of criminal procedure (evidence law, standards of proof, rights of the defendant), EU criminal law and criminology. Since December 2018 she serves as judge at the Constitutional Court of the Republic of Slovenia.

## What does it mean to be a public law scholar in CEE?

Distinguished speaker address

by

**Tanasije Marinković** (University of Belgrade),

chaired by *Marjan Kos*.

**Tanasije Marinković** is a professor of Constitutional Law at the University of Belgrade - Faculty of Law. He received his degrees from the University of Belgrade (LL.B and Ph. D) and University of Paris I (LL.M). He is a member of the Electoral Commission of the Republic of Serbia and of the University of Belgrade Gender Equality Committee. He is a co-founder of the independent Commission of Inquiry for Establishing the Responsibility for the 2024 Collapse of the Novi Sad Railway Station Canopy. His bibliography includes *Serbia* (International Encyclopaedia of Constitutional Law, Wolters Kluwer, 2019).

**Equality in Central and Eastern European Constitutionalism I – Exploring the Concept**

**Varieties of Politics in Constitutional Adjudication**

**Constitution  
x  
Economy**

**Procedure  
x  
Jurisdiction**

**Constitutional Courts  
x  
Democracy**

**Golden Lecture Hall**

**Blue Lecture Hall**

**Seminar 3<sup>rd</sup> Floor**

**Viva Voce Room**

**Grey Lecture Hall**

Chair: Barbara Havelková

Chair: Max Steuer

Chair: Silvia Suteu

Chair: Davor Petrić

Chair: Gloria Golmohammadi

**Anna Śledzińska-Simon:**

*Apples and Oranges: Equality and Difference Before the Polish Constitutional Tribunal*

**Ladislav Vyhnanek:**

*Equality and dignity in the Czech case-law: An underappreciated relationship*

**Arta Vorpsi:**

*Equality and Human Dignity in Albanian Constitutional Jurisprudence: Mapping an Unstable Relationship*

**Martin Dekleva:**

*Equal but Different? Constitutional Perspectives on Natural and Legal Persons: Insights from the Case Law of the Slovenian Constitutional Court*

**Olha Nykorak:**

*Limitations on the Institutional Capacity of the Constitutional Court of Ukraine Caused by Political Factors*

**Anjali Sirohi & Sana Kamra:**

*The Appearance of Inevitability in Constitutional Adjudication*

**Zoltán Szente:**

*Strategic Adjudication under Political Capture: Interpretive Practices of the Hungarian Constitutional Court*

**Arnisa Tepelija:**

*The Politics of Restraint: Constitutional Adjudication in a Fragile Democracy*

**Max Steuer:**

*Discussant*

**Ioana Maria Costea:**

*When Doctrine Speaks and Courts Don't Listen: The Deaf Constitution in Fiscal Matters*

**Tim Horvat:**

*Human Rights in the Marketplace: The Role of the Slovenian Constitutional Court in Contemporary Economic Governance*

**Katarzyna Metelska-Szaniawska**

*Economic consequences of non-compliance with constitutions – the post-socialist “illiberal democracy” perspective*

**Mihaela Tofan,**

**Larisa-Cătălina Ionescu & Alina-Adriana Arseni:**  
*Constitutional Boundaries for Governing Taxation. Bottom-up Analysis on Deficit of Democratic Tools*

**Đorđe Gardašević:**

*The Constitutional Court of Croatia and the Concept of Inherent Powers*

**Jakub Novák:**

*Case Closed? Ongoing Human Rights Violations in Case Reopening Proceeding before the Czech Constitutional Court*

**Matevž Bedič:**

*Interim Measures in Administrative Disputes and the Right to Judicial Protection in Slovenian Constitutional Case Law*

**Despina-Martha Ilucă:**

*Administrative Offences in Romanian Law: Evolution through Judicial Review and Doctrinal Nuances*

**Zoltán Pozsár-Szentmiklósy:**

*Pretending to be democratic. Direct decision-making in Hungary, 2008-2026*

**Wojciech Firek:**

*The Concept of Citizen Participation in the Jurisprudence of the Polish Constitutional Tribunal*

**Damir Banović:**

*The Judiciary's Role in Protecting Democratic Values, Principles, and Rights - The Context of the Western Balkans*

**Rok Dacar:**

*Political Parties under Constitutional Constraint: Prohibition, Limitation, and Militant Democracy*

**The Romanian Constitutional Court after the 2024 national elections: key elements of rebuilding institutional credibility**

**The Effects of Judicial Decisions in Time: CEE Constitutional Courts**

**Situating scholars on the terrain of constitutional expertise**

**Constitutional Courts in the Crisis of Constitutional Democracy**

**Constitution  
x  
Equality**

**Viva Voce Room**

**Grey Lecture Hall**

**Seminar 3<sup>rd</sup> Floor**

**Golden Lecture Hall**

**Senate Room**

Chair: Raluca Bercea

Chair: Donatas Murauskas

Chair: Matija Miloš

Chair: Nika Bačić Selanec

Chair: Damir Banović

**Diana Botău:**  
*Erosion of Legitimacy and Strategic Politicization of the Romanian Constitutional Court*

**Andreea Verțeș-Olteanu:**  
*Constructing and contesting independence: the status of the constitutional judge in Romania*

**Raluca Bercea:**  
*The thorny issue of magistrates' special pensions before the Romanian Constitutional Court*

**Ramona-Delia Popescu & Bogdan Dima:**  
*The Procedural Law of Constitutional Adjudication: A Case Study of the Constitutional Court of Romania*

**Sorina Doroga:**  
*Preparing for the Next Elections: Judicial Power, Democratic Legitimacy, and the Lessons of Romania's 2024 Elections Annulment*

**Monika Florczak-Wątor:**  
*Temporal effects of Constitutional Court judgments in times of emergency: The Polish experience*

**Tímea Drinóczi & Endre Orbán:**  
*The Effects of Judicial Decisions in Time: the case of Hungary*

**Tomáš Lalík:**  
*Temporal Effects of the Slovak Constitutional Court Judgments: Between Prospectivity and Retroactivity*

**Marek Antoš:**  
*Between Legal Stability and Effective Remedy: The Modulation of Temporal Effects in Czechia*

**Darko Vinketa:**  
*From scholactivism to fidelity: charting the role of scholars in constitutional controversies*

**Sanja Barić:**  
*Venice Commission: a three-stage (constitutional) expertise formation*

**Petar Bačić:**  
*On the possibilities of the Influence of Legal Theory on Constitutional Court Decisions*

**Silvia Suteu:**  
*Discussant*

**Matej Avbelj:**  
*Constitutional Crisis as the Crisis of the Constitutional Court*

**Konrad Lachmayer:**  
*Austrian Constitutional Court – Resilience and Vulnerabilities*

**Pietro Faraguna:**  
*Constitutional Courts as Litmus Tests in the Crisis of Constitutional Democracies: The Italian Case*

**Anna Śledzińska-Simon:**  
*Withering Constitutional Courts in Hybrid Constitutionalism. The case of Poland and the EU*

**Goran Selanec:**  
*Discussant*

**Martin Gramc:**  
*Constitutional Courts, Medical Authority and the Rights of Intersex and Transgender Youth in the Ex-Yugoslav Region*

**Antoni Konieczny:**  
*How does the Polish Constitutional Tribunal conceptualise same-sex relationships in light of Article 18 of the Constitution, and what role does constitutional scholarship play in this process?*

**Šimon Svoboda:**  
*A Vulnerability-Aware Framework of Algorithmic Discrimination Litigation*

**Balázs Kiss:**  
*Parliamentary representation of national minorities in the case law of Central and Eastern European constitutional courts*

**Reinforcing EU  
Constitutionalism**

**Judiciary  
X  
Resilience**

**Resilience  
X  
Rule of Law**

**Judging  
X  
Scholarship**

**Constitutional Courts  
X  
Future**

**Golden Lecture Hall**

**Blue Lecture Hall**

**Seminar 3<sup>rd</sup> Floor**

**Viva Voce Room**

**Senate Room**

Chair: Nika Bačić Selanec

Chair: Đorđe Gardašević

Chair: Mohor Fajdiga

Chair: Jaka Kukavica

Chair: Bernadette Somody

**Matej Avbelj:**  
*CJEU after the Breakdown of  
Political Liberalism*

**Davor Petrić:**  
*Reinforcing the European  
Mandate of National Courts*

**Iris Goldner Lang:**  
*Solidarity and Social  
Responsibility in the EU*

**Aire Keturakiene:**  
*When judicial restraint  
undermines constitutional  
resilience: constitutional courts,  
interpretation and self-limitation*

**Ignacy Klajbor:**  
*Sententia Non Existens?  
Adjudication, Scholarship, and the  
Crisis of Legitimacy in the Shadow  
of the Polish Abortion Ruling*

**Jaroslav Benák:**  
*The Strategic Secular: Judicial  
Resilience and the Political  
Salience of Church-State  
Relations in the Czech Republic*

**Urh Šelih:**  
*Blind Spots of Judicial Protection  
under the EU Pact  
on Migration and Asylum*

**Fruzsina Gárdos-Orosz:**  
*Constitutional courts in  
emergency: experiences from  
the Visegrad countries*

**Nazarii Stetsyk:**  
*Constitutional Resilience  
under Fire: The Constitutional  
Court of Ukraine between  
European Integration  
Aspirations and Wartime  
Realities*

**Kristina Trykhlíb:**  
*Evolving the Rule of Law:  
Jurisprudential Developments  
in the Constitutional Court  
of Ukraine*

**Metka Vodušek:**  
*Legal Scholarship in the  
Jurisprudence of the Slovenian  
Constitutional Court*

**Andrea Procházková:**  
*Amicus Curiae Between Public  
Interest and Lobbying. What  
Role Does the “Friend of the  
Court” Play in Judicial  
Decision-Making?*

**Anna Niemiec:**  
*Between Judgment and  
Commentary: The Role of  
Polish Constitutional  
Scholarship in Shaping the  
Authority of the Constitutional  
Tribunal*

**Paulina Jabłońska:**  
*The mirroring effect of abusive  
constitutional practices*

**Lana Ofak &  
Valentina Grubešić Črnelč:**  
*The Evolving Role of  
Constitutional Courts in the Age  
of Climate Emergency:  
Perspectives from the Croatian  
Constitutional Court*

**Monika Hanych:**  
*Algorithmic Age Judicial  
Legitimacy: The Czech  
Constitutional Court’s Dual  
Approach to AI*

**Maja Nastić:**  
*The Role of the Constitutional  
Courts in Shaping Human Rights  
in the Digital Age*

**Marina Kalashlinska:**  
*Radical Clarity and Hybrid  
Lawfare: Constitutional Courts  
and the De-Hybridization of  
Territoriality in CEE*



Ljubljana 2026

15 May

## DAY 2

- 9:30–11:00** Plenary discussion: **What does it mean to be an intellectual in CEE?**
- 11:00–11:30** *Coffee Break*
- 11:30–13:00** Parallel Sessions 4
- 13:00–14:00** *Freshfields Lunch*
- 14:00–15:30** Plenary book launch: **'Constitutionalism and Its Discontents'** by Bojan Bugarič and Mark Tushnet  
Special workshop for junior scholars: **'PhDs Anonymous: How to build and maintain a productive and healthy relationship with your supervisor'** led by Mojca M. Plesničar.
- 15:30–16:00** *Break*
- 16:00–17:30** Parallel Sessions 5
- 17:45–18:00** Closing ceremony

## What does it mean to be an intellectual in CEE?

Plenary discussion

with

- **Renata Salecl** (University of Ljubljana),
- **Luka Lisjak Gabrijelčič** (CEU),

hosted by *Kristina Krajnc*.

**Luka Lisjak Gabrijelčič** is a historian and political analyst with a regular opinion column in the largest Slovenian daily newspaper, Delo. He serves as Editor-in-Chief of the Razpotja journal on culture and is a member of the Editorial Board of the Eurozine network of European cultural journals. He coauthored *A History of Modern Political Thought in East Central Europe, vol. II*, published by Oxford University Press, and co-edited *The Legacy of Division: East and West after 1989*, published by CEU Press.

**Renata Salecl** is a philosopher, sociologist and legal theorist. She is a Senior Researcher at the Institute of Criminology at the Faculty of Law in Ljubljana, Slovenia, and a Professor at the School of Law, Birkbeck College, University of London. Her books, which have been translated into 20 languages, include *A Passion for Ignorance: What We Choose not to Know and Why* (Princeton UP, 2020), *Tyranny of Choice* (Profile Books, 2011), *On Anxiety* (Routledge, 2004), and *(Per)versions of Love and Hate* (Verso, 1998).



## Special plenary event

### Book launch

#### Constitutionalism and Its Discontents

by

**Mark Tushnet** and **Bojan Bugarič**

Hosted by

*Gloria Golmohammadi and Mojca Mauhler.*

The scholars joined forces again after having published "Power to the People: Constitutionalism in the Age of Populism" with OUP in 2022. Their new book, forthcoming this year with University of Chicago press, was announced as a "thoughtful and provocative meditation on both the potential and limits of constitutionalism". The monograph is a plea for a "thin" idea of constitutionalism and for realistic expectations with regard to what constitutionalism can achieve.

**Mark Tushnet** is William Nelson Cromwell Professor of Law, Emeritus at Harvard Law School, who has written on constitutional review in the United States and around the world, as well as on other institutions created to protect constitutional democracy. He is the author of, among other books, Taking the Constitution Away From the Courts (1999), Weak Courts, Strong Rights: Judicial Review and Social Welfare Rights in Comparative Constitutional Law, (2007) and The constitution of the United States of America: a contextual analysis (2015).

**Bojan Bugarič** is Professor of Law at the University of Sheffield School of Law and a Founding Member of the Icon-S CEE Chapter. Previously, he was Professor of Law at the University of Ljubljana Faculty of Law. His areas of research are comparative constitutional law, EU law, rule of law and law and law and development. He has dedicated a number of works to the issues in our region, e.g. Populism, liberal democracy, and the rule of law in Central and Eastern Europe' (2008), 'A crisis of constitutional democracy in post-Communist Europe: "Lands in-between" democracy and authoritarianism' (2015) and 'Central Europe's descent into autocracy: a constitutional analysis of authoritarian populism (2019)'.

## Special plenary event

### Special workshop for junior scholars

#### PhDs Anonymous:

**How to build and maintain a productive and healthy relationship with your supervisor**

led by **Mojca Mihelj Plesničar.**

This year, a special workshop will focus on the relationship between a PhD candidate and their supervisor. The title "PhD Anonymous" is not to be taken too literally; it does not mean that the identities of the participants will be hidden but rather that we aim to create an environment away from your home institution where you can discuss some of the issues revolving around a productive mentoring relationship with your peers who may come from different systems and backgrounds - but experience shows that the problems they encounter are often very similar.

**Mojca Mihelj Plesničar** is Senior Research Associate at the Institute of Criminology and Associate Professor of Criminology at the Faculty of Law of the University of Ljubljana. In 2024, she was awarded a Starting Grant from the European Research Council («Sentencing architecture: building a decision-making matrix» - SENTRIX).

day 2

**Behind the bench: Unveiling the influence of scholars on the development of the reasoning of constitutional courts**

**Saviors or Authoritarian Enclaves: The Role of Constitutional Courts Against Autocratization in Central and Eastern Europe**

**Equality in Central and Eastern European Constitutionalism II – Litigation a Courts’ Responsiveness**

**Project presentation: Access to Human Rights Justice - Slovenia & its Constitutional Court as a case study**

**History  
x  
Identity**

**Viva Voce Room**

**Golden Lecture Hall**

**Grey Lecture Hall**

**Senate Room**

**Seminar 5 (basement)**

Chair: Elena Masnevaite

Chair: Gábor Halmai

Chair: Tilen Štajnpihler Božič

Chair: Veronika Fikfak

Chair: Zoltán Pozsár-Szentmiklósy

**Marieta Safta:**  
*Scholarly Influence in Romanian Constitutional Jurisprudence*

**Boris Balog:**  
*Constitutional Scholarship as a Support and Feedback for Constitutional Court in the Slovak Republic*

**Remzije Istrefi:**  
*To ‘cite or not to cite’: The position of scholarly opinions in Kosovo’s Constitutional Court Decisions*

**Jolita Miliuviene:**  
*Invisible Yet Influential: Academic Scholarship in Lithuanian Constitutional Adjudication*

**Kristaps Tamužs:**  
*The Constitutional Court of the Republic of Latvia and legal scholarship – not a source of law but coming close*

**Bojan Bugarič:**  
*Militant Democracy in the Age of Populism: How Defending Democracy Can Undermine Itself*

**Gábor Halmai:**  
*The Current and Future Role of the Hungarian Constitutional Court: An Abuser of Constitutional Review and an Authoritarian Enclave*

**Kasia Krzyzanowska:**  
*Constitutional Transgression: The Constitutional Tribunal of Poland as a (Declining?) Illiberal Enclave*

**Silvia Suteu:**  
*Militant Democracy in the Electoral Context: The Romanian Constitutional Court and Institutional Failure*

**Max Steuer:**  
*Constitutional Courts and Regime Change in the 2020s: Beyond the ‘Reluctantly Militarized’ Constitutional Court in Slovakia*

**Barbara Havelková & Terezi Boková:**  
*(Not) raising equality concerns? Lawyers’ litigation strategies in Czechia*

**Donatas Murauskas:**  
*The role of constitutional courts in developing equal protection of same-sex couples in the Baltic states*

**Biljana Kotevska:**  
*Of Missed and seized opportunities: multiple and intersectional discrimination and the constitutional courts in Croatia, Macedonia, and Slovenia*

**Adam Ploszka & Jan Denka:**  
*The Principle of Equality as a Vehicle for Social Rights Enforcement in Central and Eastern Europe*

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- Umut Yüksel
- Urban Slak Piskar
- Gaja Podgornik
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**Hent Kalmo:**  
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*Constitutional Courts in Europe and the Limits of Judicial Dialogue: Lessons from C-448/23*

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Chair: Barbara Havelková

Chair: Metka Vodušek

Chair: Urh Šelih

Chair: Saša Zagorc

**Snežana Armenko:***Challenges and temptations of being a judge of the Constitutional Court of the modern era***Rafat Stronk:***In Search of the Legitimacy of Judicial Review. The Recruitment of Judicial Elites in Poland: Debates and Possible Jurisprudential Effects (An Invitation to Discussion)***Mohor Fajdiga:***The Role of Chilling Effect in Constitutional Adjudication: The ECtHR's Approach to Freedom of Expression of Judges***Dominika Kuna:***The Constitutional Tribunal under Strain: Poland's Rule of Law Conflict***Anže Medičevc:***The diverging methodologies and impact of constitutional courts transposing international law into domestic legal systems***Sergeja Hrvatič:***The Role of Constitutional Courts in Safeguarding Socio-Economic Rights under International Law***Benjamin Nurkić:***The role of the Constitutional Court's jurisprudence in the implementation of the Strasbourg Courts' demands for Bosnia and Herzegovina***Ana Horvat Vuković:***Prohibited but Recognized: Surrogacy, Children's Rights, and Constitutional Adjudication in Croatia***Eszter Bodnár:***What Keeps Public Lawyers Staying the Course: Professional Skills for Sustainable Careers in Academia and Practice***Bernadette Somody:***Teaching Constitutional Law under Conditions of Uncertainty: From Knowledge to Skills, from Grades to Feedback***Emma Humeňanská:***Judicial Communication of Unconstitutionality in Slovakia***Agne Juskeviciute-Viliene:***Interdisciplinary Knowledge and Constitutional Jurisprudence: Economic Regulation, Environmental Protection, and the Role of Constitutional Courts***Niko Jarak:***Formalism and the Concept of Separation of Powers in Post-Socialist Constitutionalism: "Mystification" of the Role and Position of the Constitutional Court of Croatia***Kristijonas Povylius:***Constitutional Courts' Power to Impose Interim Relief Against the Government: A Comparative View***Larisa-Cătălina Ionescu:***The President, the Prime Minister, and the Constitutional Court: Government Formation in Romania***Piotr Mikuli & Natalie Fox:***The role of ordinary courts in reviewing the constitutionality of laws in Poland versus the functions of the Constitutional Tribunal: division of tasks, cooperation, and confrontation between state authorities***Jan Podkowik:***Should the judgment of a constitutional court be final? Search of a balance between the court and the legislature***Kálmán Pócza, Pep Vallbé & Gábor Dobos:***Judicial Assertiveness in Europe: A Comparative Analysis***Viktória Alžbeta Sutórisová:***Why some judicial councils cope better than others: A resilience toolkit for future designs***Alex Ricciardi:***The Venice Commission's Approach to Election Annulments by Constitutional Courts in the Central-Eastern EU Area*

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*Snežana Armenko*

## **Challenges and temptations of being a judge of the Constitutional Court of the modern era**

This paper tries to determine the balance between the independence of the judge of the Constitutional Court on the one hand and the self-restraint and self-control of the judge of the Constitutional Court in the interpretation in good faith of the constitutional competences, on the other hand.

In this sense, the paper specifically analyzes the institution of termination of office of a judge of the Constitutional Court and the relationship with the Parliament on that issue, as well as potential changes to the Constitution, as a tool of political pressure. A special aspect of scientific criticism is focused on the ideas and proposals for changes to the Constitution regarding the method of selection, increasing or decreasing the number of judges and similar proposals, which would be used as a basis for terminating the mandate and electing a new convocation, which is not unknown not only in the practice of the Montenegrin constitutional judiciary, but also in other countries.

The biggest challenge turned out to be the question of what behavior of constitutional actors creates legal uncertainty in which the judge is expected to be "cooperative" instead of consistent, but also the challenge to put the judge himself above the Constitution as its sole guardian and interpreter under the veil of protection of the "principle of the rule of law".

The conclusion of the paper is permeated with the idea that being a judge means to actually establish and maintain a responsible and active function of protecting constitutionality and legality, which rests on the principle of the rule of law. This work affirms the call for judges to, despite numerous systemic shortcomings, uncompromisingly protect the Constitution as the only barrier against legal anarchy and political voluntarism.

## **The Judiciary's Role in Protecting Democratic Values, Principles, and Rights - The Context of the Western Balkans**

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In a modern democratic system, the constitution has been a barrier and a safeguard of democracy, democratic principles, and political rights. Modern European constitutions proclaim that democracy is the nature of their respective political system. Even as part of the political sphere, democracy can be perceived as a legal principle implemented through different political rights, such as freedom of expression, freedom of assembly, free elections, independent judiciary, the right to participate in political life, etc. Democracy has ways of protecting itself, whether through political activism, political pressures, protests, etc. However, judicature can and does play a significant role in preserving democratic values, principles, and rights. Populists and other anti-democratic movements tend to change the established rules of democracy, test its limits, and possibly degrade it. The article has a more modest aim and analyses how the judiciary can keep the limits, elements, and structure of a democratic political system and, consequently, its role in modern democratic systems. Moreover, I would like to show how courts act when democracy is in decline, focusing primarily on the selected case law of constitutional courts (e.g., the Constitutional Court of Bosnia and Herzegovina) and the European Court of Human Rights (ECtHR).

## **Interim Measures in Administrative Disputes and the Right to Judicial Protection in Slovenian Constitutional Case Law**

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The case law of the Slovenian Constitutional Court indicates that interim measures are not regarded as a direct component of the right to judicial protection under Article 23 of the Constitution of the Republic of Slovenia. They are considered constitutionally relevant only where they constitute a necessary instrument to prevent a situation in which judicial protection would no longer be capable of achieving its purpose. The same approach applies in administrative disputes, which are characterised by a preceding administrative procedure. Since, under the general legal framework, an action in an administrative dispute lacks suspensive effect, an interim measure represents the only mechanism for temporarily suspending the enforcement of the contested administrative act.

The Constitutional Court's established diction – that judicial protection would otherwise “no longer be capable of achieving its purpose” – is broad and inherently casuistic. Accordingly, the paper analyses the relevant case law with the aim of identifying the key reference points based on which it is possible, if at all, at an abstract level, to regard interim measures in administrative disputes as part of the right to judicial protection. Furthermore, in light of the specific characteristics of administrative disputes as compared to civil proceedings, the paper examines whether interim measures should be understood merely as ancillary to the right to judicial protection or rather as its integral component. This question is particularly acute where an administrative dispute substitutes for an unavailable appeal in the administrative procedure, in which case it may also fall within the scope of the constitutional right to a legal remedy under Article 25, which constitutional jurisprudence requires to satisfy the core elements of instancy, namely devolutive and suspensive effect.

## **The Strategic Secular: Judicial Resilience and the Political Salience of Church-State Relations in the Czech Republic**

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In Central and Eastern Europe, constitutional courts are frequently framed as the ultimate guardians of democratic stability against populist encroachment. This paper explores the role of the Czech Constitutional Court (CCC) as a socially embedded actor that employs "selective activism" to maintain its institutional legitimacy and resilience. While the CCC often focuses on ensuring fair political competition to avoid public backlash, its interventions in culturally sensitive areas—specifically the relationship between church and state—reveal a complex landscape.

This study utilizes three landmark cases Church Restitution I (Pl. ÚS 10/13), Church Restitution II (Pl. ÚS 5/19), and the Concordat (Pl. ÚS 8/25 - currently still pending, but the president of CCC has publicly announced in media that the case will most likely be decided in first months of 2026) to show that even in the Czech Republic, frequently cited as the most secularized state in Europe, these cases emerged as highly polarized and politically salient "high-politics" issues. Through an analysis of these decisions, the paper will demonstrate how the Court navigated intense public opposition and left-wing political resistance.

Drawing on qualitative data from in-depth interviews with elite judges, the paper further examines how judicial perceptions of media and public opinion influence decision-making strategies. It argues that the CCC's handling of church-state relations serves as a litmus test for its resilience. The findings challenge the assumption that religious cases lack salience in secular societies.

## **What Keeps Public Lawyers Staying the Course: Professional Skills for Sustainable Careers in Academia and Practice**

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Public law careers—across academia, constitutional adjudication, and public legal practice—are marked by distinctive professional demands that extend well beyond doctrinal expertise. While constitutional scholarship has extensively examined institutions, jurisprudence, and normative frameworks, considerably less attention has been paid to the personal and relational capacities that enable public lawyers to remain engaged, effective, and professionally sustainable over time. This paper asks what keeps public lawyers staying the course.

The paper serves as an opening contribution to a broader research project on professional sustainability in public law. It starts from the premise that public law careers differ structurally from private law careers not only in their exposure to external pressures, but also in their reliance on long-term engagement, cooperation, and credibility within epistemic and institutional communities. As a result, professional success and integrity depend on a set of skills that are rarely made explicit in legal training or scholarly reflection.

The paper identifies and conceptually examines a cluster of professional capacities central to sustainable public law careers. These include self-awareness and reflective judgment, the ability to articulate and maintain a coherent professional identity, leadership, communication and cooperation across institutional and disciplinary boundaries, and forms of self-development that support independence without isolation.

The final part of the paper turns to questions of preparation and support. It explores how law schools might better prepare students for the relational and developmental dimensions of public law careers, and how public lawyers can be supported in later career stages to foster renewal, collaboration, and continued professional engagement. The paper is explicitly intended to open a discussion, drawing on and benefiting from the diverse experiences of conference participants.

## ***Between the Bench and the Chair: The Changing Role of Constitutional Judges as Academics***

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Following the establishment (or restoration) of constitutional courts in Central and Eastern Europe in the wake of democratic transitions of the late 1980s and 1990s, the combination of the role of constitutional judge with an academic career, most notably that of a university professor, was widely perceived as institutionally desirable. This dual role was understood as fostering cross-fertilisation between constitutional theory and practice: constitutional courts benefited from academically trained judges with strong methodological backgrounds, while universities gained from professors with first-hand experience of constitutional adjudication.

This presentation will argue that this assessment has fundamentally changed in recent years. In a context marked by increasing political polarisation, heightened media exposure of constitutional courts, and the growing politicisation of academic environments, the combination of judicial and academic roles tends to generate structural risks rather than institutional benefits. Constitutional judges who remain active in academia may become exposed to informal pressures, reputational costs, or retaliatory practices within academic institutions, including ostracism or adverse treatment in procedures related to academic promotion. At the same time, universities themselves are increasingly drawn into political and ideological conflicts surrounding constitutional adjudication, which undermines their capacity to function as neutral spaces of scholarly debate.

The presentation will trace this shift from perceived synergy to growing vulnerability and will examine its implications for judicial independence, academic freedom, and the boundaries between constitutional adjudication and scholarly engagement. It will conclude by questioning the continued viability of traditional models of dual role-holding under contemporary conditions and by outlining possible normative and institutional responses.

## ***When Doctrine Speaks and Courts Don't Listen: The Deaf Constitution in Fiscal Matters***

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Our study examines the borderland legal areas that develop sanctioning regimes such as fiscal law. These sanctions demand a rigorous analysis of their legal nature, as they accompany—or even replace—civil procedures designed to secure revenue for an atypical creditor. In shaping this legal terrain, public authorities derive from private law, *jus commune*, distinct forms of sanctions whose legal content departs from classical doctrine.

These sanctions travel across multiple procedural pathways, generating patrimonial consequences for a debtor's faulty behaviour and requiring classification through concepts from civil, administrative, and even criminal law. Interest, late payment penalties, non declaration penalties, fines, and tax surcharges all converge within a tax collection implemented mechanism that drifts from legality and procedural regularity. Although each of these fiscal surcharges has its own legal regime, they ultimately pursue the same objective: accelerating tax compliance.

A doctrinal approach that extracts fiscal specificities and evaluates the direct or indirect punitive dimension of these fiscal surpluses naturally leads to examining their compatibility with constitutional and conventional guarantees. Yet such a test of doctrinal robustness risks remaining merely academic, unable to break the jurisprudential silence surrounding fiscal matters.

We will explore several examples: (i) erosion of property right; (ii) breaches of *ne bis in idem*; (iii) eternal perpetuation of patrimonial burdens; (iv) insufficient safeguards for the right to a fair trial. These loose doctrinal threads highlight a broader question: what is the Constitution's perspective on fiscal law? They also give rise to more targeted inquiries stemming from doctrinal reflection that refuses to remain a sterile *ex cathedra* exercise.

## **Political Parties under Constitutional Constraint: Prohibition, Limitation, and Militant Democracy**

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The prohibition of political parties, as well as other restrictions on their activities, constitutes one of the most intrusive interferences with democratic pluralism and the freedom of association. As such, it provides a particularly revealing test of constitutional democracy and of the role constitutional courts play within it. This presentation examines the Slovenian constitutional framework governing party bans and other restrictive measures through the lens of militant democracy, understood as a model of democracy that allows for preventive limitations in order to protect the constitutional order. The Slovenian model largely follows the German *Parteiverbot* tradition, while displaying notable procedural specificities, most prominently the comparatively broad range of actors entitled to initiate proceedings before the Constitutional Court. These features raise important questions regarding institutional balance, access to constitutional review, and the preventive logic underlying restrictions on political parties. The presentation analyses how prohibitions and other limitations of political parties are justified in constitutional adjudication, focusing in particular on standards of evidence, the application of proportionality, and forms of preventive reasoning. It argues that such cases place constitutional courts in a position of heightened discretion, where abstract constitutional values, security considerations, and political realities intersect. By drawing on the jurisprudence of the European Court of Human Rights as a normative reference point, the presentation contextualises the Slovenian regulatory model within broader European standards and explores the normative boundaries of militant democracy in contemporary constitutional systems.

## **The Role of Chilling Effect in Constitutional Adjudication: The ECtHR's Approach to Freedom of Expression of Judges**

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Chilling effect is a mysterious concept, often invoked in human rights adjudication. Despite mounting academic criticism over its conceptual ambiguity, speculative nature and arbitrary use, there has been very little interrogation about its actual role in constitutional adjudication. Is chilling effect a central argument, or simply a legal cliché? The answer of the academic community varies greatly, even when the same court is under scrutiny. Scholarly opinion seems to be based predominantly on a simplistic and intuitive analysis of legal decisions. This paper presents a part of an ongoing PhD project that seeks to fill this gap. It sheds light on the role of chilling effect in a narrow area of jurisprudence of the European Court of Human Rights. Departing from a previous study with a wider sweep, it zooms in onto the case law concerning freedom of expression of judges. It situates the argument in the proportionality assessment and relies on pragma-dialectical theory of argumentation to develop an analytical framework for assessing its role. The analysis of case law shows that the role of the chilling effect varies greatly from mere rhetoric to an argument which transforms the otherwise harmful expression into adequate behaviour, thus suggesting a more nuanced view on the relevance of chilling effect in constitutional adjudication.

*Wojciech Firek*

## **The Concept of Citizen Participation in the Jurisprudence of Polish Constitutional Tribunal**

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Citizen participation constitutes one of the key elements of a democratic state governed by the rule of law. The engagement of civil society in democratic governance based on fundamental human rights is essential for a healthy democracy. Participatory and deliberative institutions complement the classical model of representative democracy and generate significant positive social effects. They enhance the legitimacy of public authorities, enable effective citizen oversight, strengthens civic identity. For these reasons, citizen participation is widely recognized as a universally desirable value that must be protected by law.

The presentation will focus on a review of selected judgements of the Polish Constitutional Tribunal that refer to the concept of citizen participation in a democratic state. Although the Polish Constitution does not use this term *expressis verbis*, constitutional jurisprudence seems to treat it as a legal principle relevant to the interpretation of democratic standards and fundamental human rights. The review will cover judgements concerning freedom of assembly, access to public information and citizen participation in the law-making process. The question of whether the citizen participation is recognized as a connotational principle or it is just a figure of speech will be considered.

*Fruzsina Gárdos-Orosz*

## **Constitutional courts in emergency: experiences from the Visegrad countries**

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This presentation examines the operation of constitutional courts in Hungary, Poland, the Czech Republic, and Slovakia—the Visegrád countries—during states of emergency, with a special focus on the COVID-19 pandemic. It investigates how these courts interpreted their constitutional roles under “special legal orders” and whether their competencies and jurisprudential standards changed under exceptional circumstances. Although the constitutions of all four states maintain the continuous operation of constitutional review during emergencies, the courts’ performance and impact varied considerably. The analysis shows that the strength and independence of constitutional adjudication under normal conditions determine its capacity to function as a guardian of constitutionality in emergencies. The paper concludes that constitutional courts that do not effectively protect constitutionalism in ordinary times are unlikely to do so during crises, emphasizing the continuing importance of institutional integrity, judicial independence, and rule-of-law standards in exceptional legal orders.

*Djordje Gardasevic*

## **The Constitutional Court of Croatia and the Concept of Inherent Powers**

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This presentation examines the Croatian Constitutional Court's interpretive approach to the existence of its own "inherent" powers and their relationship to the Court's powers enumerated in the Constitution. More precisely, the focus of this research is on the question whether the Court can claim that it possesses a sort of "inherent powers" or it must stick only to those powers that are given to it by the Constitution expressly?

In this context, the presentation contains both the descriptive and the normative part. In the descriptive part, the relevant case law of the Constitutional Court touching upon the issue of the Court's "inherent powers" is presented. In the normative part, the said case law is analyzed through several key questions.

First, does the Court exercise its "inherent" powers through the concept of a descriptive or an autonomous norm (i.e. are the "inherent" powers the source of an entirely independent power or they apply merely as a supplement to express powers)?

Second, does this result in significant changes in the Court's procedures, as they are prescribed by the Constitution?

Third, does the Court apply measures that are precisely defined by the Constitution or it introduces new ones?

Fourth, does this significantly disrupt the constitutional balance of competences and powers between the Court and other institutions (the parliament and courts).

The findings show that the Court applies the concept of the autonomous norm, thereby significantly altering both its procedures and the measures it is authorized to impose. The conclusion is that such an approach by the Court significantly undermines the principle of the balance of powers as envisaged in the Constitution.

The presentation is based upon the following paper: Gardašević, Đorđe; Jarak, Niko, *The Constitutional Court of Croatia and the Concept of Inherent Powers*, *Pravni zapisi*, 16 (2025), 2; 372-415.

*Martin Gramc*

## **Constitutional Courts, Medical Authority and the Rights of Intersex and Transgender Youth in the Ex-Yugoslav Region**

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This study addresses the lack of comparative legal analysis of constitutional frameworks governing the rights of intersex and transgender youth and their access to health care in post-socialist ex-Yugoslav countries. Intersex youth are individuals whose sex characteristics—chromosomal, gonadal, hormonal, or anatomical—do not conform to binary socio-medical norms, while transgender youth identify with a gender different from that assigned at birth.

While research in Western countries has extensively examined the relationship between legal regulation and health care for intersex and transgender youth, scholarship in the ex-Yugoslav region remains limited and fragmented. Existing studies are largely confined to medical research or single-country legal analyses, often focusing on the role of constitutional courts in securing rights for transgender youth, frequently encompassing intersex youth as well. Comparative regional research is notably absent, despite shared historical, political, legal, and health care contexts. This gap is particularly significant in light of the growing anti-gender movement, which often conflates intersex and transgender populations.

The study offers a comparative analysis of the role of constitutional courts in Slovenia, Croatia, and Serbia in recognising the rights of intersex and transgender youth. It shows that although courts have played a central role in advancing legal protections, they have not achieved full equality nor fully disentangled legal recognition from medical authority. Drawing on court decisions, legislation, policy documents, and secondary literature, the study contributes to the underdeveloped legal scholarship on intersex and transgender youth in post-socialist ex-Yugoslav countries

*Monika Hanych*

## **Algorithmic Age Judicial Legitimacy: The Czech Constitutional Court's Dual Approach to AI**

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As AI reshapes the legal landscape, Constitutional Courts in CEE face a critical dilemma: how to harness the efficiency of digital tools without eroding the fragile public trust characteristic of post-authoritarian jurisdictions. While generative AI is often criticized for hallucinating case law -threatening the integrity of legal information - the recent deployment of an AI chatbot by the Constitutional Court of the Czech Republic offers a counter-narrative of technological integration centered on institutional control and legitimacy.

On one hand, the Court has defended the integrity of judicial proceedings by already fining one legal practitioner for submitting submission reliant on AI-hallucinated case law. On the other, the Court has deployed its own AI chatbot - a tool architecturally constrained to answer public inquiries based solely on the Court's jurisprudence from its own official case-law database, strictly prohibiting external or generative deviations.

Using Max Weber's framework of legitimacy, specifically the concept of legal-rational authority, the paper argues that the dual approach is not contradictory but complementary. By punishing "hallucinating" AI, the Court protects the rationality of the legal order against the chaos of fabrication and high number of low-quality submissions. Contrary to that, by deploying "constrained" AI chatbot, the Court modernizes its bureaucratic function, enhancing transparency and access.

The presentation explores how this "closed-loop" AI model reinforces the Court's legitimacy by transforming the "black box" of constitutional scholarship into an accessible, yet institutionally controlled, interface. It suggests that for post-authoritarian courts, where trust is hard-won, the integration of AI tools must be strictly subordinated to procedural rigidity - using technology not to create law, but to curate the Court's authoritative voice via raising accessibility and availability of case-law to public.

*Tim Horvat*

## **Human Rights in the Marketplace: the Role of the Slovenian Constitutional Court in Contemporary Economic Governance**

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Recent years have seen an increase of disputes over economic legislation before the Slovenian Constitutional Court in areas as diverse as healthcare, housing, and banking. Based on a close reading of a series of landmark cases between 2015 and 2025 and a mapping of argumentative moves, the paper analyses the Court's extensive use of the constitutional right to property (Article 33), the freedom to choose an occupation (Article 49), freedom of economic initiative (Article 74), and, in EU-law contexts, the application of the EU freedom to conduct a business (Article 16 of the EU Charter).

This paper shows that the Court's standard approach to human rights adjudication in economic affairs functions as a mode of economic governance by redrawing the boundaries of permissible regulation. First, it argues that such an approach results in a heightened justificatory burden, the need for institutional tailoring, and rigorous economic analysis. It argues, second, that proportionality analysis imports implicit normative choices with observable distributive effects.

The paper situates the Slovenian case within a broader shift towards economic constitutionalism that displaces distributive conflict from democratic bargaining toward judicial balancing, and reflects on its implications for law-making and the separation of powers in Slovenia.

## Prohibited but Recognized: Surrogacy, Children's Rights, and Constitutional Adjudication in Croatia

On 16 December 2025, the Croatian Constitutional Court (CCC) upended the legal treatment of surrogacy, accepting the effects of international surrogacy arrangements despite their express illegality under domestic law. The decision reflected broader European trends of private and family life protection, but remained silent on questions of constitutional identity and the limits of constitutional accommodation in value-laden areas.

It missed an opportunity to articulate the minimum standards of verification in international surrogacy cases, failing to assess the evidentiary requirements under Croatian law salient in a cross-border case that collapses the distinction between illegality and legal recognition of a transactional establishment of parenthood. Moreover, the Court intervened at a stage where ordinary legal remedies had not yet been exhausted.

The CCC's decision will be examined through the lens of transnational constitutional adjudication. We will recognize that the paucity of Court's reasoning resulted from an automatized application of ECtHR jurisprudence, which notably affords states a margin of appreciation in regulating surrogacy. The CCC offered no deeper doctrinal analysis, caveats, or instructions to the legislator in this regard. Additionally, the presentation will explore whether CJEU's case-law offers a separate line of logic, grounded in EU citizenship and free movement, regarding recognition of legal situations validly created in one Member State.

Against this background, we will contend that the CCC missed an opportunity to articulate a principled analysis capable of mediating between domestic constitutional values and supranational obligations. By situating the decision within the matrix of rule of law, i.e. the judicial dialogue between the CCC, ECtHR and CJEU, the presentation will thus also explore the role of constitutional courts in resolving normative conflicts in pluralist legal orders.

## The Role of Constitutional Courts in Safeguarding Socio-Economic Rights under International Law

By ratifying core international instruments, particularly the International Covenant on Economic, Social and Cultural Rights, states have formally undertaken obligations that extend to all individuals under their jurisdiction, including migrants without a (finally determined) legal status. However, these obligations operate within a legal framework that allows states a margin of discretion, particularly where individuals are in different legal situations. States often justify restrictive approaches by invoking state sovereignty, economic capacity and the structural limitations of national welfare systems. At the same time, the principle of non-discrimination in international law tends to apply primarily to persons in comparable legal situations, leaving unresolved the question of whether and to what extent migrants without a (finally determined) legal status are entitled to socio-economic rights. This paper provides a comparative analysis of the constitutional case law of four EU member states with different migration histories and constitutional traditions: Germany, Italy, Ireland and Slovenia. By analysing key judgements, it explores how constitutional courts assess the compatibility of state conduct with international law when claims concerning the socio-economic rights of migrants without a (finally determined) legal status are brought before them. While acknowledging states' discretion in matters of migration control, economic policy, and social welfare, it demonstrates how constitutional courts function as mediators between international legal commitments and national practices. The paper also exposes the limitations of international law in ensuring a minimum level of socio-economic rights for migrants without a (finally determined) legal status, while emphasising the pivotal role of constitutional courts in determining the scope of these rights in practice.

## **Judicial Communication of Unconstitutionality in Slovakia**

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The view that courts should speak only through their written decisions is increasingly challenged. In the context of disinformation, populism, and democratic decline, where constitutional courts are often portrayed as elitist and lacking democratic legitimacy, constitutional courts should seek new ways to strengthen their institutional legitimacy and engage more directly with the public. Proactive communication, not only through official statements, but also via off-the-bench activities - such as public speeches, interviews, or social media presence - is considered one of the most effective tools to achieve this goal. The paper seeks to answer whether the Slovak Constitutional Court has developed a communication strategy and employs legitimacy-enhancing rhetoric in its public communication, particularly in the case where it declares the unconstitutionality of a legislative act. The research question is grounded in recent case law that confirms the role of the Constitutional Court as a counterbalance to the Slovak parliament. Although these decisions have become an integral part of the legal system, they have also been the subject of political criticism. In this regard, the paper examines whether the Court's communication tools are used as a response to political criticism or whether they also serve to clarify judicial decisions in a clear and accessible manner for the public, to enhance perceived legitimacy. The paper is based on legal analyses of the judgements striking down acts of parliament with high political salience, as well as subsequent communication tools through which these decisions were presented to the public. Finally, it proposes ways in which communication tools could be used by the Constitutional Court more effectively.

## **Administrative Offences in Romanian Law: Evolution through Judicial Review and Doctrinal Nuances**

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This study analyzes administrative offences, also known as contraventions, within Romanian law, focusing on their historical evolution from criminal origins through the current regulation. We aim to observe how the Romanian legal system has progressively differentiated contraventional sanctions from criminal penalties, while still reflecting criminal law principles such as *lex mitior* and legality, that continue to shape their framework.

The study highlights the limited implication of the Romanian Constitutional Court with contraventional law, noting that constitutional analysis has tended to focus on limited provisions rather than developing a larger doctrine on the constitutional guarantees applicable to administrative sanctions. Some relevance in this matter is given by the fact that administrative offences can also be regulated by provisions from local authorities, thus making constitutional review impossible.

We also explore the influence of European case-law and legislation, particularly from the European Court of Human Rights regarding procedural safeguards and the *ne bis in idem* principle, and some accents deriving from the EU Charter on Fundamental Rights, which underline challenges at the intersection of administrative penalties and fundamental rights protections.

Finally, we consider the role of legal scholarship in clarifying the legal nature of contraventions and advancing interpretations that harmonise national administrative practices with European human rights standards, therefore contributing to ongoing debates on proportionality, judicial review and administrative justice.

*Larisa-Cătălina Ionescu*

## **The President, the Prime Minister, and the Constitutional Court: Government Formation in Romania**

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The process of government formation represents a critical moment for constitutional democracy, as it directly tests the balance between political discretion and constitutional constraints. In Romania, the designation of the Prime Minister places the President at the center of this process, while the Constitutional Court has progressively shaped the legal framework governing the interaction between the President, Parliament, and political parties.

This paper examines the role of the Romanian Constitutional Court in defining and limiting the President's powers in government formation, with particular attention to the Court's case law concerning the nomination of the Prime Minister. It argues that constitutional adjudication has transformed what initially appeared to be a largely political prerogative into a constitutionally regulated competence, subject to principles such as separation of powers, constitutional loyalty, and the prevention of excessive concentration of power.

By analysing key decisions of the Constitutional Court, the paper highlights how judicial interpretation has constrained presidential discretion, imposed duties of institutional cooperation, and clarified the constitutional relationship between the President and the parliamentary majority. At the same time, it explores the tensions arising from this jurisprudence, especially in periods of political fragmentation, when the boundaries between constitutional arbitration and political intervention become increasingly blurred.

The Romanian experience illustrates how constitutional courts may play a decisive role in government formation processes, not only by resolving institutional conflicts, but also by shaping the practical functioning of executive power within a semi-presidential system. The paper contributes to the broader debate on constitutional adjudication and executive authority, offering insights relevant beyond the Romanian constitutional framework.

*Paulina Jabłońska*

## **The mirroring effect of abusive constitutional practices**

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This paper uncovers an intriguing phenomenon: when abusive constitutional practices occur, scholarly criticism of these practices can lead us to reassess practices during times of constitutional normality. Using the illustrative case of academic debates surrounding two abortion decisions in Poland, it shows how standards set by legal scholarship to describe abusive practices during constitutional decline can be used to identify and criticize similar practices that occurred before this decline. Finally, this paper examines three scenarios for applying the observed phenomenon, showing that there is no simple answer regarding whether reassessing practices during constitutional normality using standards set by scholarship in times of constitutional decline is normatively justified.

## **Formalism and the Concept of Separation of Powers in Post-Socialist Constitutionalism: “Mystification” of the Role and Position of the Constitutional Court of Croatia**

This contribution critically examines the “mystification” of the role and position of the Croatian Constitutional Court, i.e., its labelling as a sui generis “fourth branch” of government or as an “interstitial” body. It traces the doctrinal roots of this view to a formalistic understanding of the separation of powers and demonstrates how such “mystification” is frequently invoked to justify the Court’s ever-evolving extra-procedural actions, most recently manifested in the controversial self-extension of judges’ mandates.

This “mystification” stems from a very narrow vision of tripartite separation of powers which, in its extreme version, understands checks and balances as operating only between the three traditional branches. Thus, the Constitutional Court is positioned outside the system of checks and balances, as the ultimate guarantor of separation of powers between the three branches, which enables the Court to act beyond constitutional confines inherent to its judicial role.

It is argued that post-socialist legacy and deeply entrenched legal formalism in Croatia have fostered the doctrinal and practical detachment of the Court from its inherent judicial role by overstating its formal insulation from the ordinary judiciary. Instead, the Constitutional Court should be understood substantively as a specifically situated judicial actor fully immersed into the system of checks and balances, operating in dialogue with its coordinated and equally important constitutional interlocutors. The Croatian experience with the “mystification” of the Constitutional Court demonstrates how legal formalism in post-socialist systems can distort a key structural concept such as separation of powers. It emphasises the importance of promoting a wider, value-laden understanding of separation of powers and its underlying logic of checks and balances in legal orders lacking both a strong tradition of the rule of law and value-oriented legal reasoning.

## **Interdisciplinary Knowledge and Constitutional Jurisprudence: Economic Regulation, Environmental Protection, and the Role of Constitutional Courts**

Constitutional courts in CEE have historically operated within a distinctive socio-economic context, shaped by the transition from centrally planned to market-based economies. During this period, constitutional adjudication in economic matters focused primarily on safeguarding economic freedom, property rights and legal certainty. Judicial reasoning was largely influenced by classical and modern economic theories, including the ideas of A. Smith and market liberalism, as well as the efficiency-oriented analysis approaches developed by R. Posner and other proponents of law-and-economics. These frameworks supported the efforts of constitutional courts to entrench market relations and protect entrepreneurial freedom as a constitutional value.

Today, however, CEE constitutional courts face a qualitatively different challenge. Climate change, environmental degradation and the implementation of the European Green Deal have made economic regulation a highly complex field in which constitutional review increasingly relies on knowledge from disciplines beyond law, such as economics, environmental science and sustainability studies. This development raises fundamental questions about the evolving nature of constitutional adjudication.

In my presentation, I will argue that contemporary constitutional courts in the CEE region no longer function solely as interpreters of legal norms, but also as institutional actors that selectively integrate non-legal scientific knowledge when assessing the legitimacy and proportionality of economic regulation. My analysis is structured into 2 phases of constitutional doctrine development in the CEE region. The first phase is linked to the introduction of the market economy and the consolidation of economic freedom. The second phase is characterised by a doctrinal reorientation, in which economic freedom is no longer treated as absolute and may be restricted in pursuit of overriding public interests, such as environmental protection.

## **Radical Clarity and Hybrid Lawfare: Constitutional Courts and the De-Hybridization of Territoriality in CEE**

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This paper explores the intersection of constitutional jurisprudence and legal scholarship in Central and Eastern Europe (CEE) amidst the transformation of territoriality in hybrid conflicts. The author contends that in contemporary hybrid warfare, the "weaponization of everything" transforms territory from a physical space into a site of manipulative legal construction. This process, conceptualized as "legal laundering," involves the creation of artificial territorial subjectivities (as seen in Crimea, Donbas, and Transnistria) to erode state sovereignty from within.

The core of this study analyzes Constitutional Courts as epistemic authorities - institutions that stabilize legal reality by distinguishing normative facts from hybrid simulacra. The paper argues that Constitutional Courts in Ukraine and Moldova do not merely act as arbitrators but serve as anti-hybrid filters, exercising judicial resilience to restore "radical clarity."

Ukraine's Constitutional Court (2014) is examined for its role in dismantling the doctrine of "regional self-determination," thereby reinforcing the constitutional unity of the state.

Moldova's Constitutional Court (2017) is analyzed for its doctrinal stabilization by legally fixing the "effective control" of a foreign power over the Transnistrian region.

The author argues that these judicial responses provide a unique laboratory for CEE public law scholarship. By analyzing these landmark cases, the paper demonstrates how constitutional doctrine in the region is evolving beyond Westphalian formalism. The study concludes that the "de-hybridization" performed by constitutional courts is essential for the future of constitutionalism, as it prevents the institutionalization of grey zones and reclaims the authority of the legal order over political expediency.

## **Revisiting the 'sovereignty conundrum' in East-Central Europe**

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At the time of the eastern enlargement of the EU, Wojciech Sadurski noted an irony that he characterised as the 'sovereignty conundrum': countries which had only just emerged from domination by the Soviet Union, were eager to embark upon the surrender of the sovereignty again. According to Sadurski, the decision to join the EU was taken on political grounds but judges and scholars in the region underwrote it by distorting constitutional arguments which created a false impression that sovereignty was not really compromised in the EU. I shall argue that lawyers were not insincere or cunningly strategic when they failed to make the idea of national sovereignty an obstacle to the process of accession. Both pro- and contra-EU arguments have been linked to sovereignty. These various positions cannot be explained by the conventional models of legalism or neo-realism. Rather, they show how even the most abstract legal concepts are understood against the background of broader cultural imaginaries that make some interpretations appear more appropriate to lawyers.

## **When judicial restraint undermines constitutional resilience: constitutional courts, interpretation and self-limitation**

Liberal constitutional democracy has been affected by democratic backsliding, marked by the gradual weakening of core constitutional principles. A defining feature is the circulation of legal techniques that entrench political power while preserving the appearance of legality. In this context, constitutional resilience (the capacity of a constitutional system to withstand attempts to undermine its foundational principles) has gained importance. Scholarship identifies constitutional review as a safeguard of constitutional resilience. However, constitutional courts (CCs) may contribute to power consolidation if they are captured or self-limited. This presentation examines the relationship between constitutional resilience and the interpretative choices of CCs. Using Lithuania as a case study, it contrasts 2 rulings of the Lithuanian Constitutional Court (LCC). The first, in which the LCC consolidated its doctrine on unamendable constitutional principles (ruling of 30/07/2020, No. KT135-N11/2020), illustrates a forward-looking interpretative approach aimed at anticipating systemic risks. The second, concerning the appointment of a long-standing parliamentarian directly from the legislature to the LCC (ruling of 15/01/2026, No. KT2-N1/2026), reflects a restrained approach. While doctrinally coherent, the LCC declined to engage with broader concerns relating to judicial independence, separation of powers or the permissibility of direct transitions from Parliament to the LCC. As such, it fails to account for the longer-term risks of constitutional capture. The presentation challenges the assumption that judicial restraint necessarily supports constitutional stability. It argues that restraint may weaken constitutional resilience when CCs adopt narrowly formal interpretations and refrain from addressing broader systemic risks. Constitutional resilience thus depends not on the mere existence of CCs, but on CCs willing to engage in forward-looking interpretation.

## **Parliamentary representation of national minorities in the case law of Central and Eastern European constitutional courts**

Parliamentary representation of national minorities is a key topic in Central and Eastern Europe. To establish such representation, it is essential to define the rights of minorities, as well as their scope and limitations. Perhaps the most appropriate means of accomplishing this task is the interpretation of national constitutional courts. The paper analyses the practices of five constitutional courts (Croatia, Hungary, Romania, Serbia, and Slovenia).

The paper primarily seeks to answer the following question: what justification is there for the parliamentary representation of national minorities in the case law of constitutional courts? Secondly, it analyses whether electoral privileges granted to national minorities are justifiable and, if so, how.

The paper states that the justification for the parliamentary representation of national minorities is usually based on a number of interconnected arguments. One such argument is the requirement for equality and non-discrimination, whereby parliamentary representation is deemed necessary to achieve effective equality. Another argument is instrumental justification, whereby parliamentary representation is seen as a means of protecting the rights and specific constitutional status of national minorities, and of achieving their effective equality and integration.

The paper also states that the overwhelming majority of the constitutional courts indicate that the requirement of numerical equality of votes is absolute, i.e. states may not deviate from the principle of 'one person, one vote', nor may they grant double voting rights to national minority voters. By contrast, constitutional courts typically take the view that the fundamental principle of effective equality of votes is not violated, and therefore state measures that reserve seats for national minorities or grant exemptions from general seat allocation criteria to national minority organizations are permissible.

*Ignacy Klajbor*

### **Sententia Non Existens? Adjudication, Scholarship, and the Crisis of Legitimacy in the Shadow of the Polish Abortion Ruling**

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The constitutional crisis initiated in Poland in 2015 has led to a systemic dysfunction of the body intended to protect the Constitution, reaching a critical turning point with the judgment of October 22, 2020 (ref. no. K 1/20), regarding abortion. This ruling triggered the largest street protests in modern Polish history (the Women's Strike) and exposed profound fractures in the authority of the constitutional judiciary. The primary objective of the research author is to provide a multi-layered assessment of the Constitutional Tribunal's (CT) functioning through the lens of this ruling, offering a vital academic contribution to the reflection on how a constitutional court can be transformed into a tool for legalizing politically and socially controversial changes. Research is conducted using the legal-dogmatic method and the interpretation of legal acts, incorporating an analysis of the K 1/20 justification, the case law of the CJEU and the ECHR (notably the Xero Flor case) regarding judicial status, as well as Polish and foreign scholarship and critical commentaries. The analysis demonstrates that the ruling was issued by a body whose composition has been successfully challenged internationally, and the substantive flaws in the proportionality test resulted in the CT losing its capacity to act as an impartial arbiter. The consequences are dualistic: legally, they deepened the rule-of-law crisis and legal dualism, while socially, they led to radical polarization, making the necessary institutional reform an extremely difficult task. Based on these findings, the author postulates a comprehensive constitutional reform to restore the CT's legitimacy by removing unauthorized persons from the bench and implementing *de lege ferenda* measures to insulate the court from political instrumentalization. Restoring judicial independence is a mandatory condition for returning to the standards of a democratic rule of law in Central and Eastern Europe.

*Antoni Konieczny*

### **How does the Polish Constitutional Tribunal conceptualise same-sex relationships in light of Article 18 of the Constitution, and what role does constitutional scholarship play in this process?**

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This study analyses the Polish Constitutional Tribunal's (CT) conceptualisation of same-sex relationships through its interpretation of Article 18 of the Constitution. Through jurisprudence analysis and a review of constitutional scholarship, it examines the Tribunal's formalist reasoning and the critical, divided role of academia. The CT enforces a literalist reading, granting heterosexual marriage a "distinct constitutional status," which actively precludes equal institutional recognition for same-sex couples, framing them outside constitutional protection. Constitutional scholarship is pivotal yet contested. While a conservative strand legitimises the Tribunal's originalist stance, a dominant progressive current challenges it. These scholars argue Article 18 is not an exhaustive definition nor a prohibition on statutory redefinition, advocating instead for a dynamic, systemic interpretation coherent with human dignity, equality, and non-discrimination clauses. Consequently, the Tribunal conceptualises same-sex relationships through an exclusionary, heteronormative lens, embedding a hierarchical family model. Scholarship thus plays an indispensable dual role: it provides the doctrinal foundation for the CT's position while simultaneously furnishing the primary counter-arguments, fuelling an essential democratic debate on the constitution's capacity to evolve and guarantee equal rights amidst social change. This tension underscores a fundamental conflict between static and living constitutionalism in Poland.

*Dominika Kuna*

## **The Constitutional Tribunal under Strain: Poland's Rule of Law Conflict**

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The rule of law crisis in Poland is one of the most significant constitutional breakdowns in Central and Eastern Europe since the post-authoritarian transition. At its center lies the Constitutional Tribunal, originally a guardian of democratic constitutionalism, now transformed into a contested institution whose legitimacy and authority are questioned. This paper examines the Tribunal as a case of constitutional capture, focusing on the role of its President, the structural problem of unlawfully appointed “double judges,” and implications for constitutional adjudication and scholarship.

The 2021 judgments challenging the primacy of EU law marked a turning point, reflecting the Tribunal's internal composition and leadership. Concentration of power in the President's hands and participation of “double judges” turned the Tribunal from a constitutional guardian into an instrument of destabilisation, producing decisions that formally invoke constitutional identity while undermining judicial independence and the rule of law.

The analysis situates these developments in a European context. The 2025 European Court of Human Rights judgment in *A.R. v. Poland* and the Court of Justice of the EU ruling of 18 December 2025 confirmed that adjudication involving unlawfully appointed judges violates judicial legitimacy and the right to a fair trial, highlighting the transnational dimension of the crisis.

Finally, the paper treats constitutional scholarship as a social institution implicated in the crisis. In Poland, scholars have both resisted and, at times, legitimised contested practices. The Polish case thus reveals a dual crisis of constitutional adjudication and knowledge production, raising questions about the responsibility and limits of public law scholarship in times of democratic erosion.

*Aleksandra Kustra Rogatka*

## **Constitutional Courts in Europe and the Limits of Judicial Dialogue: Lessons from C-448/23**

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The Court of Justice of the European Union's judgment of 18 December 2025 in case C-448/23 stands as a milestone in the evolving relationship between EU law and national constitutional courts. This paper contends that, while staying within its established competences, the CJEU has illuminated the circumstances in which constitutional courts can join the European judicial conversation, prompting deeper reflection on the institutional role of constitutional courts within the EU legal order.

In C-448/23, the CJEU found that the Polish Constitutional Tribunal, by denying the primacy and binding force of EU law and CJEU judgments, acted in breach of Poland's obligations under the Treaties. Crucially, the Court also held that due to irregularities in the appointment of certain judges, the Tribunal does not meet the requirements of independence and impartiality expected of a “court or tribunal” under EU law. As a consequence, its rulings cannot affect the application, effectiveness, or authority of EU law.

In Poland, this judgment is reshaping the landscape of constitutional adjudication, empowering ordinary and administrative courts as frontline defenders of EU law and further curbing the Constitutional Tribunal's practical influence. On a wider scale, the decision sparks important questions for other Member States facing challenges to the independence of their constitutional courts. Instead of rejecting constitutional pluralism, the ruling can be seen as tracing its contours: constitutional identity claims and review are still valid, as long as constitutional courts uphold basic standards of independence and do not single-handedly undermine the foundations of EU law. This paper, therefore, examines whether C-448/23 is a targeted response to systemic shortcomings or a signpost toward a broader framework for how EU law and national constitutional courts interact, a question that will shape the future balance between unity and diversity in Europe's legal landscape.

### **Continuity, discontinuity, flexibility and identity (Discovering some achievements of the Hungarian Historical Constitution in constitutional-court- decisions)**

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Can the traditional achievements of the Hungarian Historical Constitution be found in the judiciary practice of the contemporary constitutionalism, and if yes, what way?

The theses are based on a paradoxon, notably the paradoxon or the inconsistency between „written or unwritten constitution” or rather „charta-formed and historical constitution”. According to the mainstream opinion in constitutional scholarship, „written” and „unwritten” constitutions represent two different methods of constitutionalism. Hungary is a country, which used to have a so-called „unwritten” (historical) constitution until 1949. From that time on, three „written” (charta-formed) constitutions followed each other, representing different constitutional eras, ideologies, or different priorities of constitutionalism. The attitude towards „historical constitution” has divided – and is still dividing – scholars’ opinions. During the communist era, historical constitution had been forgotten – at least in written, positive legal regulations. However, in several publications in the field of domestic legal history, the topic had been mentioned. After the collapse of communism, the situation had changed slowly and ambivalently. However, the European Union does acknowledge and accept the constitutional identity of its memberstates, and several memberstates did introduce some eternity clauses into their constitutions, declaring their constitutional identity, the situation had not been settled. After 2016, the situation had gained even greater importance both from the side of the European Union, and from the side of Hungarian constitutional thinking. It also turned out, that even in the 1990s, more decisions of the Constitutional Court of Hungary had been connected to some traditional achievements.

This paper intends to highlight the problem by analysing constitutional courts’ decisions, and examining the different attitudes of scholarship about the question.

### **The diverging methodologies and impact of constitutional courts transposing international law into domestic legal systems**

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Constitutional courts play a significant role for the transposition of international law into domestic legal systems. Be it at national or supranational level, constitutional courts shape the nature of domestic legal systems vis-à-vis international law through their jurisprudence.

On the national level, the Constitutional Court of Slovenia for example adjudged in case Up-13/99 that the customary law rules on jurisdictional immunities of states are applicable in domestic courts, rejecting a complainant's lawsuit claiming damages from Germany for actions allegedly committed during the Second World War. Supranationally, the Court of Justice of the European Union is increasingly assuming the roles usually exercised by constitutional courts in a federalist constitutional arrangement. Based on the doctrine of autonomy of EU law, as seen in cases such as Kadi (C-402/05) and Western Sahara (Joined Cases C-779/21 P and C-799/21 P), a prima facie tendency could be observed towards a selective interpretation of international law, alongside an emerging ‘Europeanised’ corpus of international law. This bears important constitutional consequences since the Court's shaping of the framework of application of international law impacts the constitutional structure of the EU, the dynamics between the federalist level and the level of Member States, as well as the wider relationship between international law and EU law as such.

Both national and supranational jurisprudence evidently define the transposition of international law into domestic legal systems. This presentation aims to analyse and compare the methodologies employed by national and supranational constitutional courts in exercising their supervisory role as guardians of the constitution. In particular, the goal is to ascertain the differences in approaches towards international law and how this jurisprudence affects the monist (i.e. constitutionalist) or dualist (i.e. pluralist) nature of domestic legal orders.

*Katarzyna Metelska-Szaniawska*

## **Economic consequences of non-compliance with constitutions – the post-socialist “illiberal democracy” perspective**

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In this paper we study the effects of the discrepancy between de jure constitutions and their de facto implementation in post-socialist countries of Europe and Asia in the period 1993-2023. We build upon the conceptualization of constitutional (non-)compliance by Voigt (2021) and test the hypothesis empirically for 28 post-socialist countries using the new Comparative Constitutional Compliance Dataset (Gutmann et al. 2024) and a dynamic panel strategy in the spirit of Acemoglu et al. (2019).

Constitutional economics emphasizes several important functions of the constitution, including its role: (1) as a credible commitment mechanism allowing to counteract time-inconsistency problems that arise when short-sighted politicians draft and implement economic policy; (2) as a conflict-solving and coordination device; (3) in providing governments with legitimacy for exercising its functions. De jure-de facto gaps, that emerge in constitutional implementation, undermine the effectiveness of the commitment mechanism, hamper coordination and lead to legitimacy losses, increasing, thereby, the transaction costs of governing. All of these consequences are expected to translate into adverse economic and social effects. A first empirical study for the global sample (Lewczuk, Metelska-Szaniawska 2025) delivered a tentative indication of a negative effect of constitutional non-compliance on GDP per capita. The shift of focus from global studies to a single region – post-socialist countries of Europe and Asia allows not only to mitigate problems of limited cross-country comparability but also to establish the missing connection with works on democratic backsliding and illiberal democracies. In this way, we develop a more comprehensive framework for the analysis of constitutional compliance problems, in particular for relatively young and incomplete democracies, as well as formulate recommendations for constitution drafters, legislators, and political decision-makers.

*Piotr Mikuli & Natalie Fox*

## **The role of ordinary courts in reviewing the constitutionality of laws in Poland versus the functions of the Constitutional Tribunal: division of tasks, cooperation, and confrontation between state authorities**

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The authors examine the powers of ordinary courts to review the constitutionality of statutes in conditions of constitutional crisis in Poland, addressing this issue in the context of the division and cooperation of state authorities and the challenges of constitutional interpretation.

The separation of powers also encompasses the internal division of competences among organs within each branch of government. Nevertheless, as a consequence of the politicisation and progressive delegitimation of the Constitutional Tribunal, ordinary courts in Poland have increasingly been compelled to assume the Tribunal's functions, despite lacking a clear constitutional basis for doing so. Their legitimacy stems from the need to ensure effective constitutional protection, including the safeguarding of fundamental rights and freedoms, in circumstances where the Tribunal is no longer able to fulfil its role. The authors argue that this exceptional situation—amounting to a form of constitutional emergency—justifies a non-standard approach to constitutional interpretation. Safeguarding constitutional norms requires, above all, the protection of the fundamental principles embedded in the constitutional provisions that constitute the constitution's axiological core. This specific mode of constitutional interpretation, which departs to some extent from the prohibition against presuming competences, results in a restriction not only of the division of powers among state organs (including division of task within the judicial power), but also of the principle of cooperation between authorities, expressly invoked in the Preamble to the Polish Constitution. Cooperation presupposes an a priori acceptance of a textual, constitutionally defined division of tasks and competences. Where such acceptance is no longer possible, cooperation gives way to confrontation—yet solely in pursuit of the higher aim of safeguarding the constitutional order.

*Maja Nastić*

## **The Role of the Constitutional Courts in Shaping Human Rights in the Digital Age**

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This paper analyses the evolving role of constitutional courts in shaping, interpreting, and safeguarding human rights in the context of rapid digital transformation. Technologies like artificial intelligence, algorithmic decision-making, mass data processing, and pervasive surveillance challenge traditional understandings of human rights, including privacy, freedom of expression, and equality. Rapid technological change often outpaces legislative capacity, positioning constitutional courts as the primary actors in constitutional protection.

Drawing on contemporary constitutional jurisprudence and a relevant theoretical framework, this analysis explores how constitutional courts serve as key mediators between technological innovation and constitutional values. Constitutional adjudication has become a central mechanism for translating abstract constitutional guarantees into effective rights, particularly in contexts marked by regulatory gaps, vague statutory frameworks, or executive overreach.

Special attention is devoted to the role of constitutional courts in redefining the scope and content of classical human rights, expanding positive state obligations, proportionality, and procedural safeguards in digital contexts. Through selected examples of constitutional case law, the paper identifies both converging trends and divergent approaches, reflecting differences in constitutional traditions, institutional design, and socio-political contexts.

The paper concludes that constitutional courts are shaping digital constitutionalism by articulating standards, limiting technological power, and reinforcing dignity and accountability. While they secure effective rights in the digital age, courts must avoid overreach and engage in dialogue with the legislature to foster a coherent rights-based digital order.

*Anna Niemiec*

## **Between Judgment and Commentary: The Role of Polish Constitutional Scholarship in Shaping the Authority of the Constitutional Tribunal**

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The paper examines the reciprocal relationship between the jurisprudence of the Polish Constitutional Tribunal and Polish constitutional law scholarship, understood not merely as an intellectual background to constitutional adjudication but as an autonomous social institution that co-constitutes constitutionalism in Poland. The point of departure is the assumption that, in the context of post-authoritarian constitutionalism, the authority of a constitutional court is not given once and for all, but rather “multiplied” through ongoing interactions with legal scholarship—via citations, polemics, commentaries, and the biographies of actors who combine the roles of scholars and judges.

Against the background of the Polish experience, particular attention is paid to periods of crisis in which this relationship has been redefined: from the phase of consolidation of the Tribunal as the guardian of the Constitution to contemporary controversies surrounding its legitimacy and independence. The paper argues that Polish constitutional scholarship has not only described and systematized the Tribunal's case law, but has also actively participated in disputes over its normative significance, the limits of judicial power, and the meaning of constitutionalism as a political and legal project.

In this sense, Polish constitutional doctrine emerges as an actor located “at the intersection” (x) of law and politics, interpretation and critique, loyalty to the constitutional text and intellectual responsibility toward the broader community. The paper advances the claim that analyzing this relationship allows for a deeper understanding not only of the crisis of the Constitutional Tribunal, but also of the changing role of the constitutional scholar as an academic and an intellectual in Central and Eastern Europe.

*Jakub Novák*

## **Case Closed? Ongoing Human Rights Violations in Case Reopening Proceeding before the Czech Constitutional Court**

Execution of international human rights decisions is a central but often contested element of human rights protection. In the context of the European Court of Human Rights, the reopening of domestic proceedings has become an important mechanism to ensure effective compliance. This paper examines how the Constitutional Court of the Czech Republic approaches case reopening after international human rights decisions, with a specific focus on how it works with the concept of an ongoing human rights violation.

The paper analyzes the Court's case law to explore when and how an ongoing violation is identified regarding its nature as a material condition of case reopening. It examines the legal grounds, conditions, and limits developed by the Court, as well as the interpretive strategies employed to balance compliance with international human rights law and the preservation of constitutional autonomy and the principle of legal certainty. Based on a systematic review of relevant decisions, the paper assesses whether the concept of ongoing violation facilitates meaningful execution of international judgments and genuine judicial dialogue, or whether it functions as a narrowly framed tool of arbitrariness. The paper concludes by reflecting on the implications of this approach for human rights protection and inter-court dialogue in the Czech Republic.

*Benjamin Nurkić*

## **The role of the Constitutional Court's jurisprudence in the implementation of the Strasbourg Courts' demands for Bosnia and Herzegovina**

The interplay between the European Convention on Human Rights (ECHR or Convention) and the Bosnian-Herzegovinian Constitution has come into focus in scholarship following the European Court of Human Rights' (ECtHR) recognition of discrimination prescribed by the Bosnian-Herzegovinian Constitution. Namely, the constituent peoples (Bosniaks, Croats and Serbs) are privileged by Articles IV and V, as these Articles guarantee them exclusive seats in the House of Peoples and the Presidency, whilst Others cannot compete for these seats. In the Sejdić and Finci case, and afterwards in Zornić, Pilav, Šlaku, and Pudarić cases, the ECtHR found Articles IV and V of the Constitution to be incompatible with the Convention. At a glance, these judgments require constitutional changes in terms of breaking the monopoly of the constituent peoples in competition for these seats prescribed by the Constitution. However, the constituent peoples' monopoly is presented in other rules at the central-state level and at other levels of state governance. In this context, this paper argues that ECtHR judgements require not only changes to the mentioned constitutional Articles, but the deep reform of the Bosnian constitutional order, which includes changes to all rules at all levels of state governance that granted exclusive power to the constituent peoples. The second part of this paper will examine the Constitutional Court's role in aligning the constitutional order with the ECtHR's requirements. In several cases, the Constitutional Court was challenged to decide on the constitutionality of the constituent peoples' monopoly in certain institutions. Therefore, the second paper's thesis is that the Constitutional Court's inconsistent jurisprudence, in terms of non-implementation of the ECtHR requirements, has contributed to stalemates in the implementation of the ECtHR's requirements in Bosnia and Herzegovina.

## **The Evolving Role of Constitutional Courts in the Age of Climate Emergency: Perspectives from the Croatian Constitutional Court**

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This contribution examines whether, how, and to what extent constitutional courts in Central and Eastern Europe, focusing specifically on the Constitutional Court of the Republic of Croatia, can effectively engage with the increasingly complex challenges posed by the climate emergency. The analysis situates potential climate cases within the broader evolution of constitutional cases on environmental protection and fundamental rights, emphasizing the growing interaction between constitutional and human-rights-based climate litigation. Special attention is devoted to the impact of recent case law of the European Court of Human Rights (ECtHR), in particular *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* and *Greenpeace Nordic and Others v. Norway*, which deal with states' positive obligations and the scope of judicial control over climate policies.

Within the context of Europe's growing climate litigation such as the German Federal Constitutional Court's Neubauer decision, the presentation explores how constitutional courts may interpret existing constitutional provisions - on fundamental rights, environmental protection clauses, and separation of powers - to articulate state duties in the climate context and evaluate legislative and executive insufficient action. At the same time, the contribution addresses counterarguments claiming that courts are ill-suited to address the scientific, economic, and political complexities inherent in climate policy. The Croatian Constitutional Court is used as an example to illustrate the existing case law on environmental protection and to assess whether this framework could be extended to possible future climate-related claims. Finally, the presentation examines how ECtHR's new case law may shape Croatian constitutional practice and considers whether climate litigation before constitutional courts is transforming both constitutional environmental law and our broader understanding of courts as actors in climate governance.

## **Constitutional identity at the intersection of the Constitutional Court and academia: a doctrinal influence or merely a useful tool for expanding competences? – The Croatian case**

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The Croatian Constitution does not contain explicit material restrictions for constitutional amendments. This was reflected in the early jurisprudence of the Constitutional Court of Croatia. In a 2001 case, the CC claimed that it cannot decide on the "constitutionality of the Constitution". At that time, academic opinions on this issue differed: while some argued against the possibility of material constitutional review of constitutional provisions, others advanced the opposite view grounded in the idea of constitutional identity.

Arguably, the CC was influenced by the latter, as it mentioned constitutional identity in a case from 2011 connecting it to a paragraph of the preamble. The CC went further in 2013. By establishing its competence to review the material constitutionality of a referendum question aimed at amending the Constitution, it departed from its case law and confirmed its authority to decide on "unconstitutional constitutional amendments" by invoking constitutional identity.

The CC continued to outline the content of constitutional identity, proclaiming specific articles of the Constitution as elements thereof but left it open-ended. However, cited articles cover a broad set of principles and values, which can also be interpreted quite extensively, resulting in uncertainty.

This uncertainty is further amplified by the absence of clear rules for invoking constitutional identity, providing the CC with the opportunity to use it on a case-by-case basis: e.g. to take over competence from another court.

It is worth exploring whether the CC's reasoning is driven by doctrinal positions or if its motivation lies elsewhere. To this end, this contribution analyses CC's case law in light of the existing scholarship and the relevant political and legal contexts surrounding particular decisions.

*Jan Podkowik*

## **Should the judgment of a constitutional court be final? Search of a balance between the court and the legislature**

The purpose of this paper is to initiate a discussion on whether the principle of the finality of constitutional court judgments is a necessary element of contemporary constitutionalism or whether alternative models of relations between the constitutional court and the legislature are possible. These considerations are part of the debate on different manifestations of weak-form judicial review. The paper analyzes a model granting parliament the power to override a constitutional court judgment as a formal institutional response by the legislature to the constitutional court's interpretation of the constitution. The point of reference is the Polish experience - both the period prior to the 1997 Constitution, when the legislative chamber possessed the competence to override certain judgments of the Tribunal, and the period following its adoption, in which the principle of finality and universal binding force of judgments was introduced. It advances the thesis that the competence to override constitutional court judgments need not be viewed as undermining the separation of the judiciary or as weakening the supremacy of the constitution. Under certain conditions, it may instead constitute a form of constitutional dialogue and cooperation, grounded in the principle of good faith. Such a solution allows the legislature to express a different, yet potentially rational and constitutionally justified, interpretation of constitutional norms. In this way, parliament acts as an equal participant and interpreter of the constitution, providing a counterbalance to a strong constitutional court.

The paper proposes several prerequisites and limitations, including a short decision-making timeframe, a restricted scope of application, a requirement of a qualified majority, and an obligation to provide detailed justification.

It concludes that dialogical models of weak constitutional review may - under certain conditions - foster a more stable and more legitimate constitutional process.

*Kálmán Póczy, Pep Vallbé & Gábor Dobos*

## **Judicial Assertiveness in Europe: A Comparative Analysis**

Why do some constitutional courts frequently annul legislation while others show restraint? Despite broadly similar formal powers, constitutional courts in Europe vary widely in their willingness to strike down contested laws. This paper argues that such variation is not solely driven by legal doctrine or political ideology but reflects the interaction between institutional design and strategic political context. We conceptualize judicial assertiveness as a conditional outcome shaped by how features such as appointment procedures, term renewability, review mode, internal voting rules, and access provisions interact with both de facto independence and the surrounding configuration of political power. Using a the JUDICON-EU research project's ruling-level dataset of over 25,000 decisions issued by 19 European constitutional courts (1990–2020), our findings challenge standard assumptions. Renewable terms are positively associated with annulment - but only in systems with pluralistic appointment mechanisms. A priori review increases the likelihood of annulment, especially when access to the court is highly permissive. The chilling effect of dissenting opinions on assertiveness disappears under qualified majority rules. Finally, courts are significantly more assertive when facing fragmented governments with a strong compliance record, while legislative strength dampens judicial assertiveness. Our results reveal that judicial behavior is not dictated by isolated institutional rules or by context alone. Rather, it emerges from the strategic interplay between institutional architecture and political opportunity structures. Our findings offer a more nuanced account of when and why courts strike down legislation - and caution against one-size-fits-all reforms aimed at empowering constitutional adjudication.

*Kristijonas Povylius*

## **Constitutional Courts' Power to Impose Interim Relief Against the Government: A Comparative View**

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Recent years have brought significant developments in judicial interim protection against the government worldwide. For instance, European and national courts have relied on interim measures in judicial review connected to controversial judicial reforms in Poland. In the US, federal courts issued a record number of universal injunctions against the Presidential Administration, a trend that culminated in the SCOTUS decision in *Trump v. CASA*, which limited federal courts' ability to issue such wide injunctions.

Interim protection against the highest governmental branches is more sensitive than interim relief in ordinary disputes: its implications can be wider, and the cases are often intensely political. Moreover, in current turbulent times judicial interference with the government can have broader implications than in more stable periods.

Various jurisdictions adopt divergent approaches. Some, such as Germany or the EU, equip their (constitutional) courts with broad powers to order interim protection against the government. Other, such as Lithuania, do not provide their courts with comparable powers, but rely on alternative mechanisms, such as an automatic suspension in certain cases. In a further group, including Poland or Latvia, this issue remains contested. This complex landscape also bears an EU-law imprint: under the *Factortame I* case logic, national courts may be required to grant interim protection to secure EU rights even where domestic rules would otherwise block such relief against governmental action.

This combination of recent practice, political sensitivity, divergent approaches, and contemporary political turbulence makes interim judicial protection against the government a fertile field for further research. Accordingly, this paper pursues two aims: descriptive (how do selected jurisdictions approach this issue) and explanatory (why different approaches and what effects it might have on a legal system).

*Zoltán Pozsár-Szentmiklós*

## **Pretending to be democratic. Direct decision-making in Hungary, 2008-2026**

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Since 2008, Hungary has experienced several situations in which certain forms of direct decision-making have played a pivotal role in politics. Each of these situations has contributed to a growing distance from the culture of genuine direct democracy. During this time, national referendums ranged from opposition initiatives that caused the collapse of the governing coalition in 2008 to government-organized plebiscites that reinforced the key messages of their political agenda in 2016 and distorted the political contest by presenting propagandistic questions for a vote on the day of parliamentary elections in 2022. Public opinion among those political and social groups who opposed these actions shifted from counter-arguments to direct calls to invalidate these national referendums. Meanwhile, the government has frequently used national consultations in the form of propagandistic questionnaires that have reached every household (an average of one per year since 2010). These instruments lack a legal and professional background, yet they were treated as sources of legitimacy in government communication. The paper argues that the various forms of direct decision-making in Hungary over the past eighteen years have lacked substantive democratic standards. In the long term, one way to reinforce direct democracy is to clarify these standards within constitutional scholarship.

*Andrea Procházková*

## **Amicus Curiae Between Public Interest and Lobbying. What Role Does the “Friend of the Court” Play in Judicial Decision-Making?**

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The institution of the amicus curiae, or “friend of the court,” has become firmly established in both Anglo-American law and continental Europe over the past decades. The contribution examines the role that amicus curiae plays in judicial proceedings and identifies the actors who use this instrument most frequently in the Czech context. It briefly recalls the original purpose of the institution and shows how its function has evolved in judicial practice. Particular attention is devoted to submissions addressed to the Constitutional Court, where amicus curiae appears both in filings submitted by political actors and in those originating from civil society. The contribution outlines the differences observable between these two groups and the questions they raise in terms of transparency, legitimacy, and potential influence on judicial decision-making.

*Alex Ricciardi*

## **The Venice Commission’s approach to election annulments by constitutional courts in the Central-Eastern EU area**

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This paper examines the approach adopted by the Venice Commission to the annulment of elections by constitutional courts in the Central-Eastern European Union area. Focusing on key opinions, reports, and soft-law standards developed by the Commission, the analysis explores how annulment is framed as an exceptional remedy within a democratic constitutional order.

Particular attention is devoted to the principles of legality, proportionality, legal certainty, and effective judicial protection, as well as to the evidentiary thresholds required to justify the invalidation of electoral results.

The paper highlights the Venice Commission’s concern with balancing the need to remedy serious electoral irregularities with the imperative to respect the will of the voters and to maintain public trust in democratic institutions. By comparing selected cases from Central and Eastern EU Member States, the contribution sheds light on recurring tensions between constitutional adjudication and political processes, including the risks of judicial overreach and the instrumentalization of courts.

Ultimately, the paper argues that the Venice Commission’s guidance provides a coherent normative framework aimed at safeguarding electoral integrity and democracy while limiting the destabilizing effects of election annulments in fragile or contested democratic contexts, as illustrated by the Romanian Constitutional Court’s decision to annul the 2024 presidential vote.

*Bernadette Somody*

## **Teaching Constitutional Law under Conditions of Uncertainty: From Knowledge to Skills, from Grades to Feedback**

Legal education in constitutional law has traditionally been organised around the transmission of doctrinal knowledge and assessed primarily through summative exams. While this model ensures familiarity with legal texts and concepts, it tends to render invisible the transversal skills that are essential for constitutional reasoning in practice, such as problem-solving, critical thinking, and effective communication.

These skills are increasingly emphasised by labour market expectations, as they are indispensable for adapting to rapidly changing social and economic environments. Transversal skills have become particularly important in legal systems characterised by rapid and sustained change. In the Hungarian context, the past decade and a half has been marked by continuous transformations of public law, including frequent amendments to constitutional norms and the contestation of fundamental constitutional principles.

The paper argues that the dominance of knowledge-centred curricula and summative assessment obscures the development of transversal competences that are crucial for sustaining the practical relevance of constitutional doctrines.

Drawing on experiences from the DoTS (Digital Badges for Transversal Skills) project at Eötvös Loránd University, the paper presents an educational methodology aimed at making these competences explicit, assessable and subject to continuous feedback. It introduces a method for identifying key transversal skills within constitutional law teaching, evaluating their development, and supporting students through formative feedback and reflective assessment practices. The paper suggests that rethinking how constitutional law is taught is not merely a pedagogical concern, but an essential element of the capacity of constitutional scholarship to respond to legal and societal changes.

*Nazarii Stetsyk*

## **Constitutional Resilience under Fire: the Constitutional Court of Ukraine between European Integration Aspirations and Wartime Realities**

The constitutional judiciary in Ukraine, as in many post-Soviet states, faces long-standing challenges related to judicial independence, institutional legitimacy, and the effective exercise of constitutional review within fragile systems of checks and balances.

These challenges have been dramatically intensified by Russia's full-scale aggression against Ukraine, which has led to the introduction of martial law and the functioning of constitutional institutions under conditions of prolonged emergency. At the same time, Ukraine's candidate status for accession to the European Union has triggered an accelerated process of constitutional and judicial reform aimed at aligning domestic institutions with European rule of law standards.

This paper examines the Constitutional Court of Ukraine through the lens of constitutional resilience, understood as the capacity of constitutional institutions to preserve core constitutional functions, protect fundamental rights, and maintain public legitimacy under conditions of systemic stress. It analyses how the Court operates at the intersection of wartime constitutional governance and European integration, highlighting tensions between emergency powers, constitutional continuity, and rights protection.

Special attention is devoted to recent institutional reforms, in particular the experimental competitive screening procedure for the appointment of judges of the Constitutional Court involving the Advisory Group of Experts with international participation. The paper assesses whether these reforms enhance the Court's resilience by strengthening judicial independence and public trust, or whether they create new vulnerabilities in times of crisis.

*Rafał Stronk*

## **In Search of the Legitimacy of Judicial Review. The Recruitment of Judicial Elites in Poland: Debates and Possible Jurisprudential Effects (An Invitation to Discussion)**

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Since the establishment of the Constitutional Tribunal (“CT”), politicians – more precisely, Parliament – have been involved in the process of appointing judges. Even after the democratic transition, the CT was subject to criticism based on suggestions of a link between the political majority responsible for appointments and the political views of judges reflected in their rulings. Such criticism was countered by representatives of legal elites (including CT judges), who consistently promoted the thesis of the Tribunal’s apolitical nature and claimed that the constitutional court relied exclusively on “objective” legal arguments (Dębska 2015). This divide largely mirrored another fundamental cleavage in Polish politics until around 2005, namely the dispute over the assessment of Poland’s transformation. The absence of a genuine debate on the political entanglement and functions of the CT has also been identified in Polish legal scholarship as one of the factors facilitating the development of the constitutional crisis in Poland. My preliminary research includes: (a) debates concerning the method of selecting CT judges – I move beyond a standard review of academic literature and focus more closely on political and journalistic discourse, including press reports and public statements; (b) the course of individual judicial appointments (arguments in favour of candidates, records of hearings before parliamentary committees, and expressions of protest); and (c) the life trajectories of individual CT judges.

In my paper, I will present the results of my preliminary research as well as the concept of a grant project that I plan to prepare in the first half of 2026. I will also outline a theoretical framework inspired primarily by the work of R. Hirschl and W. Sadurski, and provide a justification of the research topic, pointing to the deficiencies of Polish legal scholarship in studying the biographical, professional, and ideological backgrounds of constitutional judges.

*Viktória Alžbeta Sutórisová*

## **Why some judicial councils cope better than others: A resilience toolkit for future designs**

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Judicial councils have long been promoted as the optimal model of judicial governance for safeguarding judicial independence and enhancing the effectiveness of courts. Despite continued endorsement by supranational bodies and the global diffusion of the model, repeated episodes of democratic backsliding have exposed its significant institutional vulnerabilities. While once properly designed, they can help insulate judges and judicial governance from politics, they also suffer from corporativism and resistance to dynamic change. What is even more troublesome, they seem to magnify problems in those transitioning countries, which previously struggled with culture of judicial independence.

Despite an expanding empirical literature, existing research has not systematically mapped the recurrent design failures of judicial councils nor explained why some councils cope with institutional stress more effectively than others. Moreover, scholarly debates have largely focused on political capture and judicial corporatism, yet paid limited attention to other organisational challenges which no less hamper judicial councils’ long-term sustainability.

The paper thus proposes a comparative, resilience-oriented analysis of the major issue patterns affecting judicial councils in Europe. By examining instances such as diminished effectiveness, internal deadlock, politicisation, and institutional capture, it offers insights into the role judicial councils and their design failures have played in the erosion of judicial independence and identifies vulnerabilities that may be mitigated in future judicial governance reforms.

*Šimon Svoboda*

## **A Vulnerability-Aware Framework of Algorithmic Discrimination Litigation**

This contribution develops a vulnerability-aware framework to understand and address the obstacles victims of algorithmic discrimination face in litigation. Building on the author's previously developed multi-level typology of obstacles to enforcing algorithmic discrimination, including inter alia substantive, procedural or socio-structural obstacles such as evidentiary asymmetries, procedural constraints, and broader socio-structural factors, it argues that these obstacles cannot be adequately explained by traditional equality lenses alone. Rather, they reveal a structurally vulnerable situation of algorithmic discrimination litigants.

The contribution conceptualises vulnerability in the enforcement of algorithmic discrimination by distinguishing four interrelated dimensions: predispositional vulnerability, universal vulnerability, procedural vulnerability, and intersectional vulnerability. By focusing on situations of vulnerability, these dimensions explain why many obstacles in algorithmic discrimination litigation stem from the very specifics of algorithmic decision-making rather than from litigants' individual or group-based characteristics.

It further examines how this vulnerability perspective fits within equality scholarship and adjudication, which are traditionally organised around stable categories and abstract notions of equal treatment. While supporting recent scholarship on the collective aspects of algorithmic discrimination enforcement, it argues for renewed attention to the situations of individual victims of algorithmic discrimination.

Finally, it asks whether and how vulnerability can function as a heuristic for courts and policymakers, informing, e.g. procedural accommodations, evidentiary adaptations, and decision-making sensitive to situations of vulnerability. These insights are tested through a Czech case study, grounding the framework in a concrete Central and Eastern European procedural context.

*Urh Šelih*

## **Blind Spots of Judicial Protection under the EU Pact on Migration and Asylum**

This individual presentation examines the concept of blind spots of judicial protection as an analytical lens for understanding persistent gaps between formally guaranteed rights and their effective realization in EU asylum law. Developed as part of an ongoing doctoral research project, the contribution focuses on how such blind spots emerge within the reformed Common European Asylum System established by the EU Pact on Migration and Asylum, and what they reveal about the constitutional foundations of the EU legal order.

Drawing on the analogy of the physiological blind spot in human vision, blind spots are understood as structural areas where legal protection is formally acknowledged but practically absent. The presentation argues that these blind spots are not accidental or merely technical deficiencies, but systemic features of contemporary asylum governance that raise constitutional concerns, particularly regarding access to justice, effective judicial protection, and the rule of law.

The focus will be on selected procedural mechanisms reinforced by the Pact, such as the fiction of non-entry, accelerated border procedures, and limitations on access to judicial review. These mechanisms illustrate how formal compliance with constitutional and rule of law standards may coexist with diminished judicial protection in practice. By situating these developments within the procedural dimension of the rule of law, the presentation highlights the role of courts, judicial interpretation, and institutional design in shaping the constitutional balance between state sovereignty, EU competences, and fundamental rights.

The contribution aims to demonstrate that identifying and critically examining blind spots is essential for assessing the constitutional legitimacy and resilience of judicial protection in the EU asylum system.

*Mihaela Tofan, Larisa-Cătălina Ionescu & Alina-Adriana Arseni*

### **Constitutional Boundaries for Governing Taxation. Bottom-up Analysis on Deficit of Democratic Tools**

Scholars have extensively examined the democratic deficit at the level of the European Union (EU), yet less attention has been devoted to democratic deficits emerging within Member States (MS). The paper seeks to address this gap from the taxation point of view, observing how the evolution of law-making reshapes the meaning and effectiveness of democratic consent. The research question is whether the erosion of parliamentary control over taxation undermines the constitutional principle of tax legality and, indirectly, the democratic legitimacy of the tax systems. Our research uses a bottom-up approach, starting with Romanian regulation and comparing the MS tax systems, to shape wider observations for EU deficit of democratic instruments in tax field.

Romanian constitution established boundaries for the use of democratic tools towards tax policies (i.e. the prohibition of citizen tax initiative, the principle of certainty of tax liability). The past two decades have been characterized by increasing reliance on delegated rulemaking in tax matters, shifting substantial regulatory power from Parliament to the executive. Delegation is not inherently undemocratic, but Romanian practice enables high prerogatives to the executive, defining essential elements of taxation (tax base, rates, taxable events, and compliance obligations). The governance in taxation through executive acts (emergency ordinances) is founded on the confidence-based legislative procedure. Frequent recourse to this procedure favors risks for democracy, limiting the protection of the citizen rights. Romanian constitutional rules for taxation are not abandoning the consent which supports the democratic process, but they are undermining it, transforming democratic representation from a substantive safeguard into a procedural formality.

The paper argues that unchecked executive dominance in tax law-making is converting a democratic guarantee into a symbolic one, weakening democracy in governing taxation.

*Kristina Trykhlil*

### **Evolving the Rule of Law: Jurisprudential Developments in the Constitutional Court of Ukraine**

The research examines the Constitutional Court of Ukraine's (CCU) development of the rule of law doctrine through its case law, analysing landmark decisions, doctrinal frameworks, and institutional challenges.

Through comprehensive analysis of the CCU jurisprudence, particularly post-2014 developments, this study identifies three pillars of the CCU's rule of law doctrine: legal certainty, proportionality, and dynamic constitutional interpretation.

The study analyses four landmark cases that define the CCU's approach. The October 27, 2020 anti-corruption decision struck down key powers of the National Agency on Corruption Prevention, triggering a constitutional crisis that exposed institutional vulnerabilities. The Skrypka case illustrates how the 2016 constitutional complaint mechanism transformed the CCU from an abstract norm controller into a direct protector of individual rights. Legal certainty cases establish strong prohibitions against retroactive legislation, while lustration decisions balance transitional justice with procedural guarantees.

The CCU faces critical challenges: doctrinal fragmentation without systematic taxonomy, weak enforcement mechanisms undermining implementation, political backlash threatening institutional legitimacy, and debates over appropriate judicial activism. Comparative analysis with European constitutional courts reveals that while the CCU employs similar interpretive methods, it exercises wider discretion amid greater political vulnerability. The reform priorities essential for strengthening constitutional adjudication in Ukraine include systematic doctrinal consolidation, robust enforcement mechanisms, enhanced institutional safeguards, and capacity building through international cooperation. As Ukraine pursues European integration while confronting unprecedented security challenges, a legitimate and effective Constitutional Court is crucial for constitutional democracy's future.

*Metka Vodušek*

## **Legal Scholarship in the Jurisprudence of the Slovenian Constitutional Court**

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This contribution examines the relationship between decisions of the Constitutional Court of the Republic of Slovenia and legal scholarship. It addresses two main questions: first, whether the Court's approach to citing academic literature has changed over the past twenty years; and second, whether the composition of the Court, specifically the identity of the constitutional judges, matters in this respect.

The research analyses all constitutional complaints accompanied by separate opinions at five-year intervals. It examines not only the number and share of citations, but also (i) the nature of the cited literature (including the type of literature, the nationality of the author, and the author's gender) and (ii) the characteristics of the judge citing academic literature (in particular, whether the judge has an academic background and the judge's gender).

While similar research, conducted on a larger scale, has examined citations of foreign judicial decisions (Štajnpihler Božič and Bardutzky, 2023), this contribution seeks to fill a gap in the literature by focusing specifically on citations of academic scholarship.

***Pre-formed panels***

## Reinforcing EU Constitutionalism

*Matej Avbelj, Davor Petrić, Iris Goldner Lang,  
Nika Bačić Selanec (Chair)*

*Matej Avbelj*

### CJEU after the Breakdown of Political Liberalism

Against the backdrop of the decline of political liberalism within the European Union—or at least in several of its member states—this contribution will re-examine how the Court of Justice, as one of the Union’s key sources of public reason, has addressed the most contentious value-based conflicts to date. It then considers how the Court’s jurisprudence could be further developed to help restore the foundations of political liberalism, which is essential for the existence of a viable democracy grounded in the rule of law. The chapter argues that, at this stage of European integration, and given the fragile state of political liberalism, the Court of Justice should place less emphasis on the formal tenets of the EU constitutional order—such as the principles of primacy and the autonomy of EU law—and instead use complex, value-laden cases as opportunities to strike a careful substantive balance between national and supranational constitutional identities. In doing so, the Court could support national governments in resisting and reversing ongoing trends of constitutional backsliding. Finally, the chapter evaluates the extent to which current case law aligns with these normative objectives and explores judicial strategies that could be adopted to further advance this critical trajectory.

*Davor Petrić*

### Reinforcing the European Mandate of National Courts

This contribution examines the key operational role that the Court of Justice places on the national judiciaries, arguing that the evolution and recent developments in the case law of the Court of Justice amount to reinforcing the European mandate of national courts.

Since its earliest years, the Court of Justice has relied on foundational doctrines of direct effect and primacy to place into the hands of national judges the power of judicial review, to bring their law-making function to the forefront, and to free them from institutional and judicial hierarchies established under national law. In the ongoing developments, the Court continues to elaborate the additional elements of this mandate. In recent jurisprudence, the independence of national courts was emphasized as a matter of EU law, with judicial autonomy being at its core. The Court also introduced procedural requirements for national courts to observe in the process of interpretation of EU law, such as giving parties an opportunity to argue with judges about how the law should be interpreted; or obliging the courts to state reasons for their decisions regarding matters of EU law. With this, the European mandate of national courts is becoming much thicker. While its original design was more about formal obligations and powers and was outcome-oriented, the upgrades pertain to additional institutional and procedural elements that are outcome independent. Such a thick conception of judicial mandate has the potential of going beyond formal changes in the outlook and operation of national judiciaries. It is more transformative and strikes at matters that are primarily related to legal culture, and hence opens ways for changing judicial patterns of behaviour and ways of thinking.

Iris Goldner Lang  
**Solidarity and Social Responsibility in the EU**

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This contribution argues that crucial challenges of the Union's constitutionalism lie beyond the judicially-centred narratives and instead examines its sociological legal dimensions. Europe and its citizens are increasingly torn between solidarity and self-interest. This tension will be explored by examining Member States' and EU citizens' duties of solidarity and social responsibility under EU law. She understands solidarity as a fair and just sharing of benefits and burdens among Member States and EU citizens, expressed through mutual support and cooperation, particularly in times of crisis. Closely linked to this, social responsibility is defined as the duty of EU citizens to exercise their rights in a manner that respects the rights of others and contributes to the collective good. In this sense, social responsibility reflects the recognition that individual rights are inseparable from duties towards fellow citizens and towards the values enshrined in Article 2 TEU. Yet, both solidarity and social responsibility face growing challenges: the rise of individualism within European societies and the open self-centeredness and self-interest by Member States. While the Treaties affirm the Union's commitment to the "well-being of its peoples" (Article 3 TEU), practice often reveals reluctance to share burdens or act in the interest of the common good. This contribution argues that solidarity and social responsibility are essential principles underpinning the Union's constitutional framework which precondition any prospects for its deeper integration.

# Equality in Central and Eastern European Constitutionalism I – Exploring the Concept

*Anna Śledzińska-Simon, Ladislav Vyhnánek, Arta Vorpsi,  
Martin Dekleva, Barbara Havelkova (Chair)*

*Anna Śledzińska-Simon*

## **Apples and Oranges: Equality and Difference Before the Polish Constitutional Tribunal**

This chapter engages in a doctrinal analysis of the test applied by the Polish Constitutional Tribunal to assess alleged violations of the principle of equality. It offers a critical examination of the first - and foundational - element of this test: the determination of whether certain individuals or groups are in a comparable legal situation, that is, whether they share a relevant characteristic allowing for meaningful comparison under the challenged provision.

The chapter then explores the underlying mechanisms of this assessment and seeks to systematize examples in which entities are either found to be different, or considered equal but treated differently in a manner deemed justified by the Tribunal.

Our hypothesis is that determinations of sameness are often made a priori or arbitrarily, while findings of difference frequently exhibit bias in favor of privileged or majority groups. This issue is particularly significant in the context of access to constitutional review, as classifying a claimant as lacking a relevant common feature may result in a complaint being declared inadmissible.

The final section addresses the legal status of entities whose rights are not regulated by statute - whether due to legislative omission or more systemic forms of exclusion, often rooted in inadequate parliamentary representation.

The chapter concludes with a normative claim that the Constitutional Tribunal should adopt a more rigorous and equality-sensitive approach to the assessment of comparability—one that acknowledges structural disadvantage and works to prevent the exclusion of marginalized groups from legal protection and meaningful access to constitutional adjudication.

*Ladislav Vyhnánek*

## **Equality and dignity in the Czech case-law: An underappreciated relationship**

The connection between dignity and equality is almost a notoriety in human rights theory. How do the Czech courts reflect this connection? To what extent do they rely on dignitarian arguments when deciding equality and discrimination cases and what impact do these arguments have on the outcome of these cases? This chapter aims to answer precisely these research questions.

An overview of the Czech case-law (of civil courts, administrative courts and of the Constitutional Court) shows that explicitly dignitarian arguments are used rather rarely (with several exceptions). After dealing with these exceptions (and attempting to explain why these exceptions occurred), the chapter provides an in-depth analysis of the reasoning of key discrimination rulings that do not explicitly rely on dignitarian arguments. The analysis focuses on two points 1) are there implicit dignitarian arguments (and the connection to human dignity is just not highlighted by the courts) present in the reasoning and, 2) if not, could the outcome of the cases have changed, if dignitarian argument were - in fact - considered?

*Arta Vorpsi*

## **Equality and Human Dignity in Albanian Constitutional Jurisprudence: Mapping an Unstable Relationship**

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This paper examines the interaction between equality and human dignity in the jurisprudence of the Albanian Constitutional Court. While both principles are recognized as constitutional values, the Court has not developed a coherent framework for their relationship. Instead, dignity appears in different recurring ways: as a principle extending equality protection, as a limiting threshold restricting or substituting equality claims. Through an analysis of selected cases, the paper shows how dignity is inconsistently deployed: at times reinforcing equality such as in case of declaring as unconstitutional the lustration law (Decision no.9/2010), which prohibited a wide group of citizens to be elected or nominated as public officials for an uncertain period of time. In another case (Decision 20/2021) the legal provision on obligatory polygraph test for police officers, but not for judges or prosecutors of the same anticorruption structure, was declared unconstitutional. The Court dealt only with dignity claims, leaving the question of equality untreated. The Court's choice not to apply equality reasoning, despite an evident differential treatment, shows that dignity was used as a threshold for engaging further with equality rather than a complementary value. The paper argues that equality should remain the primary analytical framework for adjudicating discrimination claims, while dignity should function as an interpretative principle that enriches but does not restrict or substitute equality.

*Martin Dekleva*

## **Equal but Different? Constitutional Perspectives on Natural and Legal Persons: Insights from the Case Law of the Slovenian Constitutional Court**

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The paper examines the principle of equality as interpreted by the Slovenian Constitutional Court, focusing on its application to natural and legal persons. While both categories are formally subject to the same judicial test, in practice, this opens the possibility of differing interpretations and applications. By analysing key constitutional decisions, the presentation shows that what appears to be a uniform principle of equality in theory functions, in practice, as a context-sensitive and adaptive constitutional norm within Slovenia's legal order.

## Equality in Central and Eastern European Constitutionalism II – Litigation a Courts' Responsiveness

Barbara Havelkova & Terezi Boková, Donatas Marauskas,  
Biljana Kotevska, Adam Ploszka & Jan Denka, Tilen  
Štajnpihler Božič (Chair)

### Barbara Havelkova & Terezi Boková (Not) raising equality concerns? Lawyers' litigation strategies in Czechia

In a previous paper, we have observed that the Czech Constitutional Court uses several strategies to avoid deciding gender-relevant cases, especially those which could be considered 'hard' or politically contentious. We also noted that all of the (five) cases where the CCC decided a case of discrimination on the basis of sex on merit have been brought by men. This relative lack of sex equality/discrimination case-law could be caused by two main mechanisms. The CCC might be avoiding equality/discrimination questions when they are brought to it, or cases which could be seen as having an equality/discrimination dimension are not plead as such by applicants. Substantively, the general lack of cases and the preponderance of male application could indicate a narrow – formal – understanding of equality, where women's difference (motherhood) or unique experience (reproduction) does not seem to fit the equality paradigm.

In order to examine these questions, we will identify and analyze cases where an equality/discrimination arguments were raised in pleadings but not examined on merit by the Court as well as those where such arguments might have been expected (given ECHR and CEDAW obligations) but were not plead (we expect this sample to be quite large). To explore the question why there is a relative lack of engagement with equality/discrimination arguments, we will conduct interview with several (expected 7-10) litigating lawyers, who are repeat players in the human rights cases before the CCC.

Donatas Marauskas

### The role of constitutional courts in developing equal protection of same-sex couples in the Baltic states

What is the role of constitutional courts in developing notions of equality and non-discrimination? This paper looks at the trend among the three Baltic states toward strengthening the protection of same-sex families. Across the region, it has been the constitutional courts that have played a pivotal role in expanding equality, primarily, the Estonian Supreme Court rulings of 27 June 2017; 13 April 2018 and 26 June 2019; Latvian Constitutional Court rulings 13 November 2020 and 8 April 2021; and Lithuanian Constitutional Court rulings of 11 January 2019 and 17 April 2025.

This paper offers a close analysis of the legal arguments advanced by the parties and the courts. In particular, it examines how litigants and, consequently, the courts choose to frame and develop the concept of equality for same-sex couples: how they derive legal grounds that address equality of same-sex couples, including general guarantees of equality, the right to private and family life or specific prohibitions of discrimination, and to what extent they rely on national constitutional obligations as opposed to regional standards, primarily those derived from the ECHR and EU law.

*Biljana Kotevska*

## **Of Missed and seized opportunities: multiple and intersectional discrimination and the constitutional courts in Croatia, Macedonia, and Slovenia**

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This paper provides a critical and comparative analysis of how the constitutional courts of three post-Yugoslav countries - Croatia, Macedonia, and Slovenia - have addressed and conceptualised multiple and intersectional discrimination. The analysis is situated within a broader historical and legal context, noting that Yugoslavia was a rare example of a socialist state that established constitutional courts with active jurisprudence on equality issues during socialist times. The external influence of the EU is also tracked.

By tracing the evolution of constitutional practice in the successor states that inherited the Yugoslav institutional framework, the chapter highlights both missed opportunities and limited progress in recognising and remedying multiple and intersectional harms. It considers cases explicitly brought as multiple or intersectional discrimination claims, as well as others not framed in such terms which raise those issues. It argues that the constitutional courts have been inconsistent in recognising and addressing intersectional discrimination, due to compartmentalisation and prioritisation of protected discrimination grounds as well as the tendency for disjointing intersectional discrimination claims into either multiple discrimination or single-ground cases.

*Adam Ploszka & Jan Denka*

## **The Principle of Equality as a Vehicle for Social Rights Enforcement in Central and Eastern Europe**

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Social rights are perceived as “secondary” or “aspirational” rather than fully enforceable rights. Constitutional Courts have therefore, alongside or instead of relying on social rights, referred to the principle of equality to declare specific legislative measures that infringe on an individual's social interest unconstitutional.

The paper aims to explore what could be described as the “social dimension” of the equality principle. Through a comparative analysis of Central and Eastern European countries, we aim to determine the role that the principle of equality has played in the judicial enforcement of the right to social security. Building upon the differentiation proposed by Sadurski, we examine the constitutional courts’ case law from three countries (Latvia or Romania, Slovakia, and Slovenia).

With this research, we will test the hypothesis that invoking the equality principle alongside social security rights facilitates the enforcement of these rights before constitutional courts, regardless of the different ways of constitutionalising social rights. However, we assume that these ways of constitutionalisation might translate into different manners and scopes of invoking the “social dimension” of equality, which we will analyze in detail. We will also examine the extent to which the “social dimension” of the equality principle is rooted in the communist legacy and/or international standards. Through this piece, we aim to contribute to the discussion on various strategies for enforcing social rights by providing insights from Central and Eastern Europe.

## **Saviors or Authoritarian Enclaves: The Role of Constitutional Courts Against Autocratization in Central and Eastern Europe**

*Bojan Bugaric, Kasia Krzyzanowska,  
Silvia Suteu, Max Steuer, Gábor Halmai (Chair)*

*Bojan Bugaric*

### **Militant Democracy in the Age of Populism: How Defending Democracy Can Undermine Itself**

Contemporary constitutional debates often frame populism as a democratic pathology, prompting political actors to label opponents indiscriminately and sometimes call for their marginalization or exclusion. For example, in Slovenia, the Constitutional Court considered banning the Left—similar to Greece’s Syriza—and the more centrist Social Democrats as threats to the constitutional order, but rejected the petition. The case highlights how centrist framings of populism can create tense dilemmas between protecting constitutional norms and preserving democratic pluralism.

*Gábor Halmai*

### **The Current and Future Role of the Hungarian Constitutional Court: An Abuser of Constitutional Review and an Authoritarian Enclave**

The first part of the presentation analysis the captured Court’s abusive constitutional review resulting in its active role as an agent of the Orbán governments fifteen years of autocratization. The second part deals with the hypothetical situation, when a newly elected democratic government forced to live together with authoritarian enclaves, such as the Constitutional Court loyal to the previous government and implementing the entrenched illiberal constitution, called Fundamental Law. The presentation raises the more general question of ‘democratic frontsliding’: How authoritarian enclaves can be dismantled by ‘restorative disobedience’, temporary, proportionate exceptions addressing severe violations of the rule of law by previous autocratic governments.

*Kasia Krzyzanowska*

## **Constitutional Transgression: The Constitutional Tribunal of Poland as a (Declining?) Illiberal Enclave**

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This contribution aims to empirically investigate how the established meaning of constitutional norms was contested from within by the constitutional judges themselves. The article focuses on on- and off-bench judicial agency that aims to contest the liberal constitutional precepts. First, the paper systematically discusses constitutional reasoning employed by new judges in three cases: abortion, constitutional identity, and the principle of judicial independence. The paper claims that, although the crisis disrupted the performative continuity of adjudication, its pragmatics have been maintained mainly due to the similar methods of constitutional reasoning employed by former and new judges. This phenomenon (continuity in legal form, rupture in ideological substance) is a vital insight for understanding democratic backsliding.

Second, the paper presents a discursive illiberal contestation of the established constitutional principles conducted by new judges. It shows that though legal concepts used by judges remain nominally the same, they are infused with different meanings by new judges, accompanied by different justification strategies. The paper shows that the established meaning of the principles and legal relations is contested by the constitutional judges themselves, which poses a broader question: can the abrupt change in constitutional reasoning realized on the motion of right-wing political actors, and enhanced by discursive mobilization of the constitutional judges themselves, be accepted as a legitimate evolution of the case-law, or rather is an example of an illiberal enclave? In other words, what are the consequences of the constitutional principles' contestation if the actors conduct it from within the constitutional field? This question addresses a core, universal challenge to constitutional stability in contemporary democracies.

*Silvia Suteu*

## **Militant Democracy in the Electoral Context: The Romanian Constitutional Court and Institutional Failure**

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The Romanian Constitutional Court made global headlines when it invalidated the first round of presidential elections in December 2024. Invoking electoral law breaches by the far-right candidate who had come first, the Court's unanimous judgment was welcomed by many as a form of militant democracy in action. An earlier decision disqualifying a would-be presidential candidate had also been framed in militant democracy language, while de facto creating new electoral eligibility criteria. This draws on recent comparative constitutional insights to assess whether the Court's jurisprudential innovations can be justified on account of institutional failure elsewhere in the system. At the same time, the paper reflects on dysfunction within the Court itself and how this affects its institutional legitimacy, public trust, and the reception of its militant interventions.

*Max Steuer*

## **Constitutional Courts and Regime Change in the 2020s: Beyond the ‘Reluctantly Militarized’ Constitutional Court in Slovakia**

This contribution illustrates the struggles constitutional court judges face in environments not used to personalized images of justice and ‘judicial heroes’, when such judges are called to halt authoritarian advancements; in other words, when they are called to practice militancy, even if ‘just’ as militant rule of law, rather than militant constitutionalism more broadly. Slovakia in the 2020s was subject to these struggles, because, firstly, it has been undergoing autocratizing regime change through deepening illiberal practices and, secondly, it lacks a tradition of ‘judicial heroes’, even in proportion to its regional counterparts that had a similar historical trajectory. Just before the COVID-19 pandemic, the 2020 elections gave rise to a fragile constitutional majority of a coalition that vouched to eradicate corruption from partisan politics. Instead, its legacy remained the COVID-19 emergency mismanagement marked by exceeding the limits of executive competence and removing several safeguards of independent judicial power. In the 2023 early elections, it was replaced by the fourth cabinet of PM Robert Fico, who got radicalized and articulated a commitment to follow the Hungarian route of eliminating checks and balances. The Constitutional Court found itself amidst this maelstrom retaining broad powers and enjoying a largely stable composition. Nevertheless, the judges, mostly appointed after heated coalition-opposition disputes during 2019–2020, were not used to heated public spotlight and partisan attacks. They rarely challenged the executive power, adopting a timid position with the language of restraint and denial of own agency. They started to show signs of self-recognition of agency only reluctantly when it became clear that the post-2023 governing coalition imposes no limits upon itself in its attempts to centralize power, and so any other action would result in the Court itself becoming insignificant.

## **The Romanian Constitutional Court after the 2024 national elections: key elements of rebuilding institutional credibility**

Diana Botău, Andreea Verteș-Olteanu, Ramona-Delia Popescu & Bogdan Dima, Sorina Doroga, Raluca Bercea (Chair)

*Diana Botău*

## **Erosion of Legitimacy and Strategic Politicization of the Romanian Constitutional Court**

By annulling the presidential election in December 2024, based on intelligence reports regarding hybrid warfare and illegal campaign financing (TikTok/AI manipulation), the Constitutional Court of Romania (‘RCC’) acted as a staunch protector of democracy. There are several robust legal and constitutional arguments to justify this move. Primarily, the Court focused on the supremacy of the democratic substance rather than mere proceduralism. It acted as a restorative force to ensure the people’s will is actually theirs, not a manufactured digital consensus.

However, while the Court temporarily shielded the state from extremists, its ruling is backfiring. In making a decision of such magnitude, the RCC shifted from being a referee to being a player. This shift led to an institutional devaluation and to strategic politicization of the RCC by populist parties. For many, the December 2024 decision was not merely a legal ruling; it was perceived as an instance where the Court used its authority to prevent a specific political outcome. Parties like AUR and SOS called for a referendum to limit the CCR’s powers, to change the process of appointing judges, or even to abolish the CCR altogether. They have also challenged the validity of the judicial mandates of some of the Court’s judges. To address this institutional erosion while maintaining its role as the guardian of the Constitution, the CCR may consider a strategy of institutional rebranding and procedural hardening. Alternatively, erosion might be viewed as a temporary fever necessary for the long-term health of the state.

*Andreea Verțeș-Olteanu*

## **Constructing and contesting independence: the status of the constitutional judge in Romania**

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The constitutional judge occupies a paradoxical position: a central player whose independence is constitutionally entrenched, yet persistently questioned in legal, political, and public discourse. Recent developments in Romania reveal a structural tension between the formal design of judicial independence and the recurring suspicions directed at judges. The analysis uses case-law, legislative reforms, and a number of highly visible media controversies to concentrate on the elements shaping the status of the constitutional judge. These cover appointment procedures, allegations of excessive politicisation, judicial challenges to nominations, debates on extended immunity and legal responsibility, as well as the contested role of separate opinions, including attempts to constrain their expression. Particular attention is paid to the ways in which all these instruments, intended as guarantees of independence, have been repeatedly mobilised, criticised, and reinterpreted in moments of constitutional stress.

*Raluca Bercea*

## **The thorny issue of magistrates' special pensions before the Romanian Constitutional Court**

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Generating a reset in the presidential elections, the Romanian Constitutional Court's ('RCC') decisions adopted at the end of 2024 had an important impact on the Romanian social and political situation. The newly elected president supports the cascade of reforms that the prime minister has initiated to stop what is presented as a deep economic crisis, of which some important corrections concern the magistracy. In several public declarations, the prime minister has underlined that while the current earliest magistrates' age of retirement in Romania is 48, the lowest in Europe, the average pension in the justice system reaches 5,000 euros net, much higher than the average national pension. Moreover, due to the formula currently provided by law, magistrates' pensions can be even higher than their salaries. To solve a potential sustainability issue generated, a series of adjustments have been proposed to progressively increase the retirement age to 65 and the length of service required for magistrates from 25 to 35 years. Welcome by the civil society, the measures have been loudly rejected by the magistrates themselves and contested before the RCC. This contribution traces the chronology of a thorny case that has so far counted one decision on procedural grounds, a second request also addressing the merits, and four adjournments, of which one due to the unexpected absence of 4 judges during one session. It also connects it to the analysis of the current public narratives and perceptions regarding the RCC, assessing their impact on the Court's credibility.

*Ramona-Delia Popescu & Bogdan Dima*

## **The Procedural Law of Constitutional Adjudication: A Case Study of the Constitutional Court of Romania**

Comparative scholarship on constitutional justice has largely focused either on institutional design (jurisdiction, composition, and organization) or on substantive doctrine (interpretation and case-law). By contrast, the procedural law of constitutional adjudication—the rules that structure access to the court, participation, evidentiary handling, deliberation, reasoning, and the effects of decisions—remains comparatively under-systematized. This presentation argues that the legitimacy of constitutional justice depends not only on outcomes, but also on procedural guarantees tailored to the distinctive role of constitutional courts, which is related to but not identical with ordinary adjudication. As a case study, we shall examine the CCR's procedure in disputes concerning the annulment of presidential elections, a competence characterized by extreme time pressure and heightened political stakes, where procedural safeguards (participation rights, evidentiary standards, and reasoning requirements) are relevant for institutional credibility, yet not fundamental for delivering a judgment. Moreover, we shall analyze the procedural architecture of a priori review (objections of unconstitutionality) and a posteriori review (exceptions of unconstitutionality). The case study identifies procedural ambiguities and reform-relevant pressure points, and illustrates why constitutional procedure should be treated as a core component of comparative constitutional studies.

*Sorina Doroga*

## **Preparing for the Next Elections: Judicial Power, Democratic Legitimacy, and the Lessons of Romania's 2024 Elections Annulment**

The annulment of Romania's 2024 presidential elections illustrates a broader global dilemma. Electoral processes are increasingly exposed to digital manipulation, opaque online campaigning, micro-targeting, and the use of artificial intelligence to distort both public discourse and voter autonomy. Such phenomena have been shown to evolve much faster than traditional legal remedies and often remain invisible to ordinary procedural frameworks. Courts are therefore pushed into a reactive posture, intervening late and dramatically, with tools that may prove inadequate in the current political environment. In this context, courts (including constitutional courts), remain indispensable actors for the protection of democratic processes; however, their role must be recalibrated in order to preserve their legitimacy. Extraordinary, ex post interventions – especially when conducted ex officio, without adversarial debate or transparent evidence – may safeguard a single election, but they also contribute to the erosion of trust in constitutional adjudication. The Romanian case reveals the risks of transforming courts into crisis managers without an adequate procedural architecture. This contribution explores potential avenues to move faster towards a preventive and procedurally robust model of electoral protection, by combining national constitutional safeguards with EU-level mechanisms. Such mechanisms could include clearer standards for digital campaigning under the Digital Services Act, transparency and targeting rules under the Regulation on political advertising and increased cooperation between national authorities. Only by embedding judicial intervention in a transparent, adversarial, and proportionate framework can courts protect elections without undermining the democratic legitimacy on which their authority ultimately rests.

## The Effects of Judicial Decisions in Time: CEE Constitutional Courts

Monika Florczak-Wątor, Tímea Drinóczi, Endre Orbán,  
Tomáš Lalík, Marek Antoś, Donatas Murauskas (Chair)

*Monika Florczak-Wątor*

### Temporal effects of Constitutional Court judgments in times of emergency: The Polish experience

The presentation will demonstrate how the Polish Constitutional Court shapes the temporal effects of its rulings in various extraordinary situations, ranging from constitutional crises to economic and pandemic emergencies. The analysis will focus on the Court's power to postpone the loss of binding force of provisions deemed unconstitutional, as regulated in Article 190(3) of the 1997 Constitution. The results of research comparing the frequency of the use of postponement during a crisis and during the normal functioning of the state will be presented, together with an analysis of how the Court justifies temporarily maintaining unconstitutional provisions in force. These justifications range from arguments concerning the protection of public finances and the stability of the legal order to those relating to the protection of individual rights and the continuity of public authority in times of emergency. The presentation will test the hypothesis that in extraordinary situations the Constitutional Court relies more frequently on its power to modify the temporal effects of its judgments. This will allow to determine whether the case law from times of emergency strengthens or weakens the protection of individual rights, as well as how it affects legal certainty and the effectiveness of constitutional review. The analysis will demonstrate that the temporal modulation of the effects of Constitutional Court judgments is an important instrument of constitutional governance in times of crisis.

*Tímea Drinóczi & Endre Orbán*

### The Effects of Judicial Decisions in Time: the case of Hungary

The chapter examines how the temporal effects of decisions of the Hungarian Constitutional Court (HCC) facilitate or undermine human rights protection and shape legal certainty. While the HCC has broad discretion in deciding on the temporal scope of its decisions, the doctrinal foundations and practical consequences of these temporal choices remain insufficiently analyzed in the literature. To address this gap, the paper separately examines the HCC's jurisprudence during two distinct constitutional eras: the period under the 1989/1990 Constitution (1990–2011) and the subsequent period governed by the Fundamental Law (2012–present). Through a close reading of statutory developments and evolving interpretive practices, the study explores whether shifts in the constitutional framework and political environment have influenced the Court's approach to the temporal scope of its rulings, and whether this, in turn, affected human rights protection and legal certainty. By situating these developments within comparative debates on Hungary's illiberal political context (2010–present), the paper offers insight into more profound implications of the HCC's approach to the temporal effects of judicial decisions.

*Tomáš Lalík*

## **Temporal Effects of the Slovak Constitutional Court Judgments: Between Prospectivity and Retroactivity**

The article examines the temporal effects of judgments of the Slovak Constitutional Court at three levels: legal norms, the case law of the court and finally sociological implications. In the first part, the paper points to the limited regulation of the temporal effects of judgments. The specificity is that if the court declares a norm unconstitutional, the unconstitutional regulation first loses its applicability by publication of the judgment in the Collection of Laws and if the legislator does not react within 6 months, such regulation loses also its validity. The statutory regulation provides for the renewal of the previous legal regulation at the discretion of court. In the case law analysis, the paper explains how the court has partially modified the scarce regulation over the decades. It has moved from broader accommodation of retroactive effects of its case law to recently relativization of such effects vis-à-vis submissions from courts of general jurisdiction. The current composition of the court is divided on this issue with consensus that temporal effects have retroactive force in criminal law. Human rights are rather absent from the discussions as temporal effects are approached from a legalistic perspective – the powers of the court and the concerns for the rule of law (legal certainty, stability and the prohibition of retroactivity). The final part claims that restoration of constitutionality requires cooperation between various stakeholders with the irreplaceable role of legislator to respond on unconstitutionality in due time. The practice is that both the legislator remains passive after judgments on unconstitutionality and the court tries to limit the submissions from courts of general jurisdiction, thus diminishing their role in protection of constitutionality. However, some exceptions exist. The general discussion and the involvement of NGOs or civil society is missing.

*Marek Antoš*

## **Between Legal Stability and Effective Remedy: The Modulation of Temporal Effects in Czechia**

This chapter examines the multi-layered approach of the Czech Constitutional Court to the temporal effects of its decisions, focusing on the balance between legal certainty and fundamental rights protection. The analysis first establishes the normative baseline in Czechia, where the default rule for the derogation of laws is *ex nunc*. However, the Court frequently modulates this effect by deferring the executability of its rulings to provide the legislature with a grace period to prevent legal vacuums.

A key focus is placed on the duality between the review of legal regulations and individual constitutional complaints. While the former results in *erga omnes* derogation, the latter functions as a cassation mechanism. The chapter explores the grey zone created during deferred executability and the role of ordinary courts during this interim. Furthermore, it analyzes the Court's fluctuating approach regarding whether its interpretive shifts should apply retrospectively to pending cases or only prospectively. This includes the specific practice of reviewing laws that have already been repealed but remain applicable to past legal relations, ensuring that constitutional justice is not bypassed by legislative timing.

The chapter also investigates the phenomenon of the reviviscence of legal norms. Although the Czech legal order generally rejects the automatic revival of previous legislation, a vital exception exists: the original text is revived when an amending act is annulled specifically due to procedural flaws in its adoption. Finally, the chapter evaluates the effectiveness of preliminary measures and the necessity of ensuring a tangible benefit for the successful petitioner to prevent the right to an effective remedy from becoming illusory. By synthesizing these elements, the chapter provides a critical perspective on how the Court's temporal choices either facilitate or undermine the protection of human rights in the Czech Republic.

## Behind the bench: Unveiling the influence of scholars on the development of the reasoning of constitutional courts

*Marieta Safta, Boris Balog, Remzije Istrefi, Kristaps Tamužs, Elena Masnevaite (Chair)*

### *Marieta Safta* **Scholarly Influence in Romanian Constitutional Jurisprudence**

The Constitutional Court of Romania represents a jurisdiction in which the use of academic legal doctrine in constitutional reasoning is comparatively visible and institutionally facilitated. Romanian procedural rules explicitly require the judge-rapporteur to examine relevant Romanian and foreign legal literature during the preparatory stage of cases, creating structural openness to scholarly input.

This presentation analyses how academic doctrine functions within Romanian constitutional jurisprudence, based on the Court's own decisions. It demonstrates that doctrine is employed at multiple levels: as an explanatory tool clarifying legal concepts; as an objective benchmark supporting constitutional reasoning; and, in certain cases, as a guiding framework shaping the structure and outcome of decisions. Romanian case-law reveals frequent references to "doctrine" or "specialised literature," sometimes alongside judicial practice, and occasionally as a decisive element in findings of unconstitutionality.

The Romanian example illustrates a model in which scholarly work operates as an acknowledged partner of constitutional adjudication, strengthening reasoning while raising questions about visibility, accountability, and the boundaries between judicial interpretation and academic influence.

*Boris Balog*

### **Constitutional Scholarship as a Support and Feedback for Constitutional Court in the Slovak Republic**

Constitutional Scholarship does not only have its own scientific goals, tasks and responsibilities. Law, or rather constitutional law, is a social science and its tasks and responsibilities are also social. The task of constitutional scholarship is to provide verified, scientific knowledge and information, as to support society's trust in the democratic order, the rule of law and constitutionality. The responsibility of constitutional scholarship is also to provide support for the Constitutional Court. This support may be seen in two interconnected positions. Constitutional scholarship provides the Constitutional Court with scientific knowledge for its decision-making. At the same time, it provides the court with comments, analyses and research in individual proceedings, which may serve the Constitutional Court as one of the bases for its decision. However, the task of constitutional scholarship is not exhausted by this. Even more important task of constitutional scholarship is to provide the Constitutional Court with professional feedback on its decisions. In a free, democratic society, the decisions of the Constitutional Court are publicly commented on by journalists, politicians and the general public. However, the expert feedback from the constitutional scholarship has a special benefit for the decision-making of the Constitutional Court. Although it may be critical of the Constitutional Court, it is precisely objective criticism built on a scientific basis that is the best input for further development of the judiciary of the Constitutional Court.

The paper, using the example of the Slovak Republic, shall highlight both dimensions of the relationship between constitutional scholarship and the Constitutional Court. The paper will on one hand highlight the use of doctrinal sources in the jurisprudence of the Constitutional Court, but also the critical reactions of constitutional scholarship to some decisions of the Constitutional Court on the other.

*Remzije Istrefi*

## **To 'cite or not to cite': The position of scholarly opinions in Kosovo's Constitutional Court Decisions**

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Although constitutional courts generally avoid relying on academic literature in their constitutional review, there are courts that do so. The role, legitimacy, and methodology of constitutional adjudication are often cited as reasons why scholarly works are not typically referenced by constitutional courts. However, when constitutional courts do engage with scholarship, it is usually in the context of grappling with novel or complex constitutional questions. Since its establishment in 2008, the Constitutional Court of Kosovo has reviewed complex and sometimes unprecedented constitutional issues. Yet, the Court does not reference academic scholarship in its constitutional review. This paper examines whether, in addressing complex and novel issues, the Court might benefit from engaging with academic works in its constitutional review. Empirical studies have demonstrated that scholarship provides interpretive guidance, doctrinal development, and comparative insights that enable courts to navigate difficult constitutional questions. By citing and engaging with academic works, courts can strengthen the legitimacy of their rulings, situate their reasoning within broader theoretical debates, and demonstrate awareness of critiques concerning judicial activism and democratic accountability.

Drawing on examples from the German Federal Constitutional Court, the U.S. Supreme Court, and the South African Constitutional Court, this analysis highlights the dual function of scholarship and its relevance for constitutional review in Kosovo: in enriching constitutional reasoning and as a critical lens that enhances the Constitutional Court legitimacy and coherence. Ultimately, the study argues that academic literature is not merely ancillary to constitutional adjudication but also constitutes an essential element of constitutional dialogue, bridging theory and practice in the pursuit of coherent and legitimate constitutional governance.

*Jolita Miliuviene*

## **Invisible Yet Influential: Academic Scholarship in Lithuanian Constitutional Adjudication**

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Lithuanian constitutional jurisprudence is characterised by a markedly restrained approach to the explicit use of academic legal doctrine. Lithuanian procedural rules do not expressly require engagement with scholarly literature, and references to doctrine in final rulings are rare. Nevertheless, this presentation argues that academic influence on the Constitutional Court of Lithuania is substantial, though largely invisible.

Drawing on selected rulings and preparatory practices, the presentation shows that scholars frequently contribute through expert opinions requested during case preparation, and academic works are commonly consulted by judges and assistants without being cited in the final text. Academic doctrine plays a significant role in explaining new or complex legal concepts, especially in the early years of the Court, and in shaping underdeveloped areas of constitutional doctrine, such as state service, forms of governance, or procedural guarantees.

In exceptional and socially sensitive cases (such as the abolition of the death penalty) the Court relied extensively on legal theory and criminological scholarship, even explicitly citing classical authors. More often, however, scholarly influence is embedded implicitly in the language and structure of constitutional reasoning.

The Lithuanian experience demonstrates a model of latent academic impact that preserves judicial autonomy while benefiting from scholarly expertise, raising important questions about transparency, traceability, and the normative value of silence in constitutional reasoning.

*Kristaps Tamužs*

## **The Constitutional Court of the Republic of Latvia and legal scholarship – not a source of law but coming close**

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Alec Stone Sweet argues that “the political legitimacy of constitutional review has been constructed [...] in interactions among three sets of actors: (1) litigants, those who activate constitutional review processes; (2) judges, those who adjudicate constitutional disputes; and (3) academic lawyers, those who work to build the constitutional law through their scholarly activity”. The present paper focuses on this third type of actors and on their role in the proceedings of the Constitutional Court of Latvia. A plausible argument may be made that the Latvian Constitutional Court is one of the most active users of legal scholarship.

The Court draws benefits from legal scholars in two main ways: inviting them to submit their opinions with respect to specific cases and by referring to legal scholarship as a subsidiary source of law when interpreting the Constitution and other sources of law.

Article 22(3) of the Latvian Constitutional Court Law<sup>[2]</sup> allows to recognize any person as an invited person to a case. Among those persons very frequently are legal scholars specializing in the area of law that is subject of a particular case. For instance, in the case where the Court had to find a balance between the interests of a victim of a crime who as a result of fraudulent actions had lost his ownership of an apartment and a bona fide acquirer. In the process judge rapporteur invited a number of persons to submit their opinions, including 3 Latvian and 2 German legal scholars.

The second part of the paper will address the situations in which the Court refers to scholarly works in its judgments. While, clearly, legal doctrine is not a primary source of law used by the Court, the fact is that writings of legal scholars are not infrequently decisive for decisions of the Court.

## Constitutional Courts in the Crisis of Constitutional Democracy

*Matej Avbelj, Konrad Lachmayer, Pietro Faraguna, Anna Śledzińska-Simon, Goran Selanec (Discussant), Nika Bačić Selanec (Chair)*

*Matej Avbelj*

### Constitutional Crisis as the Crisis of the Constitutional Court

This presentation examines the growing politicization of Slovenia's Constitutional Court through the concentration of judicial appointments by the ruling coalition. It argues that enabling a single political majority to appoint most constitutional judges for long terms amounts to court packing, undermining judicial independence and the foundations of constitutional democracy. The limited response from the legal community is highlighted as a troubling sign of institutional complacency.

The analysis challenges the common focus on balancing “left” and “right” judges, proposing instead a multidimensional understanding of judicial ideology that includes economic orientations, social values, and attitudes toward authority. A pluralistic composition across these dimensions is presented as essential for fostering internal deliberation and producing well-reasoned constitutional decisions. Beyond ideology, the presentation emphasizes the central role of judicial philosophy as the professional framework guiding constitutional interpretation, ranging from activist to restrained approaches. Consistency in applying these interpretive methods is identified as a core element of judicial integrity, while the dominance of ideology over legal reasoning risks transforming courts into political actors. Finally, the presentation underscores meritocracy as the foundation of a credible Constitutional Court. It argues that only highly qualified constitutional law experts with well-developed judicial philosophies can effectively safeguard the constitution. Without merit-based appointments, constitutional adjudication risks devolving into a mechanism of political loyalty rather than an independent check on power.

*Konrad Lachmayer*

### Austrian Constitutional Court – Resilience and Vulnerabilities

The Austrian Constitutional Court (ACC) claims to be the oldest centralised constitutional court and celebrated its 100th anniversary in 2020. However, this claim should not obscure the fact that the ACC was shut down in 1933 during the Austro-Fascist era and only re-established in 1945. The closure was based both on the political situation and on unconstitutional so-called ‘emergency decrees’, which included the forced dismissal of members of the court, the introduction of the requirement of full attendance for a decision to be valid, and the withdrawal of judicial powers.

The historical situation shows the limits of legal, including constitutional, possibilities for creating resilience in advance. Nevertheless, the examples of Poland and Hungary show that in semi-authoritarian conditions, the design of the constitution can be relevant, at least for a certain period of time and to a certain extent. The German example illustrates that the constitutionality of the institutional design of a constitutional court can be a preventive option for ensuring the continuity of constitutional courts when a crisis of constitutional democracy looms.

In this regard, the Austrian Constitution already contains certain provisions, including setting the term of office of Constitutional Court judges until the age of 70. The Constitution was recently amended to include a waiting period for members of Parliament and members of the Government. Discussions about the specific features of the Constitutional Court show potential for progress in strengthening resilience. While the introduction of dissenting opinions is rejected with reference to the populist threat of increased pressure on judges, members of the Constitutional Court are still permitted to engage in secondary activities (e.g. as lawyers) in addition to their work at the Constitutional Court.

*Pietro Faraguna*

## **Constitutional Courts as Litmus Tests in the Crisis of Constitutional Democracies: The Italian Case**

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Constitutional democracy is currently grappling with a global state of “perpetual crisis.” In this climate, constitutional courts serve as vital litmus tests for the health of constitutional democracies, as they are increasingly targeted through institutional neglect, the politicization of appointments, or the deliberate subversion of their independence. While a court’s resilience is often tied to its specific constitutional design, even robust frameworks are not immune to pressure.

Using Italy as a case study, this presentation examines a system specifically designed to ensure neutrality, where only a minority of judges (five of fifteen) are parliamentary appointees requiring a supermajority. Despite these safeguards intended to foster consensus, the Italian Constitutional Court has recently signaled its own vulnerability; in 2025, parliamentary deadlock left the Court operating with a significantly reduced panel for several months. This presentation analyzes these trends of institutional “freezing” and proposes potential remedies to safeguard the functionality and independence of constitutional adjudicators.

*Anna Śledzińska-Simon*

## **Withering Constitutional Courts in Hybrid Constitutionalism. The case of Poland and the EU**

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This presentation provides a critical analysis of the role and legitimacy of constitutional courts in democratic systems undergoing illiberal transformation, with a particular focus on Poland. It examines the authority constitutional courts can or should maintain in the context of rising populism, deep political polarization, and the erosion of the rule of law, where constitutions and constitutional courts are viewed both as safeguards of fundamental democratic values and as potential instruments for legitimizing authoritarian tendencies. The Polish Constitutional Tribunal illustrates these challenges. In recent years, it has been transformed through politicized judicial appointments, internal personnel crises, and contested decision-making practices. Its legitimacy has been further questioned by the Court of Justice of the European Union, which in December 2025 found that the TK does not meet the standards of an independent and impartial court. The Tribunal rejected this assessment by asserting the primacy of the national constitution over EU law, while its rulings are increasingly contested or ignored by the executive and legislative branches. Limited enforcement of its judgments highlights persistent tensions between constitutional authority and political power. Situating the Polish case within a broader European context, the presentation examines emerging forms of hybrid constitutionalism and highlights the need to rethink judicial legitimacy, the enforcement of constitutional norms, and the relationship between national constitutional courts and supranational legal frameworks in safeguarding democracy.

## Situating scholars on the terrain of constitutional expertise

*Darko Vinketa, Sanja Barić, Petar Bačić, Silvia Suteu (Discussant), Matija Miloš (Chair)*

*Darko Vinketa*

### **From scholactivism to fidelity: charting the role of scholars in constitutional controversies**

The literature on “scholactivism” has sought to evaluate the potential role of scholars in constitutional controversies through the attributes of the scholar’s work. Although valuable in articulating the importance of academic freedom, rigor, and integrity, such accounts do not address how the local constitutional context may position the scholar. This paper addresses the gap by distinguishing the role of scholars from that of experts. We argue that all constitutions establish a field of expertise that may stage different kinds of experts. The plurality of the experts’ figures imposes choices before all who would claim a stake in constitutional meaning. In sum, the requirement is to assume some form of constitutional fidelity. Articulating the underlying requirement of fidelity allows us to differentiate between an ascetic and an agonistic stance a scholar may take with respect to constitutional controversies. The differentiation enables an evaluation of the role of scholars in relation to their immediate constitutional context.

*Sanja Barić*

### **Venice Commission: a three-stage (constitutional) expertise formation**

The formation of expert opinions within the Venice Commission (VC) reveals a fundamental paradox in contemporary constitutional governance: how can legitimate authority rest simultaneously on academic independence, political representation, and transnational deliberation?

This presentation argues that the Commission operates through a distinctive three-stage procedure of expertise formation. First, academic communities determine through peer review and disciplinary standards who qualifies as a constitutional scholar, establishing epistemic credentials rooted in intellectual rigor and peer recognition. Second, political actors (member states when appointing commissioners and, arguably the VC itself when selecting rapporteurs) determine whom among recognized scholars shall represent them. Third, the assembled experts engage in collective deliberation to produce authoritative opinions, their expertise reconstituted through transnational dialogue and procedural contestation. The contribution explores six theoretical perspectives that illuminate different dimensions of this triadic structure. These are: 1. epistemic legitimacy and deliberative democracy; 2. reflexive law and structural coupling; 3. constitutional pluralism and heterarchy, 4. Habermasian communicative rationality, 5 critical perspectives on hidden power and domination; and 6. epistemic justice.

Together, these six lenses suggest that the Venice Commission is neither pure expertise nor political domination, but a complex deliberative arena where knowledge, representation, and reasoning interact in ways simultaneously generative and fragile. Legitimate authority requires not choosing one perspective but holding all six in productive tension: maintaining epistemic quality and procedural reflexivity while vigilantly constraining hidden power and actively promoting epistemic justice.

*Petar Bačić*

## **On the possibilities of the Influence of Legal Theory on Constitutional Court Decisions**

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The central thesis of the book titled *The Authority of the Court and the Perils of Politics* by Stephen Breyer, a long-serving Associate Justice of the US Supreme Court, is that Americans in the past complied with Supreme Court decisions even when they disagreed with them because they believed that the Justices did not act 'politically'. In other words, the Court was able to secure public adherence and preserve the rule of law precisely because its rulings, particularly those that may rightly be described as landmark, milestone decisions, were perceived as apolitical. This thesis was sharply criticized by Professor Laurence H. Tribe, as yet another in a series of 'noble lies' and 'well-intentioned myths', which he argued to be wholly unconvincing on the grounds that the Court is anything but an apolitical body. Nevertheless, it is a fact that major judicial decisions constitute a distinctive point of intersection between law and politics, revealing their deep interrelationship. Moreover, it is before the highest courts that the fundamental questions of the constitutional-democratic state are resolved today, and the core mission of constitutional courts ought to be consolidating and advancing democracy. Within this broad framework, legal theory has long occupied a significant space. Landmark decisions frequently contain arguments and opinions authored by prominent legal scholars, which in turn shape public understanding and discourse regarding what law is and what law ought to be. This presentation examines the engagement of law professors as a contribution to the perception of objectivity and apoliticality in the decisions of courts vested with the power of constitutional review.

## Varieties of Politics in Constitutional Adjudication

*Olha Nykorak, Anjali Sirohi & Sana Kamra, Zoltán Szente, Arnisa Tepelija, Max Steuer (Discussant & Chair)*

*Olha Nykorak*

### Limitations on the Institutional Capacity of the Constitutional Court of Ukraine Caused by Political Factors

The Constitutional Court of Ukraine tends to avoid the conceptual development of both the notion of “politics” and that of “political questions”; even in relevant decisions, e.g. concerning the prohibition of the Communist Party. In several decisions, the Court refers to “political questions”, “issues of a political nature”, “political processes”, “political acts”, and “political assessment”, which it does not define and excludes from its consideration. This does not imply that political processes do not influence the Court’s activities. In the Shadow report to Chapter 23 “Judiciary and Fundamental Rights” of the European Commission’s 2023 Report on Ukraine, the state of constitutional justice is assessed critically. It points to politically biased decisions, an imbalance between the powers of the Supreme Court and the Constitutional Court (the latter being de facto a second cassation instance), extension of time limits for constitutional complaints, and judges’ self-recusals. Although on 22 July 2025, the Rules of Professional Ethics of a Judge of the Constitutional Court were adopted, emphasising political neutrality, institutionally the Court is experiencing a difficult period of restriction of its functional independence. A draft law on constitutional procedure, however, was submitted in 2020 and has not been adopted yet. In January 2025, the Constitutional Court was effectively paralysed, not only because of a fragile quorum (13 judges, 12 constitute the minimum quorum, 10 votes are required for a Grand Chamber decision). Parliament, the President, and the Congress of Judges block the completion of the Court’s formation, despite candidates selected through a transparent competition by the Advisory Group of Experts. Until mid-2025, there were only 11 judges. The reasons for non-appointment are political, e.g. insufficient votes in Parliament, as three-quarters of the few decisions adopted since 2022 declared legislative provisions unconstitutional.

## *Anjali Sirohi & Sana Kamra* The Appearance of Inevitability in Constitutional Adjudication

“For the 31 years of its existence, the Supreme Court of India has been an enormously important factor in Indian politics.” (Baxi 1980)

India’s ‘legal reality’ (Gupta 1975) is shaped by constitutional benches of its Supreme Court – not just through the “separation of powers” doctrine but also as an active participant in socio-political issues. Beginning from the Constituent Assembly Debates, right up to the ‘Emergency’ period in India, the Supreme Court declaring laws unconstitutional has been an essentially political act (Baxi 1980). Building on this conceptualization is the advent of recent landmark judgements that situate larger political debates on equality, liberty and discrimination at the forefront of constitutional values. The contribution foregrounds the ‘Sabarimala’ judgement (Indian Young Lawyers Association versus The State of Kerala) and the ‘Decriminalization of Homosexuality’ judgment (Navtej Singh Johar versus Union of India), among others, to help understand the complexity and use of everyday political language amongst constitutional benches. Although unanimous and concurring opinions are important, the dialectics of dissenting opinions is key for that understanding.

Read through this lens and building on the Indian debate, the contribution argues that constitutional adjudication can be approached as a form of meaning-making in which ideas such as neutrality, constitutional morality, and institutional restraint acquire an appearance of inevitability. Attending to judicial language and reasoning in this way allows for an exploration of how constitutional courts articulate their authority and role within the political order. Rather than assuming a homogeneous constitutional subject, this approach renders visible the tensions and silences through which plurality is managed, translated, and occasionally re-signified within constitutional reasoning.

*Zoltán Szente*

## **Strategic Adjudication under Political Capture: Interpretive Practices of the Hungarian Constitutional Court**

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The presentation, based on the presumption that the interpretative practice of a captured court favours the political force that has successfully influenced its composition, examines what strategies were developed and applied by one of the best-known captured courts, the Hungarian Constitutional Court in the last decade, that is between 2016 and 2025 with particular attention to cases implicating highly contested political interests. Rather than treating political influence as a purely structural phenomenon, the presentation focuses on the applied methods of constitutional interpretation as a major tool of judicial adaptation. In doing so, it focuses on the interpretation strategies of the Hungarian Constitutional Court developed and applied in important political matters during the period under review, and on how these strategies supported the government's political goals.

The presentation, applying qualitative and time series analysis, examines the changes in interpretative practice of the Court comparing its decisions before and after 2016 in the same types of constitutional disputes. The aim of the presentation is to contribute to the scholarship on politically captured constitutional courts by moving beyond predominantly descriptive accounts of court packing as an institutional or systemic phenomenon, and shifting the analytical focus to the day-to-day functioning of constitutional adjudication, and in particular to interpretive practices as key mechanisms through which political influence is exercised. By conceptualizing capture as a dynamic process reflected in reasoning patterns and doctrinal choices, the it offers a more fine-grained understanding of how judicial independence may be weakened without the overt abandonment of legal form.

*Arnisa Tepelija*

## **The Politics of Restraint: Constitutional Adjudication in a Fragile Democracy**

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This contribution examines how competing conceptions of politics shape constitutional adjudication in contexts of fragile representative democracy, drawing on selected cases from Albania. It argues that constitutional courts operating in highly politicized environments face structural constraints when the effectiveness of judicial review depends on compliance by the very institutions subject to constitutional oversight. In Albania, this tension is reflected in the Constitutional Court's difficulty in reconciling the binding force of its decisions with deference to the procedural autonomy of the Assembly, revealing a vulnerability inherent in systems of judicial review reliant on political will.

The analysis shows that the Court has sought to manage this institutional tension through a posture of self-restraint, aimed both at avoiding accusations of judicial activism and at accommodating competing political conceptions of democracy. Constitutional adjudication thus emerges as a site in which judicial legitimacy is continuously negotiated through accommodation, underscoring the fragility of constitutional authority under conditions of sustained political pressure.

The paper concludes that constitutional adjudication in Albania reflects the Court's understanding of its own position within a deeply politicized institutional landscape. Confronted with persistent contestation over the role of the Assembly, the Court adopts a legitimacy-preserving strategy of restraint that ultimately constrains its capacity to enforce constitutional mandates. By conceptualizing this restraint as a response to political pressures rather than a purely doctrinal choice, the paper highlights the delicate balance between constitutional authority and judicial survival.

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## Access to Human Rights Justice - Slovenia & its Constitutional Court as a case study

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### *Project presentation*

#### Presenters:

*Veronika Fikfak, Umut Yüksel, Urban Slak  
Piskar, Gaja Podgornik, Ana Lilik*

#### Project description:

Presentation of "Access to Human Rights Justice project" funded by the European Research Council/UK Innovation Fund (aka BreaktheBias). The project seeks to address one of the most challenging problems in the human rights – that of unequal access to human rights justice. It looks at the outcomes of 1,000,000 international, regional, and domestic human rights cases and identifies who is able to turn to human rights bodies and which individuals and groups are unsuccessful in making their claims. By identifying barriers that restrict access and examining the role of lawyers in the process, the project makes a significant advance in the study of inequities in human rights law. By looking at implicit, geographical, and structural legal bias, the project aims to understand the cause of access disparities so that legal processes and existing structures can be redesigned to ensure equal access to human rights justice for everyone. Our presentation will focus exclusively on the case of Slovenia and the role of its Constitutional Court in human rights protection. We analyse how many claims decided by the Constitutional Court are taken to the international level, specifically to the European Court of Human Rights; what role in the process of internationalisation is played by the Slovenian Constitutional Court; who the applicants who sue Slovenia at international level are and how they differ based on nationality, gender, and other factors; and who represents them.

Through this analysis, we can draw conclusions about a variety of questions, including whether the Constitutional Court is biased against specific claimants based on gender or nationality, what barriers claimants with different characteristics face as they seek human rights justice both at the domestic and international levels, whether lawyers encourage the internationalisation of claims, and how trust in institutions affects human rights litigation. Beyond Slovenia, our results contribute to the broader study of constitutional courts and their role in human rights litigation in Central and Eastern Europe. We welcome feedback from constitutional scholars working in this area and are open to collaborations and suggestions for expanding our work to other jurisdictions.



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