

THE CONSTITUTIONAL COURT IN THE MECHANISM OF DOMESTIC REMEDIES IN STATES WITH DIRECT ACCESS TO CONSTITUTIONAL JUSTICE: OPERATIONAL AND ECONOMIC ASPECTS

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Abstract. This article studies the legal status and the performance of the Constitutional Court (hereinafter referred to as the CC). The experience of States with direct access to a body of constitutional jurisdiction enables to distinguish the CC's position in the system of State jurisdictions (with particular economic justification of its activity) and to substantiate its role in the mechanism of domestic remedies. *The aim* of the article is to reveal the CC's place in the mechanism of domestic remedies of States with centralized constitutional review and direct access to constitutional justice on the part of effective protection of the applicants' rights and the state budget in the formation of judicial remedies. *Methodology.* The leading methods of the article are correlation, comparative-legal, dialectical and technical logic methods of research, etc. They enable to compare and contrast international standards in the field of legislation of different European States, to reveal the nature of constitutional and legal conflicts and specifics of the constitutional procedure for the CC's cases. These problems are also investigated using the method of synthesis of financial justification of the activities of the bodies of constitutional jurisdiction and the effectiveness of the results of their activities in the protection of rights and freedoms of an individual and a citizen. This enables to formulate further development and suggestions for improving the legal regulation of the CC's activities in the States that have recently begun to implement this instrument of protecting constitutional human rights and freedoms. *The key results of the study.* It is proven that the CC is a specific body that is the last at the national level to exercise exceptional special powers aimed at protecting human rights and fundamental freedoms. The role of the CC in the system of domestic remedies is revealed. The CC is an autonomous body of constitutional jurisdiction with a constitutional status, independent of the executive and legislative branches. It is substantiated that the CC is factually affiliated to the judicial authorities engaged in jurisdiction. It is proven that the CC's activities are characterized by judicial independence, combined with the powers of the CC judges to decide legal matters within its constitutional jurisdiction. Cases are judicial in nature, and the CC considers them on the rule of law. The decisions adopted shall be mandatory (binding) and shall not be altered by other branches of government. The main functions of the body of constitutional jurisdiction are distinguished into quasi-judicial, cognitive and evaluative, harmonizing. The consistent universal approach of the European Court of Human Rights (hereinafter referred to as ECHR) states that the notion of "court" does not necessarily mean classical jurisdiction, integrated into the judicial system of the state. Finally, the article proves the requirement of recognizing the CC as a "court established by law" essentially and functionally. Consistent approaches and criteria for defining the notion of "court established by law" formulated by the UN Committee on Human Rights and the ECHR's case-law prove that the CC can be identified as the last mandatory domestic remedy before applying to international judicial institutions, subject to the criterion of an effective remedy, formulated by the ECHR's case-law during proceedings in the CC.

Key words: Constitutional Court, "court established by law," jurisdictional body, judicial body, jurisdictional activity, constitutional review, domestic remedy, the right to a fair trial, socio-economic efficiency.

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1. Introduction

The constitutional state requires the existence of institutions capable of constant review and monitoring of the effective protection of human and citizen's rights and freedoms against any violation, including due to the adoption of legislation contrary to the Constitution. Moreover, this mechanism should provide a sound act system that eliminates the possibility of applying unconstitutional laws.

However, countries under constant reforms of public institutions of all kinds and areas (transition countries) daily overcome the initial side effects of implementing any systemic reform. In the legal sector, it is to ensure the judicial protection of human and citizen's rights and freedoms by the legal and procedural instruments of the State during transition. The judiciary is no exception. Namely, it is a natural and obligatory period for the adaptation of society to innovations initiated by the State: from changes in the general course of the State and transformations of certain institutions in this regard, to judicial protection of individual human and citizen's fundamental rights and freedoms. State-level reforms in the field of justice are often also concerned with reforming the body of constitutional jurisdiction. The strategic priority of any democratic State policy is to assert the right to a fair trial as a real guarantee of the protection of human rights and fundamental freedoms and to restore public confidence in courts, which requires comprehensive judicial reform at the constitutional, legislative and organizational levels (Shcherbaniuk, 2016).

The issue of the role of the constitutional justice body in the human rights protection mechanism depends, among other things, on the construction of the judicial system. If the CC belongs to the judiciary, the mechanisms for the protection of fundamental rights and freedoms are sufficiently clear. However, as a rule, the bodies of constitutional jurisdiction are outside the judicial system. This requires clarifying their place in the general system of jurisdictions (both national and supranational jurisdictions). This issue is relevant to all modern democratic States that recognize a specialized institute of constitutional review. With regards to specific options for solving the problem, both general approaches of international legal significance and national specific approaches, related to the specificities of the construction and functioning of the national judicial system, as well as its constitutional and regulatory bodies, are possible. The historical, socio-cultural characteristics of the State legal systems should be taken into account (Bondar, 2017).

In the article, the formation of the theoretical concept of judicial constitutional review and the place of a single body of constitutional jurisdiction in the system of jurisdictional bodies is considered in continuity with the practical realities of today. It should be noted that

the mission of the judiciary, the CC and the legislature is to constantly improve and optimize the judicial processes for the protection of the freedoms of persons in compliance with the requirements of efficiency, economy and effectiveness. Domestic and foreign experience assures that this problem can be solved in several ways, the most effective of which is the appeal of persons not only to one court, but also to the CC. That is, the effectiveness of the protection of rights is enhanced by means of the appeal of persons to several jurisdictions. In the context of constitutional proceedings, the requirement to ensure and observe the guarantees of the fair constitutional review of a case, to ensure direct access of citizens to constitutional justice should be considered.

In this article, we emphasize that the CC plays an extremely important role in the mechanism of the protection of basic (fundamental, constitutional) human rights. This is proven by a doctrinal comparison of the activities of the CC in European countries with direct access to constitutional justice. Moreover, we prove that the CC could be the last mandatory domestic remedy (subject to the criterion of an effective remedy) for an individual to apply to protect rights before applying to international judicial institutions.

2. The Constitutional Court in the system of state jurisdictional bodies

The essence of a centralized form of constitutional review is that a special court (often outside the ordinary court system) has the power to consider the constitutionality of legal regulations. According to this model, the CC exercises constitutional review as a competent authority. Review takes the form of both indirect and direct access. The first is available in general proceedings. The ordinary judge is obliged to suspend the case before him/her in the event of a question of constitutionality of the law applicable to that case and submit a preliminary request to the CC (Conclusion Venice, 2010). The second case involves the submission of an individual constitutional complaint to the CC (usually after all other remedies have been exhausted).

Examples of countries with a centralized model of access to constitutional justice include: Albania, Algeria, Andorra, Armenia, Austria, Azerbaijan, Belgium, Belarus, Croatia, the Czech Republic, France, Georgia, Germany, Hungary, Italy, South Korea, Latvia, Lithuania, Luxembourg, Montenegro, Moldova, Poland, Romania, Russia, Serbia, Slovakia, Slovenia, Spain, the former Yugoslav Republic of Macedonia, Turkey (Conclusion Venice, 2010) and Ukraine, which combined direct and indirect access to justice in recent amendments to the Constitution regarding justice and procedural law in 2017.

The CC in different States with centralized constitutional review and direct access to constitutional

justice (the concept of constitutional complaint) may be in the judiciary. Frequently, they are not integrated into the judiciary as a constitutional justice body. However, these bodies are involved in considering constitutional cases, which are judicial. The question naturally arises whether the CC can be recognized by court, the court established by law. This question is of considerable practical importance, since its solution affects the legal procedure and proceedings for the protection of fundamental human rights and freedoms at the national and international levels. We argue that the CC belongs to these authorities and the following example confirms this.

On July 5, 2018, the ECHR adopted the *Mendrei v. Hungary* (no. 54927/15) decision. In this regard, Dr. Daniel A. Karsai, attorney at law, emphasized that in this very important decision the ECHR had fundamentally changed the understanding of the role of constitutional courts in the system of domestic remedies and the required level of protection of Convention rights. In this case, in particular, the ECHR accepted a legal avenue of making a binding appeal to the Hungarian CC and further considering Mendrei's constitutional complaint to be an effective remedy. Moreover, in this case, the ECHR changed the burden of proof previously vested on the Government of the country regarding the effectiveness of remedies. Last but not least, the impartiality of the proceedings can be seriously questioned (Karsai, 2018).

Therefore, Mr Mendrei was a Hungarian teacher and a chairman of a teachers' trade union. According to the amendment of the National Public Educational Act, most the vast majority of the Hungarian teachers ipso iure became members of the new National Teachers' Chamber. Mr Mendrei claimed that the compulsory membership to this chamber infringed his rights under Articles 10 and 14 of the Convention. However, Mr Mendrei did not challenge the impugned regulation before the Hungarian Constitutional Court under the special constitutional complaint procedure governed by subparagraph 2 of section 26 of the Constitutional Court Act. The ECHR declared Mendrei's complaint inadmissible for the non-exhaustion of domestic remedies. The ECHR stated that the Applicant should have challenged the regulation before the CC of Hungary since this procedure was an accessible remedy offering a reasonable prospect of success (paragraph 20) (*Mendrei against Hungary*, 2018).

This decision by the ECHR suggests that in countries with centralized constitutional review, the CC is implemented into the mechanism for the protection of fundamental human rights and freedoms. For example, in Montenegro a constitutional complaint is an essential remedy in ensuring the protection of human rights and freedoms. A constitutional complaint was initiated into the constitutional system of the country only ten years ago. It was successful enough.

This is supported by the following findings: (1) the constitutional complaint is in practice an easy remedy widely available; (2) the constitutional complaint has come into force in terms of the standards of the Convention; (3) the CC protects not only constitutional rights and freedoms, but also rights and freedoms guaranteed by the ECHR and other international conventions that Montenegro has undertaken to comply with; (4) the CC's decisions on constitutional complaints have expanded the scope of legal protection of guaranteed rights and freedoms; (5) overall, the level of protection of certain constitutional rights in the CC's decisions on constitutional complaints is slowly raised following the standards and the case-law of the ECHR; (6) deciding on priority cases in the proceedings on constitutional complaints is becoming more efficient; (7) the extent of enforcement of the CC's decisions rendered in the proceedings on constitutional complaints is increasing over the course of time. Moreover, direct protection of human rights and freedoms by the CC, in the proceedings on constitutional complaints, increases the impact of this Court, primarily on the exercise of judicial power, primary function of which is the protection of human rights and freedoms (Analysis, 2019).

In fact, the CC stands for another State-level judicial body with a constitutional status that promotes the protection of human and citizen's rights and freedoms and provides an opportunity to counter the dangerous regulatory expansion of the State in general.

Moreover, we emphasize that, essentially and functionally in the mechanism of judicial protection of human rights and fundamental freedoms and in some cases of legal entities, the CC performs according to all the principles, elements, steps, stages and attributes of judicial law-application activities. In addition, the CC activities end in the adoption of decisions mandatory for other bodies in accordance with the requirements of the Basic Law. The CC's human rights function is a direct and indirect manifestation, based on the legal nature of constitutional review, which can be abstract and specific. In the course of a specific constitutional review, human and citizen's rights and freedoms are protected by the CC during proceedings on specific cases on constitutional complaints.

The arguments for recognizing the CC as a full-fledged judicial body are as follows. The CC's role in the system of separation of powers is organically interrelated with other characteristics of the constitutional jurisdictional process, as well as the scope of powers and the legal nature of its acts as the final legal form of constitutional review. The CC has a significant impact on the entire legal system. It operates on the principles of the rule of law, independence, collegiality, transparency, validity and binding nature of its decisions. Moreover, statutory procedure for jurisdictional activities shall be complied with all typical principles, elements, steps, stages and

attributes of judicial law-application activities. Doubts that the CC is a full-fledged judicial body, attempts to view it as a "quasi-court" relate primarily to independent constitutional regulation of its activities. In many countries with centralized constitutional review, the CC is not part of the judiciary, but is institutionally outside the judiciary.

3. Key functions of the body of constitutional jurisdiction

In current constitutional systems, the "soft" model of separation of powers becomes more prevalent, suggesting the partial fulfilment of "organic" or "titular" functions of one branch of power by the other as an element of the system of checks and balances. Numerous State bodies empowered to perform quasi-legislative (law-making) and quasi-judicial functions occur. From this perspective regarding the principle of separation of powers, judicial law-making is not forbidden, but rather permissible in order to seek justice and guarantee human freedom, including political (Shevchuk, 2007).

In the activities of the CC, a cognitive function is clearly traced. Its essence is that the CC studies deeply and comprehends the meaning of the Constitution in the context of mobile social relations and interprets constitutional provisions officially. In addition, it identifies and establishes the conformity of sectoral standards with the constitutional and legal content, affects the development of legal doctrine, law-making process, and law-application practice, including the protection of human and citizen's rights and freedoms.

For example, the absence of a dispute about law, the "loss of meaningful content" of the principle of competition and equality of parties, the impossibility to establish legal facts, etc. differ constitutional proceedings from ordinary proceedings in the courts of the judicial system (Chekryigova, 2010). Furthermore, methods used by the CC and general courts in proceedings are different. For example, in the course of interpreting the provisions of the Constitution, the CC does not act as a legislator, creating new rules, but reveals the meaning and sense of the existing provisions of the Basic Law. Considering constitutional requests and constitutional complaints, this body assesses specific law provisions as the matters of appeals for compliance with the provisions of the Basic Law. Meanwhile, the CC does not study factual circumstances of the case and does not resolve a specific dispute regarding the resolution of an issue of law that falls within the jurisdiction of the courts of the judicial system.

At the same time, the CC is empowered to address issues that are not subject to regulation by the Constitution, but within the legislator's competence, from the perspective of a "negative" legislator, that is, to disqualify a specific legislative provision. In some countries (e.g. Lithuania, Ukraine, Montenegro and

others), the CC is authorized at the same time to indicate the constitutional method of applying such a provision. Moreover, the CC is empowered to mandate specific authorities to execute the CC's decision and to specify the manner of such execution and the timeframe in the decision.

However, we disagree that no legal dispute exists within the framework of constitutional provision review. This approach contradicts the purpose and logic of the constitutional and judicial proceeding in relation to the resolution of constitutional legal cases on constitutional complaints. As a rule, constitutional proceedings do not arise other than on the basis of a conflict of interests and legal positions (Bondar, 2017). Constitutional proceedings provide relevant information on the terms of disagreement (collision, conflict) in a procedure where its subjects seek to convince the CC of the validity of their position on the matter raised. Due to this, constitutional jurisdictional review is traditionally regarded as a mechanism or method of resolving public law disputes, manifested in the discrepancy regarding the constitutionality of legal regulations. And this discrepancy is caused, inter alia, by these regulations' violations of constitutional human and citizen's rights and freedoms, for example in the case of a constitutional complaint.

The relations between the CC and other branches of power are characterized by a harmonizing function. The meaning of this function is to coordinate the activities of public authorities by different interpreting methods, assessment of provisions of the Constitution that enable to achieve constitutionally positive results, to form legal positions, to ensure preservation of constitutional principles, values that determine the basis of the constitutional order (Polyanskiy, 2013).

In this context, the constitutional analysis of interrelations between constitutional proceedings and politics is not limited to technical legal aspects. Access to socio-political, socio-cultural, historically specific, nationally specific and other aspects of the Constitution in its interrelations with laws, performance of constitutional justice bodies is inevitable and absolutely required, which is usually unattainable for the courts of other jurisdictions. Therefore, a constitutional legal maxim should be formulated: interrelation between the constitutional jurisdictional process and politics should be based on constitutionalizing politics rather than subordinating constitutional proceedings to politics and politicization of the constitutional and legal sphere (Bondar, 2017).

The CC plays a significant role in the establishment and development of modern constitutionalism, the Basic Law and constitutional legislation, and accordingly, sectoral legislation. It should be emphasized that the CC's practices, and ultimately the constitutional jurisdictional process, impact on the law-making process. Objectively, due to its activities

and the specific legal force of decisions taken, the CC is progressively approaching the normative and legal practice, law-making. In modern democracies, law-making by constitutional courts is closely related to their powers regarding judicial review of the conformity of legal regulations (laws) with the Constitution, as well as official interpretation and protection of constitutional rights and freedoms in strict accordance with the Constitution.

It should be emphasized that this is a quasi-judicial and human rights function of the CC, which remains an independent body of constitutional jurisdiction with an independent position in the national system of separation of powers (Fish, 2017). The CC's human rights function involves a direct and indirect manifestation and is based on the legal nature of abstract and specific constitutional review. A specific constitutional review provides protection of constitutional human rights and freedoms in proceedings on constitutional complaints, and its decisions are binding.

The general binding nature of the CC's decisions performs the specific regulatory and corrective function of the CC. The specificity of the CC's decisions is in their content that discloses, clarifies the highest abstract normative values, that is, general principles of law, constitutional values and principles, further implemented in all areas of law.

Therefore, the main specificity of the CC's decisions is that they combine normativity and doctrinal principles, determining the integral quality of these decisions and their special impact on the judicial system and the legal system in general. This should also explain their dual purpose in the system of sources of law. The CC's decision is a source of constitutional law, aimed at constitutional regulation by virtue of its own characteristics, regardless of the subject of constitutional review and is always combined with the Basic Law, a constitutional source of law.

The CC regulations have particular, quite specific features of sources of law due to their inherent constitutional and legal specificities. Decisions of the constitutional jurisdiction body are always connected with the content of the Constitution, and therefore they adhere to the Constitution and form with it a special type of constitutional sources of law, which exists in parallel with laws, by-laws, court practice, and other types of sources of law. The casual interpretation of the constitutional provisions of Ukraine in constitutional proceedings is more important than their interpretation by any other body, including the ordinary court (Bondar, 2017).

It should be emphasized that these features of the CC's decisions testify their fundamental impact on other branches of law. They should be considered derivative to other types of litigation. The regulatory unity is formed in the decisions of the CC, due to the intersection of constitutional and other sectoral legal relationships that has been identified in proceedings.

That is, the CCU's decisions reflect a consistent relation between constitutional provisions and sectoral legislative provisions. Moreover, the constitutionally significant regulatory doctrinal nature of the CC's decisions is in a higher legal value than legal regulations subject to review. Statutory interpretation is inseparable from the provision to be interpreted. Furthermore, casual interpretation is inextricably connected with a particular case (incident), and in other cases may play the role of only a specific supporting example, not a general categorical interpretation. In the course of analysing compliance of legislative provisions with the Basic Law of Ukraine, the CC discloses the content of the provisions, but using research methods in terms of disclosing the conformity/inconsistency of its content with the Constitution of Ukraine and the possibility of enshrining the procedure for its application in a separate part of the CC's decision.

That is, in essence, the CC still interprets provisions of the laws, but from the perspective of their constitutional and legal interpretation. The CC finds out the meaning, not the literal content of the provision in a particular case, in the light of specific factual circumstances. Therefore, two independent State jurisdictions, the CC and ordinary courts, are organically interrelated. It should be emphasized that constitutional proceedings are characterized by features of a judicial jurisdiction procedure with significant specificities, but this does not automatically confirm the CCU's status as a judicial body.

4. The Constitutional Court as the "Court Established by Law"

It should be emphasized that for protecting constitutional human rights subject to conventional protection, it is advisable for a person to apply before a body of constitutional jurisdiction as the last domestic remedy before appealing to international courts or relevant international organizations where a specific State with a centralized constitutional review is a member or party (subject to the criterion of an effective remedy).

The issue of exhaustion of all domestic remedies is a practical component of exercising the right to a fair trial guaranteed by Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law" (Convention, 1950).

In this context, the exhaustion of all domestic remedies and the timing of an application are important. The crucial issue is a probable recognition of this application inadmissible before the ECHR if a person has not applied to the CC with a constitutional complaint as

the last domestic remedy when a violated constitutional right subject to conventional protection. The practical importance of recognizing the CC as the last domestic remedy is a reasonable timeframe for dispute resolution and the procedure for calculating procedural time limits.

Article 14, paragraph 1 of the International Covenant on Civil and Political Rights (hereinafter referred to as ICCPR) (Covenant, 1966), Article 6, paragraph 1 of the Convention provide for that in the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by an independent and impartial tribunal established by law. Article 14, paragraph 1 of the ICCPR provides for that this court shall be "competent" (Compendium of Laws, 2013). The Human Rights Committee determines that the notion of a "tribunal" designates a body, regardless of its denomination, that is established by law, is independent of the executive and legislative branches of government or enjoys in specific cases judicial independence in deciding legal matters in proceedings that are judicial in nature (General comment, 2007).

Having analysed substantively the notion of "court" (Sramek v Austria, 1984), the ECHR explained that the court does not need to be understood as a jurisdiction of the classical type integrated into the judicial system of the State (Campbell and Fell v the United Kingdom, 1984). According to Article 6 of the Convention, the main feature of the notion under consideration, is its power to make compulsory (binding) decisions that cannot be altered by non-judicial authorities (Findlay v the United Kingdom, 1997), in combination with a mandate to determine matters within its competence "on the basis of rules of law and after proceedings conducted in a prescribed manner." The function of a court or tribunal is to decide cases within their competent jurisdiction (Sramek v Austria, 1984). This means that the court should be able to make legally binding decisions that cannot be changed by any non-judicial body to the detriment of any party (Van de Hurk v the Netherlands, 1994). The ECHR describes this requirement as an integral element of the notion of court (Morris v the United Kingdom, 2002). The right to a fair and public hearing by an independent and impartial tribunal established by law contains three fundamental elements.

First, the court is formed on the basis of law. Thus, according to Art. 6 of the Convention, criminal and civil cases should be considered by a "court established by law." According to the case-law of the ECHR, this requirement implements the principle of the rule of law, inherent in the Convention and its Protocols. Any other body established otherwise than from the will of people, enshrined in law, would lack the legitimacy required in a democratic society to hear individual cases (Lavents v Latvia, 2002). The concept of "established by law" is not defined in the Convention, but it has two basic

requirements: 1) that this judicial system (a body that enjoys judicial independence) is established and subject to law by parliament; 2) that each court for all hearings be established in compliance with the legal requirements for its establishment (Compendium of Laws, 2013). In other words, the phrase "established by law" applies not only to the legal basis for the existence of a court, but also to its composition in each individual case, including the circumstances under which judges are replaced (within the scope of recusal or self-recusal) (Posokhov v Russia, 2003). It should be emphasized that this is the second fundamental element: court established by law shall be competent. Generally, the competence implies that a particular court is staffed with competent judges with sufficient qualifications and experience to enable them to perform the duties of a judge, in particular as regards binding decisions in accordance with the rules of a particular jurisdiction.

The third element of a court established by law is that this court shall be independent and impartial. The requirement of independence means, in general terms, that tribunals should be free from any form of direct or indirect influence, whether this comes from the government, from the parties in the proceedings or from third parties, such as the media (General Comment, 2007). Impartiality is a guarantee that is linked to the principle of equality before courts and tribunals, as well as involves the idea that everyone should be treated the same. It requires that judges exercise their function without prejudice and in a manner that offers sufficient guarantees to exclude any legitimate doubt of their impartiality. The requirement of independence and impartiality apply to juries as well as judges (Compendium of Laws, 2013). The Human Rights Committee considers the requirements for competence, independence and impartiality of courts to be absolute, i.e. with no exceptions (General comment, 2007).

We emphasize that recognised approaches and criteria for defining the notion of "court established by law" formulated by the UN Human Rights Committee and the case-law of the ECHR do not even require adaptation to the nature of a central body of constitutional jurisdiction with direct access to the CC. These approaches are fully in line with the functional purpose of the CC and its competence in determining cases on the protection of constitutional rights, subject to conventional protection.

5. Conclusion

In this article, the analysis of the experience of States with centralized constitutional review and direct access to constitutional justice enable to identify the CC's place in the domestic remedy mechanism.

We emphasize that in the States with centralized constitutional review and direct access to constitutional justice, the CC can be recognized a court established

by law in the substantive content of the notion under consideration, and taking into account the functional purpose of the CC. The basis for this conclusion is criteria for the activity of a body of constitutional jurisdiction as follows: (1) the CC is a body of constitutional jurisdiction with constitutional status, independent of other branches of government; (2) the CC has a unique, significant, exclusive competence with respect to ensuring a constitutional order that no other governmental and (or) non-governmental body has. The CC determines the conformity of legal regulations with the Basic Law of Ukraine, officially interprets the Constitution of Ukraine, as well as exercises other unique competences exclusively in accordance with the Constitution; (3) the CC carries out specific jurisdictional activity on the basis of the rule of law, independence, collegiality, transparency, openness, complete and comprehensive consideration of legal matters, validity and binding nature of its decisions and conclusions; (4) this CC activity is enshrined in the Basic Law, special laws on the activity of the body of constitutional jurisdiction of States, as well as regulation of by-laws (the CC Regulation) is permitted; (5) the cases are judicial in nature, initiated by persons on the basis of a conflict of constitutional interests and legal positions and subject exclusively to the constitutional competence of the CC; (6) the CC's jurisdictional activities have a clear

procedure (opening of proceedings, authorized composition of judges in proceedings on constitutional cases (panels, chambers, Grand Chamber, etc.), oral and written hearings, broadcasting of plenary and other hearings, etc.). That is, the CC's activities are characterized by all the principles, elements, steps, stages, and attributes of judicial law-application activity; (7) the decisions of this body are compulsory (binding), as a rule final, and cannot be appealed in almost all States with centralized constitutional review, etc.

It is proven that factually the CC should be recognized as another jurisdictional body with the constitutional status that protects the fundamental human and citizen's rights and freedoms as the last public body, mandated for this at the national level. Although the CC is not normally integrated into the judicial system of the State, we emphasize the advisability of appealing to the CC in the case of the protection of the constitutional rights of persons that are both conventional rights and subject to conventional protection. In these cases, the CC should be recognized as "court established by law." This conclusion is based on the constitutional purpose and unique functions of the CC regarding establishment of the constitutional legal order. It could be highlighted that the CC is the last mandatory national remedy (subject to the criterion of an effective remedy, formulated by the ECHR's case-law when considering a case in the CC) before applying to international judicial institutions.

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