HUMAN RIGHTS AND INTERPRETATION OF THE CONSTITUTION

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Abstract: The Constitutional Court, as a guardian of the Constitution, is obliged to ensure respect for the highest fundamental values, principles and guarantees of the constitutional order. The Constitutional Court exercises its concern for the highest constitutional values in a manner that, by calling upon them and interpreting them, it interprets all other constitutional norms, believing that the other constitutional provisions are a normative expression of the fundamental values and principles. The constitutional judges need to adjudicate and decide not only on the facts but also on the right in a way that, through the prism of the integrity of the highest constitutional values, principles and guarantees, prevents the consequences of the application of provisions that do not meet constitutional values. The majority of judges, in their analyses, legal opinions and arguments, decided on a selective and restrictive approach to interpreting the provisions of the Constitution, which, in my opinion, resulted in a failure to provide a comprehensive interpretation and analysis that would fully address the allegations contained in the initiative.
The goal of this analysis is to contribute to clarifying the longstanding (and still present) dilemmas and controversies related to the concept, nature, characteristics, effects and consequences of the theories, manners and methods of interpreting constitutional values, principles and norms.
Keywords: Human Rights, Constitution, Constitutional Court and Interpretation,

1. INTRUDUCTION

"My argument during the debate was that the Constitutional Court, as a guardian of the Constitution, is obliged to ensure respect for the highest fundamental values, principles and guarantees of the constitutional order. Precisely with its interpretations, the Constitutional Court gives substance and meaning to these fundamental values, principles and constitutional guarantees, specifying them in their various manifestations. The Constitutional Court exercises its concern for the highest constitutional values in a manner that, by calling upon them and interpreting them, it interprets all other constitutional norms, believing that the other constitutional provisions are a normative expression of the fundamental values and principles. Freedom in the interpretation of fundamental values is what enables constitutional judges to adjudicate and decide not only on the facts but also on the right in a way that, through the prism of the integrity of the highest constitutional values, principles and guarantees, prevents the consequences of the application of provisions that do not meet constitutional values. In my opinion, if the majority of judges in the constitutional-legal assessment of the disputed provisions of the Law on the Judicial Council approached it through this prism, it would undeniably establish that they can and must be challenged as inconsistent with the Constitution.

The majority of judges, in their analyses, legal opinions and arguments, decided on a selective and restrictive approach to interpreting the provisions of the Constitution, which, in my opinion, resulted in a failure to provide a comprehensive interpretation and analysis that would fully address the allegations contained in the initiative. Consequently and unjustifiably, given the factual and legal situation and the indications of the judges who voted against the resolution, during the hearing of the case, despite the preparatory hearing held, which is itself a clear indication that disputed legal issues have arisen in this specific case, it was not established that the disputed provisions violate the fundamental values and guarantees of the Constitution". (Judge Darko Kostadinovski, Desenting opinion on a Resolution No. 137/2019, Издвоено мислење по предметот У.бр.137/2019 – Уставен суд на Република Северна Македонија)

This is part of my argument in the specific dissenting opinion given below in this paper. My disagreement, as evident from the text, is based on the manner how I interpret the fundamental values and norms in the specific case, for which I have submitted and explained in writing my disagreement with the majority. What is significant is that I use identical or similar arguments in almost all of my dissenting opinions. Why do I put emphasis on this? Simply to underscore the importance of the essential segment in the work of the Constitutional Court and in the decision-making process by constitutional judges - the interpretation of the Constitution, its fundamental values and norms. This is a crucial part of the decision-making process by constitutional judges, and therefore, I will try to draw conclusions in detail from my perspective regarding the methods and techniques I use to interpret constitutional values and norms. The goal of this analysis is to contribute to clarifying the longstanding (and still present) dilemmas and controversies related to the concept, nature, characteristics, effects and consequences of the theories, manners and methods of interpreting constitutional values, principles and norms.

2. WHAT IS CONSTITUTIONAL INTERPRETATION?

Constitutional interpretation is an activity based on a set of theories and methods used by constitutional judges to give meaning to the constitution, its values, principles and norms. Interpretation (*lat. interpretario*) is a creative activity that determines the true meaning and significance of constitutional norms when they are not clear enough, when their purpose and intention are not precise and clear enough, and when a balance must be struck between the written norm, value or principle and the evolutionary changes that have occurred in the meantime. Only the Constitutional Court enjoys the privilege and monopoly of authoritative interpretation, which binds all other bodies and institutions to adhere to and apply it. Constitutional courts and constitutional judges are the supreme interpreters, i.e. the last word in ensuring the meaning of the constitution is fully entrusted to the constitutional judiciary. It impliest two interrelated things: first, judges interpret the constitution and decide according their interpretation, and, second, the reasoning and interpretation on which judicial decisions are based are implemented and undisputed by all state bodies and institutions and also by the citizens.

Seen from this prism, constitutional interpretation is an activity available only to constitutional judges to ascertain and construct the "will of the creators of the constitution", the "spirit of the Constitution", the constitutional meaning of constitutional values, principles and norms, especially when they are undetermined, ambiguous, unclear, or when the Constitution does not provide an answer, when gaps arise or when the Constitution is "silent".

Constitutional values, principles and norms are characterized by abstraction or insufficient determination. They represent a framework that, in its nature, is filled with content and rules that need to be applied to explain specific situations in specific cases. To apply them, their essence must be discovered and realized first. The task to discover and give content to the constitutional values, principles and norms, to discover their meaning and specify it in their different manifestations, is entrusted to constitutional judges. This is the essence of constitutional judicial interpretation. And, in essence, my disagreement with the majority, without exception, is based on the different approaches to interpreting constitutional values, principles and norms. The Constitutional Court decisions are final and enforceable, and their nature requires them to be constitutionally and legally justified, to be based on findings and assessments that stem from the process of interpretation. In this context, I will repeat that constitutional interpretation of constitutional values, principles and norms is the most significant aspect in the debate, decision-making and reasoning of the Court's decisions.

For example, the rule of law is a fundamental value of our constitutional legal order. (Erkvania, 2023). This constitutional value as a concept, contains a series of implicit manifestations from which various principles arise, such as: the principle of constitutionality and legality (which implies supremacy of the Constitution, i.e. for consistency in the legal order, all laws must be in compliance with the Constitution, and all other general provisions, as well as procedures of state bodies, must be in compliance with the Constitution and the laws), the principle of legal certainty, legal predictability, clarity and precision of norms, the principle of acquired rights, the principle of proportionality, the prohibition of arbitrariness, etc. The Constitution, in its normative part, contains a series of other constitutional principles that cannot be viewed in isolation, but as an interdependent system, through the prism of integrity of the highest constitutional values and principles by which they are actually defined. For example, such constitutional principles are equality, ensuring equal access to the courts, independence of the judiciary, prohibition of retroactive effect, etc. In resolving difficult and complex cases, constitutional judges often resort to interpretations and arguments beyond the legal norms, or meta legal arguments, such as: fairness, impartiality, public interest, common good, or to principles such as: social justification, necessity, proportionality, (Judge Darko Kostadinovski, Desenting opinion on the decisions of the Court, У.бр.44/2020-1 и У.бр.50/2020-1 – Уставен суд на Република Северна Македонија, Издвоено мислење по предметот У.бр.44/2020 и У.бр.50/2020 – Уставен суд на Република Северна Македонија), etc. Constitutional judges are not bound by classical judicial mentality because they use different interpretive techniques and styles in their argumentation. The strength of arguments and the authority of legal understanding and reasoning of judges in interpreting, embodied in the process of decision-making or expressing disagreement as dissenting opinions, are what give judges the freedom to interpret and differentiate in their interpretations when discussing and deciding on matters within their jurisdiction (Article 110 of the Constitution of the Republic of North Macedonia), and their jurisdiction is to be the guardians of the Constitution.

What is particularly important to be pointed out is that the Constitutional Court, by its assessment of the constitutionality of laws, by interpreting the norms, principles and fundamental values scope of the human rights and freedoms, it uses to determine their meaning, sense, interconnectedness or mutual conditionality, evolution, contained in the reasoning of its decisions, "informally" but binding as well, are however an authoritative basis and a limitation for the bodies and subjects involved in the implementation of the Constitution. Namely, if the Constitutional Court abolishes a provision of a certain law, the legislator, when re-regulating the norm that has been removed from the legal order due to its inconsistency with the Constitution, must be guided by the reasoning of the decision of the Constitutional Court, by its interpretation, and any possible bypassing or "playing around,

circumventing" of such interpretation would mean disrespecting the decision of the Constitutional Court. Hence, it can be concluded that not only the text of the decision of the Constitutional Court, which is mandatory, final and enforceable, but also the reasoning of the decision itself, which unmistakably is a process of interpretation, is also mandatory not only for the author of the act, but also for all those who apply the respective act. In this sense, the reasoning of the decisions of the Court, as well as the separate opinions of the constitutional judges, are of particular importance!

Traditional view is that when judges decide on cases, they resort to interpretation that implies the use of a group of rules (theories) or techniques (methods) that they use to determine the meaning, the essence of the value, principle or norm and to choose between opposing alternative reasonable interpretations in their normative expression. Three key theories of constitutional interpretation are: textualism, originalism and the theory of living constitutionalism. The list of techniques or methods is larger and includes grammar or textual method, systemic or structural, normative-legal, historical, teleological or doctrinal, precedent, logical, comparative and ethical-moral methods. I will discuss the theories and methods of constitutional interpretation in more detail later.

The process of enforcing a court decision is an extremely complex one, especially when decided by a judicial body composed of multiple judges, as is the case in the constitutional judiciary. The content and quality of the decision are influenced by a number of internal processes and relationships within the Court, as well as external factors. The judges' professional characteristics and abilities, personal qualities, varying degrees of theoretical knowledge, practical skills, life experiences, different interests, abilities, styles, characters, prejudices, attitudes towards key prerogatives, conscience, responsibility, and particularly independence, affect the decision-making process (Antic,1991).

As for the influence of the public, social media and the media, where freedom of thought and expression often exceeds the limits of what is permissible, I already noted that they can inevitably influence judges, especially in cases where "the eyes of the public are wide open".

The combinations of all these variables, some subjective, some objective, are realistically expected in the constitutional courts to lead to differences among judges in understanding the facts, as well as in interpreting the constitutional values, principles and norms. Moreover, due to the dynamics of life and the need to respect the constant changes in society, the real meaning of constitutional values, principles and norms cannot be fully determined by the text itself, and their interpretations depend on the previously mentioned factors. Kelsen also confirms this, according to whom the norm to be applied in a particular case only creates a framework that offers several possibilities for application, but it is important not to go beyond the norm. The interpretation of norms does not necessarily lead to one decision as a single correct decision; on the contrary, different interpretations are possible, which are equally valuable.(Kelsen, 2012 & Antic, 1991).

In modern conditions, the role of constitutional courts extends beyond the traditional understanding of Kelsen's model as a "negative legislator". I fully agree with my dear colleague Jasna Omejec, who says that the defensive role of the Constitutional Court in defending the Constitution today is no longer its only or most significant role. In addition to this role, the interpretative role of the Constitutional Court is gaining significant importance, which, unlike its original defensive function in defense of the Constitution, has a positive impact in establishing standards, criteria and measures in the actions of the state authorities. By interpreting constitutional norms, constitutional courts play an important role in creating and advancing the entire legal order. Modern constitutionalism goes even further by assigning constitutional courts a new protective jurisdiction over fundamental values and principles, human rights and freedoms protected by the Constitution. (Antic, 1991& Omejec, 2009). Constitutional provisions are usually general, undefined and imprecise, especially when it comes to fundamental values, principles and constitutional guarantees. The interpretation of the Constitution, according to Dr. Jutta Limbach, former President of the German Federal Constitutional Court, is not just a pure logical interpretation, but always implies enrichment of the law. However, the dilemma remains as to the extent to which the principle of interpreting by the Constitution allows the judge to restrict or supplement the will of the legislator, despite the undisputed fact that its decisions and interpretations restrict the legislator, making the Constitutional Court essentially a "soft legislator".(Limbach, 2001).

It is believed that the static, mechanical or, as some call it "nameless", without creation and innovation stylized decision of the Constitutional Court or a dissenting opinion of a judge encourage the public perception of the law as stable, secure and safe, which, in my opinion, and that of many others, is wrong.

A decision of the Constitutional Court or a dissenting opinion of a judge can create direct and indirect changes in the law. The dissenting opinion can perpetuate changes, influence the law and eventually become law. Decisions and dissenting opinions supported by constitutional legal arguments that arise from the creative and innovative interpretive action by the Court or judges, by which they give meaning to the fundamental values, principles and guarantees of the Constitution, specifying them in their various manifestations, are the necessary recipe for "good health and condition" of the Constitutional Court. Such interpretive activity of the Court or judges, without

hesitation, has a corrective and reformist power over the evolutionary development of law, legal principles, norms and the spirit of the Constitution. The law cannot and should not stand still while the rest of the world evolves and changes. The discrepancy between the written constitutions and what science and practice call a "living" constitution inevitably imposes creativity, innovation and vision to the judges' interpretive mission of the constitutional values and norms vis-a-vis the social changes and realities, which, in turn, create what is called a living constitution or real constitution. Creative and innovative interpretation stimulates the ambition and sense of conscience and responsibility of judges, prevents lethargy and stagnation in the quality of discussions and decisions, enable progress and develops appropriate criticism of decisions. It provides legal argumens, innovative, creative and visionary interpretations of constitutional fundamental values, principles and guarantees in the spirit of the philosophy of law. This can only increase the credibility and authority of the Court, first to anticipate and accept, but also to influence and trace changes or, more precisely, to harmonize and reconcile the written constitutional values and norms with the spirit of the times. The result of the creative, innovative, visionary interpretation of constitutional values and norms that are in line with the spirit of the times and the philosophy of law does not essentially mean creating new norms, but rather clarifying the existing ones through their interpretation and adaptation, to facilitate their application, although this indirectly may represent creation of law. Authoritative, innovative interpretations may trigger creation of new norms. Hermeneutics is a science of interpreting the written word, according to which to interpret, one must know, recognize and understand the subject matter being interpreted. That is undisputed. However, in the case of constitutional judicial interpretation, it is a matter of interpreting values and norms written in a particular historical moment, when the then-applicable norms, standards and philosophy of law in the particular historical context were accepted. The universality of some values and rights has certainly withstood and "passed" the test of time; some written constitutional values and norms have evolved and acquired some specificities, new standards. Law is not a static category. It evolves and acquires modern physiognomy, modern standards and criteria, sometimes cosmetically, sometimes substantially, in some legal areas, especially in the protection of the human rights and freedoms. It is precisely through this prism that the art and skill of interpretation lie, the connection between the written and the real, the touchpoints of the past and the present, and the vision for the future. In this context, constitutional judges are often confronted with the dilemma of interpreting the "will of the Constitution" or the "will of the creator of the Constitution" or the "real Constitution"? There are different approaches to this dilemma. But, what is significant for me for the interpretative process to be maximized and successful is that it is necessary to interpret not only the "will or spirit of the Constitution" and the "will of the creator of the Constitution" but also the philosophy of law and new standards, especially in the area of human rights and freedoms, which undoubtedly evolve, change, acquire new standards and characteristics. The Macedonian Constitution was written 33 years ago. The framers wrote it and it was adopted in a specific historical context and moment. Some constitutions are much older than the Macedonian. The question arises, whether, despite universalism and unlimited duration of certain values, principles and norms, the interpreter can interpret the Constitution better than its authors? My opinion is that the interpreter can do it better. I have already explained the reasons thereof as I see them in the evolutionary processes and changes over time and the encounter with the new changed realities. Changes are the only constant in life.(Heraclitus).

3. TYPES OF CONSTITUTIONAL INTERPRETATION

The three main theories of constitutional interpretation are textualism, originalism and living constitutionalism.

Textualism specifically looks at the text of the document and is very "literal", static and mechanical in its interpretation. This theory is used to ensure strict adherence to the words of the Constitution. According to textualism, the safest and most consistent way to interpret the Constitution is not to interpret it at all. Instead, the text of the Constitution, every single word, should be someone's guide. This is the most literal of possible ways to interpret the Constitution.

According to the theory of originalism, the most effective and secure method of constitutional interpretation is to analyze the original intent of the people who wrote the Constitution, or the so-called "creators of the constitution". Originalism is fundamentally opposed to the theory of living constitutionalism because its adherents believe that any innovative and creative interpretation, that represents an adaptation to the new time and changes, allegedly leads to a change in the Constitution and is against the original intent of the creators of the constitution or the spirit of the Constitution.(Originalist interpretation of the Constitution).

At first glance, originalism may seem the same as textualism. However, originalism goes further than simply looking at the written word in the Constitution. This includes reading into the text with the help of historical context to determine the priorities and goals of its authors.(Textualist interpretation of the Constitution).

Of all constitutional interpretation theories, "living constitution" is the most flexible and dynamic one. It is also a more modern way of interpreting the Constitution. "Living constitution" is defined as a constitution that changes as

times change. Supporters of this interpretation theory argue that the new political needs and changes in culture and society require adaptation and adjustment of constitutional values, principles and norms to the changes that have occurred. Personally, I am a supporter of this theory. It is in "touch with reality" and such an approach to constitutional judicial interpretation is inevitable, necessary, essential and socially justified especially when we speek about the evolution of the human rights and freedoms. (Samar, 2019)

Constitutional interpretation in the context of originalism can be broader than textualism, but is significantly narrower in scope than perceiving the constitution as a living document. Contrary to the claims of adherents of textualism and originalism, who oppose any deviation from the original intent of the creators of the constitution, living constitutionalism supports and encourages adaptation and awareness of new content in constitutional values and principles that anticipate the spirit and needs of the new era. Critics of this model accuse of judicial supremacy and dominance of the judiciary. In the judicial supremacy model, court decisions generate obligations on all other bodies and institutions by imposing in the explication of the decision a new meaning of constitutional values, principles and norms that may modify the original ones to some extent.

In this context, one of the questions in constitutional judicial theory is why constitutional judges should be respected as much as possible and enjoy undisputed authority. One possible explanation is based on the conceptual relationship between decision-making and interpretation, in the sense that decision-making always entails interpretation, and the process of interpretation by constitutional judges has the highest moral and ethical authority, thus they are expected to be the "conscience of a society". However, this hypothesis also implies a key concern: judges should not impose their political morality or philosophical understanding of what is the best solution for a dispute from a purely moral or political point of view. Different interpretations exist precisely to avoid personal preferences that dominate the judgment of those who have the privilege of being the supreme interpreter, which leads to another challenge, to find reasons to choose one or another constitutional approach, theory and model of interpretation. Why is it better or more appropriate to choose one approach over another from the methods described above? Is there any hierarchy of arguments? Does, for example, the doctrinal argument have a special quality compared to the structuralist argument? The reasons for choosing any of these constitutional approaches are unlikely to have a strictly judicial nature. There can be no justification of a judicial nature for the choice of either a theoretical approach (textualism, originalism, living constitutionalism) or for the choice of a model of interpretation, as there is no universal rule that determines in advance how constitutions should be interpreted among the reasonable alternatives. (Alexy, 2014). Many things depend on the qualifications and personal preferences of the constitutional judge, his political, philosophical or moral standards, which, according to Bobbit, are "artists in our domain". (Alexy, "The Dual Nature of Law",2014 & Alexy, "Two or Three?, 2010). Rubenfeld summarizes this traditional view as follows: "I mind not legitimacy, leave that to politicians and political theorists. All that constitutional judges need to know is how to interpret the law".(Möller, 2007).

I will briefly dwell on the methods, i.e. techniques of constitutional judicial interpretation because the purpose of this article is not the methods themselves but completely different essential characteristics of the interpretation process.

Nine widely accepted methods of interpretation shed light on the meaning of the Constitution, and these are as follows:

- **textual or linguistic-grammar method**, according to which the judge considers and analyzes the meaning of the words in the Constitution, relying on the common understanding of what the words mean or meant at the time they were used in the Constitution as a value, principle or norm. Grammar and syntax rules serve to find the meaning of constitutional norms, according to the motto "follow the text of the norm";

- **historical method,** according to which the judge considers the historical context when a particular constitutional value, principle or norm was drafted and adopted, so that, in the historical context, assessing even the changes, traditions, historical developments, he is able to clarify the meaning. The motto of this method is "follow the historical evolution and connection of the norm". Often, to interpret a particular norm, principle or value, it is necessary to take into account the debates, drafts and all the materials that preceded its adoption. Hence, particularly significant are not only the conditions and circumstances, but also the motives and purpose for which the norm, principle or value was adopted;

- the **method of precedent** assumes that the judge applies rules established by precedents - making decisions in old cases and applying them to new ones;

- the **structural or systemic method** assumes that the judge concludes structural rules (power relations between institutions, for example) from the relationships specifically regulated in the constitution. Drawing conclusions from the design of the constitution indeed leads to some of the most important relationships for which everyone agrees that are established by the Constitution. For example, the Macedonian Constitution analyzes through this prism the separation of the Constitutional Court in a distinct section IV outside section III, which

regulates the provisions on the organization of state power, which is always used as an argument that the constitutional judiciary, as the fourth branch, is not subject to the principle of separation of powers. The advocates of structuralism note that this is a method of interpretation that considers the integral text of the Constitution, not just a segment thereof. In essence, this method supplements the method of logic;

- the **method of comparison** presupposes that the judge, in interpreting the law, uses comparative positions, judgments and decisions in similar or identical situations in different legal systems. The motto of this method is "conclude by using comparisons";

- the **method of logic** assumes complex logical reasoning regarding the content of constitutional values, principles or norms that should be applied to a specific case, always keeping in mind the constitution as a unity of values, principles and norms. The motto of this method is "analyze the thoughts contained in the norm separately to arrive at their logical connection and meaning". Namely, this method should precisely answer or verify whether the meaning of the norm established by other methods of interpretation is logically possible and justified, using a range of tools or means such as argumentum a simile (analogy), argumentum a contrario (concluding from the opposite), argumentum a fortiori (to a greater extent), argumentum ad absurdum, exceptions non sunt extendendae, argumentum ad populum (appeal to the masses), argumentum ad consensus gentium (argument of general consent), etc.;

- the **method of consequences** is particularly important in constitutional judicial interpretation. It is generally known that, in the constitutional court decisions, it is allowed and justified to take into account the possible consequences, ranging from the most diverse social character and nature, to economic, interethnic, etc. This method requires the judge to approach the interpretation of constitutional values, principles or norms through the prism of the normative character and nature of legal rules, but at the same time to have an objective assessment of the possible consequences;

- the **teleological (doctrinal) method** imposes on the judge, in the process of interpretation, to rely on scientific knowledge and philosophy of law, according to the motto "follow the objective meaning and purpose of the norm". In this method, it is essential to discover the purpose and content of the norm (ratio legis). This method is particularly applicable to progressive and evolutionary interpretations of norms, according to the theory of living constitutionalism, and

- the **ethical-moral method** is by far the most controversial and challenging, (Dworkin, 1996), and there are still diametrically opposed views in the constitutional judicial theory and practice. In this model, the judge relies on ethical principles and moral reasoning when interpreting constitutional values, principles and norms, regardless of whether they are embodied in the tradition of natural law or derived from the judge's own moral preferences (Koshy, 2022). Supporters of this model argue over one important fact that general moral and ethical principles are in the basis of a large portion of the text of the Constitution, especially in the essence of fundamental values. When judges rely on moral arguments in interpreting constitutional values, principles and norms, it undoubtedly leads to greater flexibility for judges to incorporate modern values when extracting the meaning of values, principles and norms from the Constitution. (McClain & Fleming, 2023). Ethical and moral arguments are considered by supporters to be extremely important because they cannot only fill gaps in the Constitution, but can also reasonably respond to situations that could not be foreseen at the time of its writing. Critics of using moral-ethical reasoning in constitutional interpretation argue that courts should not be "moral arbitrators". They claim that moral-ethical arguments are based on principles that are not objectively verifiable or measurable. Such a position cannot be challenged with arguments, but what I can argue against such claims is that moral-ethical reasoning in interpretation is correct and useful. It is true that moral-ethical arguments are based on principles that are not objectively verifiable or measurable, and that they can vary from judge to judge, but it is also undisputed that there are minimum standards that delineate the essence of moral-ethical preferences, which must be subject to optimization to the greatest extent possible, and, as such, I believe are extremely significant and are a particularly important mechanism, a tool in the process of constitutional interpretation.

In this context, to better understand the previous discussion, as the author, I think it is important to provide in this part a reflection on an extremely significant segment in the subject of constitutional legal interpretation, i.e. the theory of principles vis-a-vis the principles of proportionality.

4. CONCLUSION

Theory of values and principles vis-a-vis proportionality and necessity

The basis of the theory of values and principles stems from the theoretical difference between the rules and values, i.e. principles. Rules are norms that demand something specific. These are certain "commands". If the rule is positive, and if the conditions for its application are met, then what the rule requires to be done is definitively demanded. If that is done, the action taken is in line with the rule, otherwise, it is contrary to the rule. Even if the

rule (norm) is unclear, imprecise or ambiguous, its application is clarified in the process of constitutional-judicial interpretation. In contrast, constitutional values and principles have such a nature, abstract, framework, with content that can have different manifestations and variations in expression, and therefore they contain inevitable demands for optimization. Because of their essence, they are principles, which need to be understood and clarified. As such (especially when it comes to human freedoms and rights), they require something to be achieved "to the greatest possible extent about the legal and factual possibilities". For this reason, values and principles, in themselves, always represent prima facie demands, and often, in a specific case, they are determined by competing demands for optimization, and often there is a collision and tension between two or more principles. Determining the balance, which is in essence of the principle of proportionality in such cases, is, in my opinion, the most difficult challenge for any constitutional judge. Establishing the appropriate degree of satisfaction or optimization of one value or principle in view of the demands of others can only be achieved by balancing, or by searching for proportionality in each specific case. Therefore, balancing is a special form of applying the principle of proportionality. Balancing, on the other hand, is impossible without interpretation.

The principle of proportionality

The definition of the principle of proportionality as a condition for optimizing a particular constitutional value or principle leads directly to the necessary relationship between the principle and proportionality. The principle of proportionality, which has gained great international recognition in the theory and practice of constitutional control in recent decades, consists of three sub-principles: the principle of practicality, the principle of necessity, and the principle of proportionality in the strict sense. All three sub-principles express the idea of optimization, which relates to both what is factually possible and what is constitutionally possible. The principles of practicality and necessity relate to optimization in terms of actual possibilities. The principle of proportionality in the strict sense relates to the optimization of legal possibilities.

When values and principles are in conflict, as already said, balancing is necessary. Balancing is the subject of the third sub-principle of proportionality - the principle of proportionality in the strict sense. This sub-principle expresses what adaptation means about legal possibilities. It is identical to the rule that can be called "balancing law", which states that "the greater the degree of dissatisfaction with one principle or violation of one principle, the greater the degree of satisfaction with another principle", which is only one aspect of the essence of the nature of the principle of proportionality. The other side is the need for optimization of the constitutional value or principle which is favored when in conflict or tension with other(s), and this represents optimization to the "greatest possible measure". If this is difficult to achieve in the process of interpretation, the alternative to seeking optimization of the principle should be a request for a "guarantee of minimum position" or a request for a "prohibition of great disproportionality".

Dual nature of constitutional rights (human rights)

Constitutional rights have dual nature. Positivity is only one side of constitutional rights, namely their real or actual side. In addition, they possess an ideal dimension. The reason for this is that constitutional rights, emphasizing again, especially those relating to human freedoms and rights, are rights written in the constitution to be "positive to the greatest extent possible". This very demand and its alternatives that arise from the principle of proportionality are the most difficult task for constitutional judges. Human rights are first - fundamental rights, second - universal rights, third - moral rights, and fourth - abstract rights, and have priority over all other norms. The ideal character of human rights does not disappear after they are transformed into positive rights. Human rights, on the contrary, remain connected to constitutional rights and to generally accepted norms of international law, but also to the changes brought about by the spirit of the time. Therefore, the ideal dimension of human rights is present even after their politicization. It is precisely the search for ideal dimension, with demands for optimization to the "greatest extent possible" or alternatives, demands "guaranteeing a minimum position" or demands "prohibiting great disproportion", that requires constitutional judges to seriously understand both the ideal and real dimensions of the law. From this aspect, constitutional judicial interpretation is the most significant segment and the greatest challenge in the proceedings of constitutional judges.

The Constitution does not say "read me broadly" expansively or "read me narrowly" restrictively. The decision to make one or the other must be made as a matter of self-awareness of the constitutional judge. (Posner, 1995). If we add to this truth the well-known words of Supreme Court Justice Hughes, "The Constitution is what the judge says it is".(Hughes, http://c250.columbia.edu›). I believe I have highlighted enough arguments and facts, dilemmas and controversies, to properly understand the enormous burden and enormous responsibility that constitutional judges must bear. How I, as a judge, interpret constitutional values, principles and norms, and whether there is consistency between my theoretical views and their application in practice, the reader will be able to see in my series of books Loyalty towards the Constitution (Loyalty Towards The Constitution", Kultura, 2021; "Loyalty Towards Constitution 2 -Interpretation of the Constitution, Kultura, 2023"; "Loyalty Towards Constitution 3 -Living

Constitutionalism, Kultura, 2024 and "Loyalty towards Constitution Execution of the Constitutional Court Decisions", Kultura, will be published in February 2025).

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