



CONSTITUTIONAL COURT
OF THE REPUBLIC OF BULGARIA

The Role of Constitutional Courts in Guaranteeing the Rule of Law
Concept Paper

It is generally accepted that the concept of the Rule of Law, which is the foundation of liberal democracy, refers to a legal order in which the state power is limited by pre-established rules of conduct, fundamental rights are protected, and the actions of state authorities are subject to independent and impartial judicial review. In this context, Constitutional Courts are playing a particularly important role in ensuring the protection of the Rule of Law¹.

This idea has gradually become a constitutional and international starting point in the organisation of every liberal and democratic state, especially since the Second World War and even more noticeably since the 1990s, following the end of the communist regimes and the gradual enlargement of the European Union. Guaranteeing the Rule of Law has become a criterion for accession to and membership of the European Union, as well as the basis of any consolidated democracy.

However, over the last twenty years or so, the Rule of Law seems to have been put to the test. We are facing a series of crises. In the context of the crises and emergencies we are witnessing, the foundations of the Rule of Law are under serious pressure.

The crises facing our societies, including the rise of populist regimes, the weakening of judicial control mechanisms, the instrumentalisation of the law and the role of the courts in controlling the legislative and executive powers, are all phenomena that could contribute to the real erosion of the role of constitutional jurisdictions and, as a

¹ The term "constitutional courts" should be understood broadly to include not only constitutional courts *strictu sensu*, but also supreme courts exercising constitutional jurisdiction.

result, of the Rule of Law.

The challenges facing the Rule of Law and the role of Constitutional Courts in guaranteeing it can be examined in three areas – regarding guarantees for the independence of Constitutional Courts, the enforcement of court decisions, and their case law in the context of a crisis situation.

Panel 1

Composition and Independence of Constitutional Courts

By examining the composition of Constitutional Courts, the first panel aims to explore a particularly important question: how can the selection and appointment processes for constitutional judges best guarantee independence, impartiality, and, as a result, the legitimacy of the courts, which are entrusted with the fundamental task in every state governed by the Rule of Law of reviewing the constitutionality of laws adopted by the legislature and, in some legal systems, of other acts of state authorities?

This is an important issue, as the role of Constitutional Courts and equivalent institutions has often been questioned in recent years. Criticism and potential conflict with EU law include excessive politicization, the dependence of judges on the bodies responsible for their selection and appointment, ideological instrumentalization of judges, judicial activism, etc. This mistrust often directly calls into question the legitimacy of Constitutional Courts, whose task in a state governed by the Rule of Law is to control the acts of the political majority by legal means. The effective exercise of this function requires a high level of competence, independence, and impartiality.

By analyzing the selection and appointment processes, and in light of comparative analyses of practices in different countries and EU law, the panel aims to shed light on these important issues in order to help ensure, and if necessary restore, public confidence in Constitutional Courts as a body that controls the actions of the political authorities and thus acts as a guarantor of the Rule of Law.

Panel 2

Respect for and Compliance with the Decisions of the Constitutional Court

This panel aims to highlight the paramount importance of Constitutional Court

decisions in guaranteeing the Rule of Law.

At a time when fundamental human rights are constantly evolving, the role of Constitutional Courts is becoming indispensable in the interpretation and application of these rights. In this context, it is worth paying special attention to the influence of Constitutional Court decisions on promoting inter-judicial dialogue in national legal systems and balancing (overcoming) potential conflicts between national and international legal systems.

On the one hand, the application by Constitutional Courts of the European Convention on Human Rights, EU law, and the relevant case law of the ECtHR and the ECJ is of interest. On the other hand, within the framework of this panel, it may also examine the compliance with and the methods of implementation of the decisions of the constitutional courts. This raises questions both about the legal force of the decisions of Constitutional Courts and about their acceptance and implementation (compliance) by their addressees, and especially by the democratically elected legislature. The effects of the decisions of the Constitutional Court on the acts enacted by the general courts are also important. This panel could also examine the impact of the media and social networks on the reporting and perception of the decisions of Constitutional Courts in order to gain a better understanding of court decisions, resulting in the possibility of their respect and enforcement. In this regard, the communication strategies of the jurisdictions in their interactions with the media are important.

Panel 3

Case Law of Constitutional Courts in Crisis Situations

The aim of this panel is to offer reflections on how Constitutional Courts defend the Rule of Law when faced with crises. In recent years, we have faced a number of emergency situations (crises triggered by military conflicts, financial crisis, refugee crisis, pandemic crisis) that have challenged the principle of the Rule of Law as a fundamental value of any liberal and democratic state.

Populist and nationalist movements, which sometimes emerge during or after such crises, can promote the adoption of illiberal policies that undermine the stability of the Rule of Law.

When resolving these emergency situations, state authorities must comply with

the constitutional framework that underpins every legal system.

It should be noted that, in order to overcome these crises, every state takes measures that impose restrictions on the exercise of a number of fundamental rights. However, it remains of fundamental importance that the authorities established by the constitution are legally limited. In one way or another, in every state governed by the Rule of Law, including during a crisis, the limits of their state's powers are subject to judicial review.

More generally, the aim of this panel is to examine how the constitutional framework in individual countries functions during a crisis. Is this framework flexible enough to provide effective solutions for dealing with crises? How are values, and in particular fundamental rights, protected during emergencies? Does a state of emergency allow Constitutional Courts to interpret and apply the law differently than in "ordinary" situations?

Constitutional Courts often do not have a uniform approach. Some courts may accept that a crisis can justify derogating from the usual rules, while others demonstrate their commitment to protecting rights and freedoms regardless of the circumstances, showing a willingness to strictly review decisions taken by the political branches of government. In this context, dialogue between national Constitutional Courts that have ruled on similar cases is important. In particular, this panel will examine whether there are common constitutional principles that guide Constitutional Courts in assessing restrictions on the exercise of fundamental rights during a state of emergency, and beyond. All this with the aim of better guaranteeing the Rule of Law by the Constitutional Courts.