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The Dilemmas and Control Functions of the Constitutional Court's Dogmatic Position

Thesis of the Doctoral Dissertation

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1. Outline of the Proposed Research

The choice of topic for my doctoral dissertation is motivated both by my previous research findings and my personal and professional connection to the subject. My aim in this dissertation is to position the Constitutional Court within the framework of the separation of powers from a perspective not previously explored in academic literature. To achieve this, it is essential that this scholarly work identifies and explores the connections between the institution of the Constitutional Court and the theory and practice of the separation of powers. In line with the title of the dissertation, I will examine constitutional adjudication both in terms of legislation and judicial application.

The main hypothesis of this dissertation is that the Constitutional Court, in terms of its doctrinal position within the branches of power, represents a form of negative judicial power. This term has not yet been employed in any scientific work or academic opinion. The dissertation aims to demonstrate that the Constitutional Court, alongside Kelsen's concept of negative lawmaking, cannot traditionally be considered part of the judiciary but instead operates externally, influencing judicial processes from the outside.

The dissertation will emphasize the cohesion between thematic units, aiming to establish a unified logical chain and thematic connections between the chapters. Through these connections, I intend to develop the content of the topics examined in the dissertation, particularly the Constitutional Court's catalog of powers within the separation of powers system, with special attention to constitutional complaints and judicial initiatives. The dissertation begins with a theoretical foundation, which, based on my hypothesis—that the Constitutional Court represents negative judicial power—demonstrates where the Constitutional Court is situated within the coordinate system of the branches of power. Given the significant role of the Constitutional Court in society, its doctrinal placement within the classical system of branches of power remains a recurring and relevant issue in legal scholarship, warranting detailed examination. To this end, it is recommended to study the specific characteristics and current trends of this institution. The approach to this topic, consistent with its interdisciplinary nature, partially addresses one of the central subjects of state theory and constitutional law debates.

In this light, the primary focus of the research is the concept of the separation of powers. It is well-known that the principle of the separation of powers fundamentally permeates the basic organizational structure of democratic states. I will present how the classic triad of powers

(executive, legislative, and judicial) relates to each other, both domestically and internationally. Following this, I will examine the factors of power separation that are closely related to the problem area of my research topic.

Recent years have seen substantial modifications in the content of the separation of powers. Consequently, legal jargon, in addition to discussing the separation of the three branches, also identifies new factors of power separation that can serve as safeguards against abuses of power. These include the constituent power, the head of state, local governments, the prosecution service, the opposition (as a counterbalance to the executive), second chambers, and other social factors (such as the press). Additionally, institutions relevant to my research topic, such as the Constitutional Court (especially in cases where it holds strong powers), and the tools of indirect and direct democracy (public participation), should be considered.

The primary objective of the dissertation is to unpack key concepts, particularly those related to the constitution and constitutionalism. In a formal sense, the concept of the constitution carries a meaning that includes legal norms and is positioned at the apex of the pyramid of normative systems. Constitutionalism, on the other hand, is an inseparable element of the constitution. The dissertation will also address the substantive criteria of the rule of law, as modern constitutional adjudication presupposes the protection of human rights.

Following a thorough examination of the aforementioned topics, the core part of the dissertation will explore the relationship between legislation, judicial application, and constitutional adjudication. This includes the collective and individual nature of fundamental rights protection. Here, I will closely examine the institution of constitutional complaints, both in the domestic and international (particularly German) context. This part of the dissertation will also highlight the influence of German legal traditions on the Hungarian system of fundamental rights protection. The German Constitutional Court has continuously served as a model for Hungary's own Constitutional Court. Therefore, I will examine both fundamental rights protection systems, with particular emphasis on the German system.

Following the examination of the German context, the dissertation will strive to elaborate on the following thesis statements: It can be fundamentally established that constitutional courts occupy a quasi-legislative role, particularly in terms of negative lawmaking. These courts can act as counterbalances, capable of overturning the norms and decisions of bodies originally empowered by society through primary legislative competence. However, in my view—as emphasized in the dissertation—the examination of the relationship between constitutional adjudication and judicial application is also necessary, particularly in light of genuine constitutional complaints.

The year 2012 brought significant changes to domestic regulations, introducing the institution of genuine constitutional complaints. The constituent power established the authority of the Constitutional Court to annul judicial decisions that are contrary to the Fundamental Law, while also significantly narrowing the possibility of initiating subsequent norm control.

In this regard, the primary task is to examine how the genuine constitutional complaint constitutionally restructures the existing framework in which the Constitutional Court has operated over the past two decades. The professional standpoint has never been unanimous on whether the Constitutional Court performs judicial functions. If we analyze the term "constitutional court," the word "court" naturally leads laypeople to assume that the Constitutional Court engages in traditional judicial activities, particularly in relation to the constitution, specifically the Fundamental Law. However, the function of the Constitutional Court should not be analyzed purely from an etymological perspective, as this would lead to dual conclusions. The relevant chapters of the dissertation aim to explore this intriguing and profound issue. As highlighted in the opening lines of the introduction, I also intend to position the Constitutional Court within the framework of the separation of powers from a previously unexplored academic perspective, aiming to justify its role as a negative judicial power, which represents one of the novelties of this dissertation.

My dissertation focuses not only on the institution of genuine constitutional complaints and the associated distinctions within the separation of powers but also, as repeatedly emphasized, one of the primary goals of this scholarly work is to identify and explore the connections and logical contexts between these topics. I will also attempt to uncover whether constitutional complaints function as an effective remedy. Through the legal analysis of this institution, I will seek to validate the hypothesis I have developed. During and prior to the creation of my dissertation, I firmly concluded that legal practice often operates with conceptual confusion, which this dissertation aims to resolve by clarifying fundamental concepts. The characterization of constitutional complaints as a remedy is not straightforward. It is often perceived as a tool for remedying legal grievances. This perception arises from the fact that some authors place the Constitutional Court within the judiciary, emphasizing that it is part of the judicial power. The thoughts in this chapter of the dissertation can be seen as an overarching problem statement, a starting point for a debate on the function of the Constitutional Court within the separation of powers. In this crucial issue, I primarily intend to highlight that there is no definitive stance on whether constitutional complaints can be considered a remedy, and if

so, whether they are effective remedies. I believe there are strong arguments in favor of constitutional complaints being effective remedies.

In this part of the dissertation, I aim to thoroughly explore this topic, providing substantiated or hypothetical answers to the questions I pose. Among other things, I will examine whether constitutional complaints qualify as legal remedies. Naturally, constitutional complaints are a legal remedy but not a procedural remedy, meaning they can be distinguished dogmatically from procedural remedies available within the judicial system. Legal remedies include not only judicial procedural remedies but also other remedies, such as objections in electoral matters or appeals against administrative decisions. Constitutional complaints concerning constitutional issues also fall into this category. A fundamental question arises in this context: are fundamental rights considered rights? In my view, they are indeed rights, and they are stronger than any other rights. In the dissertation, I will thoroughly examine the role of fundamental rights in society.

The following chapters of the dissertation provide an overview of the Constitutional Court's practice concerning genuine constitutional complaints, focusing primarily on constitutional complaints related to administrative court decisions and Constitutional Court rulings. The selection of this area of law is justified not only by my personal and scientific motivation but also by my professional work, making it reasonable to explore this topic from a scientific perspective. As a lawyer, this is the area I encounter most frequently in my daily practice. In my view—tying back to the problematic issue of the legal assessment of fundamental rights—the difference between specific legal grievances and specific fundamental rights grievances can be better understood through concrete cases that demonstrate what fundamental rights relevance entails and how fundamental rights are considered legal rights. I intend to analyze the topic from a scientific perspective using cases I deem significant. The scientific analysis also helps me continually evaluate my own cases from a fundamental rights perspective.

2. Analytical methods, research methodology

Since 2016, I have been researching the role of the Constitutional Court's placement within the branches of power, as well as constitutional complaints and judicial initiatives. Over the course of nearly ten years of research, I have employed both theoretical and practice-oriented research methods. In writing my dissertation, I aimed to comprehensively address the available literature.

It is well known that research methods in the literature can be divided into two subtypes: quantitative and qualitative. I find it important to highlight that I did not exclude the use of either method in my research. However, qualitative inquiries play a more prominent role throughout the thesis. Thus, I aimed to gain a deeper understanding of the phenomenon or topic under investigation. During the examination of the topics, I often focused on my own experiences and attempted to analyze problematic areas from a specific perspective – the hypotheses I formulated.

Therefore, the main objective of the thesis, in addition to data processing, was to develop a research procedure capable of observing more complex and deeper connections. I scrutinized specific situations – hence the term "qualitative." I aimed to illustrate the reasons behind the research, enabling readers to understand the depth of the phenomenon and more easily relate to the relevance of the study. Within qualitative research methods, content analysis also played an important role in the thesis, and I also tried to enhance the quality of my dissertation through primary and secondary data collection methods.

Through the legal cases presented in the thesis, I attempted to distill the legal nature and significance of specific legal concepts and institutions. In addition to theoretical analysis, I placed emphasis on the practical aspect of the research, making the practice-oriented approach an important part of my research methods.

3. Summary of the Research, Thesis-Like Overview of New Scientific Results

In the dissertation, I successfully validated and supported the hypotheses proposed in the introduction, and based on this, I wish to lay down the following conclusions. As highlighted in the introduction, the aim of the study was to seek points of connection and clarify the conceptual confusions that arise in both legal practice and academic discourse.

The first chapter of the dissertation undertook the task of positioning the Constitutional Court within the coordinate system of the separation of powers. In this context, it dealt with the topic of power separation, which, in my opinion, is an indispensable element of my research. A recurring question in both legal literature and practice is the Constitutional Court's position within the system of power separation when exercising its powers. In my view, the dogmatic placement of the Constitutional Court within the coordinate system of power separation can be approached from different perspectives. As a feature of the continental model, it is an institution

that is organizationally separate from the regular courts. However, if we examine it in relation to governmental power, the literature places it within the broader sense of judiciary as a counterbalance to governmental power.

I emphasized in the dissertation that counterarguments can be raised against any stance. Every conclusion and statement can be justified in a certain context, but a unified position cannot be established. It cannot be definitively stated that the Constitutional Court belongs exclusively to the judiciary, nor can it be claimed that it is merely a negative legislator, as Kelsen suggests, and it cannot be said that it is entirely separate from the other branches of power, since constitutional judges are elected by representatives, who, in turn, are elected by the people. In this context, the Constitutional Court possesses democratic legitimacy. The principle of popular sovereignty implies that everything is traceable back to the people, and every act of public authority originates, directly or indirectly, from the will of the people. The Fundamental Law stipulates that in the Republic of Hungary, all power belongs to the people, who exercise their sovereignty through elected representatives and directly (via referendums). This principle is one of the Fundamental Law's key moral and political tenets. In this light, the legitimacy of the Constitutional Court originates from the broad sense of governmental power, specifically from the legislative body, yet it reviews the constitutionality of laws enacted by this very body. In my judgment, a fundamental question arises as to why constitutional courts have the competence to review the constitutionality of laws and judicial decisions when their legitimacy is derived indirectly from the people and directly from governmental power.

The answer, in my view, lies in judicial independence. The principle of judicial independence is undeniably a characteristic that applies to both regular courts and the Constitutional Court. Constitutional judges become independent from the body that appointed them after they assume their position. They determine their own rules of procedure, meaning they are organizationally independent of the legislature (in the broader sense of governmental power). However, during their proceedings, they often find themselves in jurisdictional conflicts with the legislature, making it impossible to definitively state that the Constitutional Court stands above the legislature.

It can be concluded that there is no exact answer to this question. This issue cannot be addressed with a simple yes or no. The dogmatic position of the Constitutional Court within the system of power separation is a far more complex problem.

Regarding the position within the separation of powers, it is not the institution's place that should be examined. The functions of the Constitutional Court, like life relations in general, have changed in recent years. The cornerstone statements of the dissertation can be summarized

as follows: the Constitutional Court is specifically tied to the legislature through normative control, where it reviews the constitutionality of laws. In this case, the Constitutional Court negatively intervenes in the legislative process by removing laws from the legal system that are unconstitutional. In this context, it acts as a negative legislator, but in legal practice, it also occasionally engages in positive lawmaking.

In light of the above, it can be stated that the Constitutional Court, in terms of the effects of its activities, performs functions similar to those of the legislature, but it cannot be said to be a legislative or super-legislative power. The Constitutional Court is an institution that can review not only the constitutionality of laws but also judicial decisions. To support this, the dissertation prominently presents the relationship between lawmaking, law enforcement, and constitutional adjudication. As is evident from the structure of the dissertation, I examined constitutional complaints from multiple perspectives. The dissertation also addressed the influence of German law, and I emphasized the impact of the German legal system and legal thinking on our legal values in several instances. Thus, the dissertation placed significant emphasis on presenting the characteristics of German fundamental rights protection and constitutional adjudication, as we have readily adopted those traditional regulatory structures on which the German legal system is fundamentally built. It can therefore be concluded that the legal regulations and jurisprudence related to the German Constitutional Court are of paramount importance in light of Hungarian Constitutional Court practice. The dissertation has also demonstrated that the German legal system has had a significant influence on the system of fundamental rights protection in Hungary.

In the subsequent chapters, I reached the conclusion that the Constitutional Court is an institution that can review not only the constitutionality of laws but also judicial decisions. In the case of both the old and the new "real" constitutional complaints, the Constitutional Court has an impact on individual cases (legal disputes), so this function of the Constitutional Court clearly falls within the realm of adjudication. There are scientific viewpoints that argue that since 2012, the Constitutional Court has predominantly performed tasks that belong to the adjudicative branch of power, functioning as a quasi-fourth level in the system of legal remedies. Before 2012, the Constitutional Court did not have such extensive competence, as the real constitutional complaint was only introduced in 2012. However, as the dissertation also notes, when examining the functions of the Constitutional Court, it can be established that it does not perform regular judicial activities, but it certainly influences the judicial branch of power (externally, beyond the judicial organizational system) by nullifying final judicial decisions (or the legal provisions underlying judicial decisions) that are unconstitutional.

Therefore, its activities do not belong to the judicial power, but at most, it can act as a restrictor of it. In my opinion, this is why the Constitutional Court can be referred to as a negative judicial power, a term that, according to my research, has not yet appeared in any prior scientific publication by other researchers. Thus, the novelty of this dissertation is evident in this regard as well.

The dilemmas surrounding the Constitutional Court's doctrinal positioning led me to delve deeper into the examination of the (genuine) constitutional complaint. Legal theory often grapples with conceptual confusion regarding the Constitutional Court's relationship with the branches of government, a situation mirrored in judicial practice as well. In most cases, it remains unclear to professionals what specific function the genuine constitutional complaint serves within our legal system. This ambiguity prompted me to address the remedial nature of the constitutional complaint in my dissertation, with particular emphasis on the relationship between the Constitutional Court and the ordinary courts.

Regarding the remedial nature of the constitutional complaint, it can indeed be classified as a remedy, but it is not a legal remedy within litigation; thus, it can be doctrinally distinguished from remedies used within the judicial system. While all legal remedies within litigation are remedies, not all remedies are related to litigation. Defining the abstract constitutional concept of a remedy is challenging. László Klicsu points out that some literature suggests that the right to a remedy has a dual value: (1) it provides an opportunity to enforce claims and (2) it grants the right to a review. Remedies that are not related to litigation still address rights, but they are extraordinary, rather than ordinary, remedies.

A fundamental question arises: Are fundamental rights indeed considered rights? In my view, they are, and they are stronger than any other types of entitlements. To investigate the remedial nature of the constitutional complaint, I also considered the case law of the European Court of Human Rights (ECHR). The dissertation, through specific legal cases, highlighted the positions that have emerged concerning the remedial nature of the constitutional complaint. The public often perceives the constitutional complaint as a tool to remedy a legal grievance. This perception stems from some authors placing the Constitutional Court within the judiciary, thereby emphasizing the view that the Constitutional Court is part of judicial power.

By examining the ECHR's cases, the dissertation demonstrated that changes occurred after 2018, wherein the ECHR determined that if a petitioner wishes to approach the Strasbourg Court, they must first exhaust the available constitutional complaint as a "quasi" necessary remedy, and only then can they approach the ECHR. From this, it can be concluded that the

Constitutional Court's role in the fundamental rights protection system is deemed effective by the ECHR.

Beyond the analytical examination of the genuine constitutional complaint, subsequent chapters of the dissertation provided an overview of the Constitutional Court's practice concerning this legal institution. The dissertation primarily focused on constitutional complaints related to administrative judicial decisions and Constitutional Court rulings. I emphasized in the dissertation that, as a lawyer, I mostly encounter administrative law; therefore, I considered it essential to examine constitutional complaints related to administrative judicial decisions. In this chapter, I explored what happens when a governmental procedure is unfair: whether the fairness of a judicial decision upholding such a decision can also be questioned, and whether the judicial process underlying that decision can be considered fair.

In my view, the fairness of administrative authority procedures impacts the fairness of administrative litigation as well. As I highlighted in the introduction, a well-developed scientific work provides insight not only into the specific legal field but also into other areas of law. Thus, the dissertation also explored theoretical and practical issues concerning civil matters. This part of the dissertation examined the role of fundamental rights in private legal relationships. The question of horizontal effect is a delicate issue in Hungarian law because it often transforms into a debate about the relationship between ordinary courts and the Constitutional Court, which is a cornerstone of my research area.

In addition to the classical areas of law, the dissertation also addressed the interpretative frameworks of constitutional criminal law and fair criminal procedure. Furthermore, it discussed the attitudes of ordinary courts towards fundamental rights, reflecting a sociological perspective that brings us closer to understanding the relationship between the Constitutional Court and ordinary courts. In this chapter, I concluded that the boundaries between ordinary judicial review and fundamental rights review are often blurred. For instance, it is unclear what specific role each institution plays within this framework and what the exact relationship between the Constitutional Court and the ordinary courts is. Since there is no unified stance, judges' views on the application of fundamental rights are also incoherent.

A small proportion of criminal judges believe that constitutional fundamental rights can be invoked as an independent legal argument, even against statutory law, while nearly one-third confirmed the view that adhering strictly to statutory provisions meets constitutional requirements. This suggests that practical considerations in legal application often take precedence over fundamental principles.

The dissertation also focused on the role of judicial initiation. The connection in this chapter was the examination of how much judicial initiation plays a role in the functioning of ordinary courts. This legal institution forms a boundary between constitutional adjudication, law-making, and law application, as a judge, who is part of the judiciary, has the opportunity during the application of the law to initiate the review of the constitutionality of a specific applicable norm. This is a form of norm control. In this context, the dissertation concluded that if we interpret this function of the courts broadly, it could be argued that ordinary courts are quasi-constitutional courts, moving towards a decentralized system. However, this is not the case, as a judge does not take a stance on the violation of fundamental rights as the Constitutional Court does; instead, if they notice a fundamental rights violation in the application of the law, they base their decision on relevant Constitutional Court rulings if such rulings exist for similar cases. If no such ruling exists, in the context of "fundamental rights" courts dealing with constitutional interpretation, it can be said that the laws strictly limiting the criteria for correct judicial reasoning provide wide latitude for these courts to hold judicial practices accountable for fundamental rights.

I continue to maintain the conclusions from my previous research. The current trend is that the Constitutional Court significantly influences legal application. There have been precedents where the Constitutional Court changed uniform judicial practice with just one ruling. It fulfills a quasi-legal unifying function, as ordinary courts, for instance, had to consider the Constitutional Court's ruling on police image issues, given that the Constitutional Court's ruling is a higher norm than a Curia's uniformity decision. Analyzing the Constitutional Court's decisions from a legal source perspective, it can be stated that their erga omnes effect shapes the legal system.

Regarding the branches of power, the special procedural rules of the Constitutional Court also indicate that it is positioned between law-making and law application. When discussing the Constitutional Court as a negative judicial power, this category can be paralleled with negative law-making as well. Concerning negative law-making, we must return to Kelsen's fundamental work, **Pure Theory of Law**, where the validity of every legal norm can be traced back to an ultimate basic norm, i.e., the constitution. It is evident that the Constitutional Court has a broad spectrum, as it can be considered both a negative judicial power and a negative legislative power.

The term negative judicial power is a new category in the history of constitutional adjudication, as the genuine constitutional complaint is a relatively new institution in Hungary. Although the Constitutional Court was granted enormous power to review legislation at its

inception, it did not extend its influence towards judicial law application. Firstly, the Constitution did not allow this, and secondly, feeling the tension due to their expansive actions against the legislature, the constitutional judges themselves decided in 1991 not to compete with the then Supreme Court's comprehensive interpretative activities across the judiciary.

4. Summary of Scientific Results – Hypotheses of the Doctoral Dissertation

The focus of the doctoral dissertation was on the control function of constitutional judiciary, also known as constitutional review. Through this role, constitutional courts ensure that the functioning of the state aligns with constitutional principles.

As indicated by the outlined chapters, the dissertation – following a theoretical introduction on the separation of powers, which also frames the thematic structure of the dissertation – primarily contains analyses related to fundamental rights adjudication. In this regard, I also analyzed international and comparative legal aspects, but primarily focused on domestic constitutional judicial practices and the resulting state and constitutional theoretical dilemmas. I aimed to position the institution of centralized constitutional judiciary within the coordinate system of the branches of power.

As seen, the dissertation presents various hypotheses. Some of these hypotheses were confirmed during my research, while others were only partially validated.

To understand how and in what manner I received answers to the hypotheses I formulated, it is worthwhile to discuss the methodology of my research.

During the research, I naturally sought to process all relevant domestic literature related to the topic. However, as seen, I also focused on international literature given that the dissertation includes comparative legal aspects. As mentioned in the introduction, the dissertation, following a thorough theoretical study, primarily contains analyses related to fundamental rights adjudication. I examined numerous legal cases, mainly in the field of administrative law, as I encounter administrative law most frequently in my practice as a lawyer. Thus, I evaluated the theoretical theses in relation to administrative authority procedures. Additionally, my research was supported by receiving the New National Excellence Program Research Scholarship twice.

Hypothesis I: The proposition that the Constitutional Court is a “transitional” body between legislation and application of law; partly a negative (or even positive, if endowed with the power

to define constitutional requirements) legislator, and partly – in relation to ordinary courts – a “negative judicial power.”

Verified

In my legal assessment, the Constitutional Court is considered a negative judicial power because it is not traditionally regarded as part of the judiciary. It intervenes externally in the application of law processes. Specifically, it imposes limitations from the outside, more precisely, it exercises control, primarily through genuine constitutional complaints, whose remedial nature I also examined in the dissertation.

Hypothesis II: That German law has had a significant influence on the Hungarian system of fundamental rights protection.

Verified

The dissertation summarized the systems of constitutional complaints in Hungary and Germany, and sought to provide useful information not only for theory but also for practice by placing them in a broader context. Historically, German legal development has traditionally served as a model for Hungarian law. Hungarian codifiers have often adopted theoretical constructs developed by German legal scholars. A key finding is that Hungary also implements the "principle of stumbling" used in Germany. This principle ensures that the role of the Constitutional Court does not shift direction, namely, to the remedy of individual legal grievances. It also aims to prevent the Constitutional Court from becoming overwhelmed by an excessive caseload. In fact, the statements made in this hypothesis further support my position in Hypothesis I, which states that the Constitutional Court is a negative judicial power, as the remedying of traditional legal grievances is the task of ordinary judiciary.

Hypothesis III: That a genuine constitutional complaint is an effective remedy.

Partially Verified

Legal practice often operates with conceptual confusion. In public perception, constitutional complaints are frequently viewed as a type of remedy for legal grievances. Essentially, the "decision-making body" performs judicial functions, but in my view, it does not engage in judicial activity in the traditional sense. Therefore, with respect to constitutional complaints, we cannot speak of an ordinary remedy. Although doctrinally it is considered a remedy, it cannot be categorized among ordinary remedies, meaning it is not an appeal in the conventional sense.

- The hypothesis title likely contains a self-contradiction regarding how the effectiveness of a remedy can be measured if a constitutional complaint is not considered an ordinary remedy.
- In the dissertation, I examined the issue from two perspectives: (1) the delineation lines based on evaluations over the years; and (2) the dissertation illustrated through various legal cases how the European Court of Human Rights (ECtHR) assessment of this matter has evolved.
- Before 2018–2019: The genuine constitutional complaint was not considered an effective remedy (K.M.C. case, Karácsony case).
- 2018–2019: Radical changes occurred: The ECtHR's consistent practice became that the constitutional complaint is an effective remedy (Szalontai vs. Hungary case).
- 2021: Varga Sándor and Others vs. Hungary case: For certain categories of cases, the constitutional complaint is not considered an effective remedy.

Hypothesis IV: That the Constitutional Court performs a quasi-unification function of the law.

Verified

- The Constitutional Court strongly influences the application of law;
- It performs a quasi-unifying function in matters of police conduct;
- The Constitutional Court's decisions represent higher-level norms;
- It shapes the legal system with erga omnes effect;
- It engages in legal system shaping across specific cases – defining constitutional requirements – with an objective protective function.

Hypothesis V: The protection of fundamental rights is a shared responsibility of the Constitutional Court and ordinary courts.

Verified

- Collective fundamental rights protection can be achieved through effective cooperation between the Constitutional Court and ordinary courts.
- The fundamental function of judicial initiative is to ensure that judges do not base their decisions on laws that are unconstitutional.
- It is the judge's responsibility to thoroughly monitor applicable laws from a fundamental rights perspective.
- Problematic points in cooperation:
 - o The judge must determine whether the issue requires a constitutional review within the Constitutional Court's competence or a "simple" interpretation of laws in accordance with the Constitution within their own jurisdiction.
- Division of labor: The Constitutional Court exclusively has the authority for authentic constitutional interpretation, while ordinary courts are authorized and obligated to interpret other laws in harmony with the Constitution.
- Practice: Specific delimitation problems.
- Parties indicate whether a given administrative procedure or decision is unconstitutional.
- The judge is only authorized to interpret the applicable law in harmony with the Constitution.
- Specific issue regarding the problem:
 - o What if the (unconstitutional interpretation of the law) means that the administrative application of the law violates the principle of fair procedure?
- If the judge notices this, but the specific applicable law itself is not unconstitutional (only the authority's legal interpretation is), what tools does the judge have in this case?
- The law is clear: if the judge detects an unconstitutional law, they must suspend the procedure and turn to the Constitutional Court.

- Detection of unconstitutional application of the law; if the Constitutional Court has already taken a position in a similar case, the judge's task is simple: apply the Constitutional Court's ruling.
- However, there are cases where the specific fundamental rights aspect does not reach the Constitutional Court.
- Does the judge have the right to take a position on unconstitutional administrative legal applications?
- There are gaps in fundamental rights interpretation.
- How accessible is the option to turn to the Constitutional Court? As a sort of preliminary ruling procedure: outlining the facts to determine if the given administrative legal interpretation meets the requirements of fair procedure?
- The Constitutional Court's caseload: The Constitutional Court's caseload would not necessarily increase with this expanded interpretation of its jurisdiction; in fact, the number of genuine constitutional complaints could decrease, and any fundamental rights interpretation problems could be resolved within the framework of ordinary courts.

Published Works of the Author

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