COURTESY TRANSLATION

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STANDARDISATION OF HUMAN RIGHTS AND THE ROLE OF THE CONSTITUTIONAL JUDICIARY

Honourable President of the Constitutional Court of the Republic of Türkiye,

Dear brother Kadir,

Distinguished colleagues and friends,

It is my honour and privilege to address the 3rd Annual Meeting of the Balkan Constitutional Courts Forum, organised by the Constitutional Court of the Republic of Türkiye, and to share my reflections on such an inspiring topic on “Standardisation of Human Rights and the Role of Constitutional Judiciary”, drawing on my long-standing academic research and judicial experience.

The standardisation of human rights represents a process that implies the acceptance and harmonisation of national legislation with internationally accepted standards for the protection of human rights. This is a genuine, dynamic, and evolving process, and at its essence lies a key characteristic inherent to human rights, that is “evolution”, which denotes the gradual transition from one state to another and continuous development realised in different ways. The traditional one is through the ratification of international treaties and the incorporation of their norms into domestic law; however, the newer, modern approach is realised through the consistent application of judicial case-law, more precisely, through adherence to the standards of the European Court of Human Rights and other international courts, as well as the case-law of the constitutional courts.

Dear all,

In this context, the question arises: What is the role of constitutional courts and constitutional judges?

The Constitution is the backbone of the legal and political system of the state and the fundamental source of law that establishes the foundations upon which the legal order is built and operates; it contains the rules governing the organisation of society and the rules of governance, with the primary objective of ensuring the protection of the fundamental freedoms and rights of individuals and citizens. Yet, it is a fact that the Constitution is a living organism whose purpose is to endure through different historical and societal phases. Naturally, a constitutional judiciary cannot remain indifferent to change. As Einstein once stated, “The world as we have created it is a process of our thinking. It cannot be changed without changing our thinking.” If this holds true, and it

undoubtedly does, then the transformations taking place in the globalised world, arising from changes in ways of thinking, necessarily require a corresponsive change in thinking in order to accept and adapt to these transformations and to the new standards relating to the fundamental freedoms and rights of the individual and the citizen. Within constitutional judiciary, this is achieved through the concept of “living” or “real” constitutionalism.

Why is this approach important? The fundamental freedoms and rights of individuals and citizens, recognised under international law and guaranteed by the Constitution, represent a core constitutional value of the Macedonian Constitution. However, the Macedonian Constitution was adopted 34 years ago. The world has changed dramatically over these 34 years, and human rights have undergone significant evolution in that same period of 34 years. International instruments such as the Universal Declaration of Human Rights were adopted in 1948, the International Covenant on Civil and Political Rights in 1966, and the European Convention on Human Rights in 1950. Today, we stand on the threshold of 2026. The world has profoundly transformed. Undoubtedly, universal standards exist, as set out in these documents and reflected in many constitutions, but human rights remain inseparably linked to a number of factors, including geographical, historical, religious, traditional, and cultural, as well as customs and societal habits. Civilisational differences clearly exist. However, such an argument does not imply, and must never imply, domination or supremacy of one culture over another, nor serve as grounds for distancing from current international standards. I strongly oppose any such approach!

Having expressed my position, I must emphasise that both as an academic and as a practitioner - as a judge, I have faced, and continue to face, the challenge of how to bridge the gap between the inherent characteristics of human rights, their evolution, their standardisation, the written norms in our Constitution, and the civilisational achievements and differences?

It is evident that the aspiration of states is to commit to the establishment of unified standards that guarantee human dignity and the freedom of individuals and citizens. This process is neither easy nor will it be swift, and resistance will inevitably be encountered. However, it is underway, and it will continue!

The key question is how do we bridge this gap and enable the gradual transition towards standardisation? As a long-serving judge and as a President of the Constitutional Court, I would like to highlight several professional challenges linked to today’s topic, which I analyse in detail in my books “Loyalty to the Constitution” and “Loyalty to Living Constitutionalism”.

Since our time is limited, I will briefly address only the key aspects of the topic, and I remain open to your questions and comments during the panel discussion, as well as in our informal exchanges.

Constitutional interpretation is the activity through which constitutional judges may uncover and construct the “will of the constitutional framers”, the “letter and spirit of the Constitution”, and what constitutional theory refers to as the “living Constitution”. Constitutional judges are not bound by the classical judicial mindset, as in their reasoning they apply different interpretative techniques and methodologies. It is the strength of their argumentation and the authority of their legal reasoning, expressed through decisions or separate opinions, that grants judges the freedom to interpret and to differ in interpretation when deliberating and deciding on matters within their competence, and their competence, above all, is to act as guardians of the Constitution. Yet, by safeguarding the Constitution, they simultaneously protect the underlying value codes shaped throughout history, which have been influenced by religion, traditions, and customs.

Among the most contemporary theories of constitutional interpretation, as I have already noted, is the doctrine of the “living Constitution”, meaning a constitution that evolves as times and social realities change.

In my view, the positions of the Court must reflect evolution, adaptation and the re-examination of previously established positions on cases, precisely because the evolution of the position of the Court is, in my deep conviction, inevitable, necessary and justified in societal perspective.

Constitutional rights possess a dual nature. This applies particularly to the fundamental freedoms and rights of individuals and citizens, recognised by international law and enshrined in the Constitution. Their positive expression is only one aspect of constitutional rights, namely, their real or factual side. At the same time, they possess an ideal dimension. This is attributable to the fact that constitutional rights, particularly those related to human freedoms and rights, as I again emphasise, are set forth in the Constitution with the intention that they be realised and given full positive effect to the “greatest extent possible”.

The ideal nature of human rights does not disappear once they are transformed into positive rights, nor in the face of precedents or standards established by international or constitutional courts. On the contrary, human rights remain connected to the various factors previously mentioned, as well as to the changes brought about by the spirit of the times. Therefore, the ideal dimension of human rights continues to exist even after their positivisation.

It is precisely the pursuit of this ideal dimension - whether through efforts aimed at achieving optimisation “to the greatest extent possible”, or through the alternative approaches of striving for a “guaranteed minimum position” or requiring the “prohibition of excessive disproportionality” - that requires constitutional judges to thoroughly understand both the ideal and the real dimensions of human rights. In my view, these are the mechanisms available to judges when, in a given case, they are confronted with the need to harmonise or, more accurately, to standardise human rights. That is my conclusion and approach to this topic!

For this reason, I consider constitutional judicial interpretation to be the most significant segment and, at the same time, the greatest challenge in the actions of constitutional judges. The Constitution does not instruct like “interpret me broadly” - extensively, nor “interpret me narrowly” - restrictively.

The choice to take either approach must ultimately rest upon the constitutional judge’s own self-awareness. When this truth is considered alongside the renowned observation of Chief Justice Hughes that “The Constitution is what the judges say it is”, I believe I have set out sufficient arguments, facts, dilemmas, and controversies to demonstrate a proper understanding that the role of the constitutional judge carries an extraordinary burden and a profound responsibility.

Distinguished colleagues,

In my book “Loyalty to Living Constitutionalism”, I emphasise the development of the concept of dynamic constitutional loyalty, which stands in contrast to a formalistic approach towards international standards. I underline that states should not remain passive recipients of European norms; rather, they should serve as active interpreters who contribute to the evolution of common standards within the contemporary context.

In the context of the ECHR, this means that national courts, particularly constitutional courts, must remain faithful to the principle of living constitutionalism; that is, to respect the Convention while adapting it to their own constitutional context and constitutional reality. Such loyalty is not blind submission but conscious, critical cooperation. I consider that this approach enables the coexistence of two systems: the European (ECHR) and the national (constitutional), and within this framework, the limitations arising from the Convention become a creative interpretative space rather than a legal barrier. I am not speaking of confrontation but rather advocating for cooperation that does not imply unconditional acceptance but rests on reasoned trust in the European legal order, grounded primarily in constitutional awareness and constitutional culture. This means that the limitations under the ECHR should not be regarded as a weakness but as a structural guarantee of quality and stability in the standardisation of human rights. Within this framework, national courts may develop higher standards, provided that these do not undermine the shared legal foundation of European values.

To conclude, the well-known philosopher Heraclitus once stated - “The only constant in life is change.” If this proposition holds true, and it undoubtedly does, it naturally raises the question: how can the “fear of change”, which is also a constant in life, be overcome? You have already heard my answer - gradually, step by step, by seeking optimisation “to the greatest extent possible”, or the alternatives of seeking a “guaranteed minimum position” or demanding a “prohibition of excessive disproportionality”.

Thank you for your attention!