

## **Third Annual Meeting of the Balkan Constitutional Court's Forum**

### ***International Symposium: Standardization of Human Rights and the Role of Constitutional Justice***

#### ***Echoing the Call of Human Rights: From Freedom to Dignity and Joy***

**Dear Presidents and Judges of the Constitutional Courts,  
Dear colleague and friend Kadir,  
Esteemed colleagues and friends,**

This month of the year marks the 75<sup>th</sup> Anniversary of the European Convention on Human Rights and Fundamental Freedoms. Honoring the legacy of the European Convention on Human Rights is, above all, honoring the dignity of every human being and the noble endeavors of humanity. It is a tribute to the integrity of life and the enduring beauty of ethical commitment to human rights.

Scholars regard the ECHR as the most effective human rights regime (Keller & Stone, 2008: 3), whereas the ECtHR is considered to be the *crown jewel* of the world's most advanced system for human rights protection (Helfer, 2008: 125).

*Dear colleagues and friends,*

It is a great honor to address this distinguished forum and the audience present today. I am also very grateful for the invitation you have extended to me to participate in this symposium, hosted by the Constitutional Court of Türkiye within the framework of the Balkan Constitutional Courts Forum. Our courts, since their establishment, have greatly contributed to the development of standards and principles of human rights through their case law.

We all share the conviction that Law fulfils its function only if it protects the rights of the weak equally and effectively. The individual is weak if not protected by the law. Vulnerable minorities are weak if not protected by the law. Citizens are unsafe if the legal system under which they live offers no equal protection through effective remedy.

The experiences of the past allow us to understand the values of democracy, rule of law and human rights more deeply. Sometimes we may inevitably doubt the imperfection of our lenses. They remind us how much courage, patience and trust in human values-- it takes-- to uproot the deeds of evil.

Without the rule of law and the fundamental political and cultural values, democracy risks becoming "*democracy*", my dear friends. There is no democracy without the rule of law. There is neither democracy nor rule of law without human rights and fundamental freedoms.

I would like to extend my sincere appreciation for the opportunity to share insights on the role of the Constitutional Court in interpreting human rights and setting standards that guide the judiciary, lawmakers and public authorities. Our Constitutional Court, as the youngest among you, has followed this path and, over the years, has succeeded in setting forth and consolidating fundamental standards and principles of human rights. Through its jurisprudence, which has established precedent-setting standards and principles, it continues to uphold and protect the fundamental rights and freedoms enshrined in our Constitution.

As emphasized also through its case-law, the Court has continuously reiterated that, in the service of preserving the constitutional order of the Republic of Kosovo - based on the principles of democracy, respect for human rights and freedoms, the rule of law, non-discrimination, pluralism and separation of powers - the Constitution of the Republic of Kosovo is the source of authority of every governing power and it determines the limits of the exercise of this authority. Thus, respect for fundamental rights and freedoms, as a core value of our Constitution serves as one of the essential guiding principles in decision making within the jurisdiction of the Court, as the final interpreter of the Constitution. As established by Article 4 of the Constitution, the Court is an independent organ of special jurisdiction mandated to safeguard the supremacy of the Constitution and ensure compliance with its principles. Through its jurisprudence, the Court has evolved into both a protector of individual rights and a standard-setting institution, providing constitutional guidance to the judiciary, the legislature, and public authorities on the protection of human rights and the application of the rule of law.

The Constitutional Court exercises both abstract and individual jurisdiction. Through its abstract jurisdiction, the Court reviews the constitutionality of laws, decrees, and acts adopted by state institutions. Its individual jurisdiction enables citizens to file complaints after exhausting all available legal remedies, alleging violations of their fundamental rights and freedoms. These functions are operationalized through three mechanisms: ex post review (after adoption of laws or acts), ex ante review (preventive assessment before entry into force), and incidental control (referrals from regular courts on constitutional questions). Collectively, these mechanisms empower the Court to safeguard constitutionality not only through adjudication but also through preventive constitutional oversight that influences legislative processes and strengthens respect for human rights in governance.

A defining feature of Kosovo's constitutional system is its integration of international human rights instruments into the domestic legal order. The Constitution establishes that international human rights agreements are directly applicable and have priority over conflicting laws, thus ensuring that international standards are part of Kosovo's legal hierarchy. Respect for human rights is therefore not only a constitutional guarantee but also a fundamental value of the constitutional order, essential to the functioning of the rule of law and democratic governance.

Even though we are neither member of the CoE nor covered by the jurisdiction of the ECtHR, we voluntarily embraced the system of the Convention's rights. Unlike other states that negotiate exceptions, reservations or transitional clauses, Kosovo embraced the Convention without bargaining. This creates an unfiltered model of human rights constitutionalism, a rare case where international norms are transplanted in their entirety into domestic law.

The European Convention on Human Rights is listed amongst the 9 international human rights instruments, which, pursuant to Article 22 of the Kosovo Constitution are directly applicable in the Republic of Kosovo. In addition, pursuant to Article 53 of the Constitution, the Constitutional Court is obliged to interpret human rights in harmony with the jurisprudence of the European Court of Human Rights (ECtHR). This provision anchors Kosovo's constitutional practice in the European Convention on Human Rights (ECHR) and related international instruments, such as the Istanbul Convention and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Through this interpretive mandate, the Court has served as a key vehicle for the standardization of human rights, translating Strasbourg principles into Kosovo's domestic legal system and ensuring that they are consistently applied by all branches of government and the judiciary.

In Case KI129/21, the Court found that the Kosovo Police and the State Prosecutor violated their positive obligations under Article 25 of the Constitution (Right to Life) and Article 2 of the ECHR by failing to protect a victim of domestic violence, S.M. Relying on ECtHR jurisprudence and the Istanbul Convention, the Court held that public authorities must adopt proactive and coordinated measures to protect individuals at risk of harm. This decision established a binding standard for all public authorities concerning their positive obligations under the Constitution, thereby setting a precedent for the judiciary and law enforcement in preventing violations of the right to life.

Through its decisions, the Constitutional Court has progressively defined clear standards and guidance for the judiciary and other public authorities in applying the essential principles of the right to a fair trial, equality before the law, and the protection of liberty, privacy, property rights.

Similarly, the Deçani Monastery case (KI132/15, Judgment of 19 May 2016) reaffirmed the principles of legal certainty and *res judicata* as integral elements of the right to a fair trial under Article 31 of the Constitution and Article 6 of the ECHR. The Court declared null and void the reopening of a case previously settled by the Supreme Court, confirming the finality of its 2012 judgment. This ruling not only safeguarded the property rights of the Monastery but also established a binding standard for the judiciary: judicial decisions must be respected as final and cannot be arbitrarily reopened. The Court thereby reinforced legal certainty, stability of legal relations, and the predictability of the justice system—core principles of the rule of law.

Beyond these land mark rulings, the Constitutional Court has built a comprehensive body of jurisprudence concerning the right to liberty and security, the right to privacy, and the judicial protection of rights and protection of property rights. It has consistently

emphasized that detentions must comply strictly with legal procedures, that courts must ensure access to justice and equality of arms, and that the reasoning of judicial decisions must be clear and based on law. The Court's standards regarding adversarial proceedings, consistency of case law, and access to a court established by law, in the recent years have become guiding norms for the regular judiciary. As a result, the Constitutional Court's interpretations of human rights have profoundly influenced the development of Kosovo's judicial culture, promoting a rights-based approach across all levels of adjudication and decision-making.

In one of its land mark cases, the Constitutional Court has emphasized that "the proper functioning and administration of justice, including public trust in this system, reflects one of the most essential principles of a democratic society based on the rule of law, the principle which is a fundamental value of the constitutional order of Republic of Kosovo." [case KO55/23, assessment of constitutionality of proposed amendments to the Constitution pertaining to the vetting system in the judiciary]. The Constitutional Court consistently applied the standards established by the Strasbourg case law, included those of the Rule of Law Check list of the Venice Commission, continuously underlining the necessity of "clarity" and "foreseeability" of the legal provisions that may affect fundamental rights and freedoms. In this context, the Constitutional Court through its case law has continuously emphasized that the principle of legal certainty, which is embodied in the concept of the rule of law, guaranteed by articles 3 and 7 of the Constitution, and in Chapter II requires the legal norms must be clear thereby ensuring that legal situations and relationships remain predictable (see, similarly, the Court's Judgment in case KO216/22 and KO220/22, para. 237). In some of its distinguished cases, it held that respective contested legal provisions did not fulfill the necessary criteria of clarity and foreseeability, deriving from the principle of the rule of law and which ultimately amounted in declaring these provisions unconstitutional [see, among others case KO46/23, assessment of constitutionality of the Law on State Bureau for confiscation of unjustifiable assets].

Through the Constitutional Court's interpretation of human rights, regular courts and public authorities, including the Supreme Court, increasingly align their decision-making with constitutional standards. Moreover, the Constitutional Court has institutionalized a mechanism of dialogue with the Supreme Court, creating a structured forum in which both courts discuss essential principles derived from their case law, particularly in the field of human rights. This judicial dialogue strengthens coherence in jurisprudence, fosters mutual understanding of constitutional principles, and reinforces the consistency of human rights protection across the judicial system.

The Court's interpretative influence also extends to the lawmaking process, where it ensures that legislative acts respect constitutional principles and international human rights obligations. When assessing the constitutionality of legislation, the Court assesses whether laws uphold substantive guarantees fundamental human rights and freedoms, such as equality before the law, proportionality, and the right to judicial protection and positive obligations in protecting rights and freedoms of citizens. In this way, the Court promotes human-rights-based lawmaking, requiring legislators to incorporate constitutional standards into the drafting and adoption of laws. Consequently, the

Constitutional Court's jurisprudence operates as both a constraint on legislative discretion and a guiding framework for democratic governance. By interpreting human rights through the lens of the ECtHR jurisprudence, and applying principles the benchmarks of the Venice Commission Rule of Law Checklist, the Court ensures that public authorities respect fundamental freedoms, that legislation aligns with constitutional guarantees, and that the judiciary consistently applies clear, predictable, and fair standards.

The decisions of Constitutional Court of Kosovo have binding authority and function as interpretive standards for the judiciary, the executive, and the legislature. The ongoing dialogue with the Supreme Court reinforces the coherence of Kosovo's legal system. In this way, the Constitutional Court not only safeguards the Constitution but also nurtures a constitutional culture grounded in the respect for human rights, the rule of law, and democratic accountability. The effective execution of its judgments and the incorporation of its standards into the jurisprudence of the regular judiciary, legislation and decision making of public authorities - all demonstrate that constitutional justice in Kosovo has become a living process of harmonization between national and international human rights law.

Furthermore, by virtue of the transparent publication and communication of its decision, publications of periodical bulletins of case law, practical guides for the Applicants and all activities of the Court – all these measures collectively contributes – and continue to contribute - to enhancing the quality and the consistency of the Constitutional case law. The number of individual complaints has continuously increased over the years, reflecting public trust in the Court as an effective remedy for alleged violations of fundamental rights and freedoms. A recent nationwide public perception survey conducted by the Council of Europe Office in Prishtina showed that seventy-six percent (76%) of respondents trust the Court's independence and impartiality, and eighty-three percent (83%) consider its role in protecting human rights as very important.

*Esteemed colleagues and friends,*

I remain hopeful that I have succeeded to provide a brief perspective on the way and method through which the Constitutional Court of Kosovo interprets human rights and constitutional standards, particularly those embedded in the case-law of the European Court of Human Rights, as well as the impact of such interpretation on the work of the regular judiciary, public authorities, and lawmakers.

On this occasion, we need to be reminded that the human rights vested in the Convention are not only a legacy to be honored, but also a solemn duty for the present and the future.

It calls upon us to ensure that human rights and the rule of law remain not distant ideals, but living guarantees safeguarding the dignity and freedom of every individual—infused with the joyful, creative spirit of *homo ludens*, as the great Dutch thinker Huizinga so wisely affirmed.

Perhaps the next journey of The Human Rights must be reimagined and embraced anew, charting a course within the enduring paradigm—from freedom, onward to dignity, and towards the full radiance of joy.

I thank you for your attention!

Teşekkürler!