

JUSTICE - SUPREME VALUE CONSECRATED BY THE CONSTITUTION OF ROMANIA

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Abstract

Justice, as constitutional principle-value, signifies, firstly, a dimension of the Constitution, namely that of being a righteous law, in the sense of settling the entire constitutional system on a foundation of fair and equitable rules, designed to eliminate any aspirations to "omnipotence" and also to protect some fundamental values that, as a whole, tend to the idea of social justice. Thus, justice is immanent in all constitutional norms and, therefore, landmark of essence for their interpretation and application. The interpreter of the fundamental law, and moreover the Constitutional Court, as a guarantor of its supremacy, is called to identify the most fair/equitable meaning and manner of application, referring his action to the same supreme value - justice. Express recognition of justice as a value/principle in constitutional review appears as a genuine factor of forming a "consciousness of justice", and thereby of constitutionalization of law in preventive effect.

Key words: justice, general principles, constitutional review, Constitutional Court

At the foundation of the fundamental law of Romania lie a number of general principles which, according to its authors' theses, "define the citizen's condition within the national collectivity, in other words, the vital interests of the nation, as a whole" (A. Iorgovan, *The Odyssey of Drafting the Constitution*, Vatra Românească Publishing House, Târgu Mureș, 1998, p.155). These principles are reflected in other constitutional norms developed, in turn, in the infraconstitutional legislation.

MATERIAL AND METHOD

In the early years of the Constitutional Court and of founding the constitutional review in Romania, both the court decisions and the separate opinions offered by the constitutional judges have expressed concern for establishing the role of constitutional norms with character of principle within constitutional review. Thus, it was held, among others, that "the entire constitutional regulation is subject to some general principles, illustrating the provisions of Article 1. para. (3) of the fundamental law, according to which Romania is a rule of law, democratic and social state, in which human dignity, the rights and freedoms of citizens, the free development of human personality, justice and political pluralism represent supreme values and are guaranteed. [...] A law violating not only the text, but also the

principles of the Constitution is unconstitutional. [...]". It also has been distinguished between "the general principles", expressly regulated in Title I of the Constitution, and the principles that emanate from the entire regulation of the fundamental law, for example that of the separation of powers (expressly consecrated through the constitutional revision of 2003) or that of equal opportunities to political parties (Dan Victor Zlătescu, *Separate Opinion from Decision 73 of 4 June 1996*, published in the Official Journal of Romania, Part I, no. 255 of 22 October 1996) and which were both invoked by the Constitutional Court, even if they did not have a specific regulation.

RESULTS AND CONSIDERATIONS

Examining the case law of the Constitutional Court in its dynamic evolution, one notices that, over time, it has often invoked as basis for establishing unconstitutionality of law, the principles contained in or deduced from Article 1 of the Constitution, whose sense it explained and developed, by interpretation in accordance with the international human rights treaties to which Romania is a party and with the case law of international courts called to guarantee them. On other occasions, we have analyzed constitutional loyalty (T.Toader, M.Safta, *The Principle of Loyalty in the Case Law of the Constitutional*

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Court of Romania, http://www.constcourt.md/public/files/file/conferinta_20ani/programul_conferintei/Tudorel_Toader.pdf), invoked by the Constitutional Court in relation to the application of the principle of separation of powers, or the principle of legal certainty (T.Toader, M. Safta, *The Dialogue of Constitutional Judges*, Universul Juridic Publishing House, 2015, p.73), invoked by the Constitutional Court in the application of the constitutional principle of legality.

In the following we shall refer to a principle-value which, although it has not experienced a significant development in the case law of the Constitutional Court of Romania so far, certainly represents one of the most important landmarks of the entire constitutional construction. We refer to justice, a value expressly consecrated by the Constitution of Romania.

THE CONSTITUTIONAL CONSECRATION OF JUSTICE. GENESIS AND SIGNIFICATIONS

Justice, as a supreme value, was placed at the foundation of the Romanian constitutional edifice at the adoption of the Constitution of 1991. At that time, the wording of Article 1 of the Constitution was: "(1) *Romania is a national, sovereign and independent, unitary and indivisible state. (2) The form of government of the Romanian State is the Republic. (3) Romania is a rule of law, democratic and social state, in which human dignity, human rights and freedoms, free development of human personality, justice and political pluralism represent supreme values and are guaranteed.*"

Referring to the text above, when presenting the Report of the Commission for drafting the project of the Constitution, professor Ion Deleanu said (*The Odyssey of Drafting the Constitution ... op. cit.*, pp.157-158), with reference to Title I, that the Commission's intention was, first, that of identifying the constituent elements of the Romanian State – the nation, the territory and the political and legal organization or the public power, and establishing their essential attributes. As for the political organization of society, "at least two landmarks have precedence: firstly, the sharing of power prerogatives, the relative moderation of state bodies and their interdependence, so that none of the public authorities be able to aspire to omnipotence or slide toward voluntarism and arrogance; secondly, the establishment of a rule of law and democratic state in which human dignity, citizens' rights and

freedoms, the free development of their personality, constitutional order, legal equality, justice, political pluralism are supreme values."

With this core motivation, the draft of the Constitution circumscribed justice among the principles enumerated in Article 1 of the Constitution. The amendment proposed by the groups of MPs for the replacement of the word "*justice*" by the phrase "*social justice*" was rejected on the ground that the latter phrase "may easily give rise to misinterpretation, while maintaining the word 'justice' without any specification emphasizes the idea of social justice, that is, finally, of justice in the social context. In this sense, 'justice' is synonymous with 'social justice'" (*The Odyssey of Drafting the Constitution ... op. cit.*, p.363).

Teleological interpretation reveals that justice, as constitutional principle-value, means, firstly, a dimension of the Constitution, namely that of being a righteous law, in the sense of settling the entire constitutional system on a foundation of fair and equitable rules, designed to eliminate any aspirations to "omnipotence" and also to protect some fundamental values that, as a whole, tend to the idea of social justice. Thus, justice is immanent in all constitutional norms and, therefore, landmark of essence for their interpretation and application. The interpreter of the fundamental law, and moreover the Constitutional Court, as a guarantor of its supremacy, is called to identify the most fair/equitable meaning and manner of application, referring his action to the same supreme value - justice.

Of course one may reply it is obvious that any democratic Constitution implicitly has this dimension. The express consecration of justice among the general principles that characterize the Romanian state gives expression to an aspiration of the Romanian people, affirmed maybe because of the experience of totalitarianism, and which outlines a constitutional identity based on *demos*, like the French model considered in drafting the present Constitution (See M. Rosenfeld, *Constitutional Identity*, in *The Oxford Handbook of Comparative Constitutional Law*, Oxford University Press, p.763). The revision of the Constitution of 2003 brought a significant addition to para. (3) of Article 1 in this respect, by reference to "*the spirit of the democratic traditions of the Romanian people and the ideals of the Revolution of December 1989*".

JUSTICE – CASE LAW LANDMARKS

1. General aspects

The case law of the Constitutional Court is not very rich in examples concerned with the characterization of justice as supreme value and constitutional principle, perhaps because the generality of the concept of justice determined the violation of justice not to be very often invoked as a distinct ground in the argumentation of unconstitutionality notifications.

We believe that some examples are likely to highlight the beginning of shaping a case law with the explicit application of this principle, especially in relation to regulations concerned with remedy/reparation in criminal matters and in legal proceedings.

We also believe that it can be identified an implicit application by the Constitutional Court of the principle of justice, which should characterize each of the decisions it delivers, both in assessing the limits of jurisdiction that the Court is free to legally establish, and in interpreting and applying each constitutional text.

2. Violation of the principle of justice by rewarding people who occupied public positions in the totalitarian regime. Unconstitutionality

Perhaps the most visible usages of the principle of justice in constitutional review in Romania occur in connection with regulations concerned with remedy/reparation. We will first refer to such examples, also in the light of the statement/commitment the Constitution makes with reference to the ideals of the 1989 Revolution.

Thus, the Constitutional Court declared unconstitutional the provisions of the Law amending Law no. 393/2004 on the status of local elected representatives (Decision no. 22 of 20 January 2016, published in the Official Journal of Romania, Part I, no. 160 of 2 March 2016) which essentially regulated the establishment of additional benefits to pension at retirement age for mayors, deputy mayors, chairmen and deputy chairmen of county councils.

The Court found, *inter alia*, the existence of a terminological equivalence, but not an equivalence of democratic legitimacy and attributions, between the office of mayor before and after 1989; with regard to the offices of chairman, first deputy chairman or deputy chairman of the executive committee of the county people's council or those of first deputy chairman or deputy chairman of the executive committee of the municipal/town/communal people's council, they have no terminological equivalence and no equivalence of democratic legitimacy and

attributions with the office of chairman/deputy chairman of county council or deputy mayor. In a broad sense of the terms, they could be assimilated to the notions used by Law no. 393/2004, for which reason, the Court pointed out, the legislator must be extremely clear and categorical in this regard and establish their exclusion from receiving additional benefits to pension, benefits that reward the local elected representatives' community service. Next, the Court raised the issue of compliance, in this respect, with the principle of justice, saying that "it is debatable whether additional benefits to pension at retirement age may be granted to the members of people's councils by the Romanian State under the principles that guide the 1991 Constitution". Such legislation "would disregard 'justice' as supreme value of the Romanian state expressed in Article 1. para. (3) of the Constitution", the Court holds and further concludes that "therefore it would consecrate a privilege to their benefit contrary to Article 16 para. (1) of the Constitution."

3. The lack of fair, equitable, reasonable character. The regulation on reparation for moral damages suffered during the communist period. Unconstitutionality

The same type of argument, that brings forth justice as fairness, as distributive justice, appears in other cases in which the Court had to decide on granting rights to certain categories of people, with reference to the communist era, this time as reparations for moral damages, and not on the basis of services rendered/offices held during that time.

Thus, for example, in several cases, the Court was notified on the exception of unconstitutionality of Art. 5 para. (1) letter a) first thesis of Law No. 221/2009, with subsequent amendments, according to which: "(1) *Any person who was convicted of a political nature during 6 March 1945 – 22 December 1989 or who was the subject of administrative measures of political nature and, after the death of that person, his/her spouse or descendants up to the second degree inclusively, may ask the court, within three years of the entry into force of this law, to order the State to: a) grant reparations for the moral damages suffered through the conviction [...]* "

Finding the unconstitutionality of the criticized legal text (See Decisions no. 1358 and 1360 of 21 October 2010, published in the Official Journal of Romania, Part I, no. 761 of 15 November 2010), the Court held, *inter alia*, that the reparation for moral damages suffered during the communist period should be fair, equitable, reasonable and proportionate to the seriousness and

suffering caused by these convictions or administrative measures. But, the reparation provided by the law under criticism, having the same purpose as the additional benefits to pension provided by Article 4 of Decree-Law no.118/1990, can not be considered fair, equitable and reasonable. On the other hand, by introducing the possibility for heirs up to the second degree to receive reparation for moral damages suffered by persons persecuted by the communist regime, the legislator moved away from the principles governing the granting of such reparations, namely that of equity and justice. Through the criticized provision of the law, the purpose for which these reparations were introduced is diluted, as heirs up to the second degree can not be considered entitled to reparation for moral damages suffered during the communist period by their predecessor to the same extent as the latter. That being so, the Court found that granting reparation for moral damages suffered by former political prisoners, as regulated by the provisions of Art. 5 para. (1) letter a) first thesis of Law No. 221/2009, is contrary to Art. 1 para. (3) of the fundamental law regarding the rule of law, democratic and social state, in which *justice is the supreme value*.

4. The lack of regulation on the term of house arrest violates the principle of justice. Unconstitutionality

As a general observation, we firstly notice that other constitutional courts also proceed, even without an express constitutional text, to invoking justice as the basis of their argumentation, especially in criminal matters, since, as motivated by the German Federal Constitutional Court in one of its decisions, "in criminal judiciary [...] justice is a supreme requirement" (BverfGE 45, 187, Sentence in the First Chamber of 21 June 1977, in *Selection of Decisions of the German Federal Constitutional Court*, Konrad Adenauer Stiftung, C.H. Beck, 2013, p. 61.). Assessment in relation to the principle of justice serves to establish the incriminated facts, the proportionality of the measures which the legislator adopts, taking into account the fact that "criminal law will be used as last resort when a certain behavior is, in addition to prohibited, particularly harmful from a social point of view and intolerable for people living together in harmony, so that preventing that behavior is imperative." (*Ibidem*, p.146).

In this matter, the Constitutional Court of Romania resorted to justice as supreme value especially when analyzing the constitutionality of the regulations on preventive measures. The reference to justice also appears in other decisions which examined the constitutionality of criminal

law, not distinctly, but by reference to Article 1. para. (3) in its entirety, namely by listing all the values it enshrines (See, for example, Decision No. 62 of 18 January 2007, published in the Official Journal of Romania, Part I, no. 104 of 12 February 2007).

Thus, hearing on the exception of unconstitutionality of Articles 218-222 and Art. 241 para. (1¹) letter a) of the Criminal Procedure Code, criticized for not setting a maximum term of house arrest, in preliminary chamber procedure and in judgment in first instance, the Constitutional Court found the unconstitutionality of Art. 222 of the Criminal Procedure Code, on the duration of house arrest. In the motivation of the decision, the Court held, among others, the violation of the principle of justice, with reference to considerations that represented the basis of a similar solution imposed by another court of constitutional jurisdiction (Decision no. 361 of 7 May 2015, published in the Official Journal of Romania, Part I, no. 419 of 12 June 2015), namely the Russian Federation Constitutional Court. In its ruling in Case No. 27-II of 6 December 2011, concerning the lack of regulation in the Criminal Procedure Code on terms for which house arrest can be ordered, on the procedure for establishing and extending this measure, the Court established that "the notion of 'deprivation of liberty' has an independent meaning, implying that any legal measure which in fact translates into a deprivation of liberty must meet the criteria of legality established by Art. 22 of the Constitution and Art. 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Nobody can be subjected to restriction of rights for an indefinite or unreasonably long term. The legislator must establish clear and reasonable terms for the restrictions allowed by law of rights and freedoms. [...] House arrest is a measure restricting the rights, which involves the isolation of the person, fact which binds the legislator to establish by law a period which is consistent with the principles of justice and equity, in order to exclude the possibility of arbitrariness and disproportionate restrictions of freedom." Both detention and house arrest involve obligatorily staying in a limited space, isolation from society, suspension of official or work duties, the impossibility to move freely and get in contact with certain categories of people, directly restricting the right to liberty itself, not only the conditions for exercising this right. The principle of legal equality imposes requirements of formal certainty, precision, clarity and unambiguity of legal norms, as well as their coordination for a uniform understanding and interpretation of the law. The Criminal Procedure

Code does not indicate the term of house arrest, or the procedure for its establishment and extension. [...] In the absence of a legal basis for changing the measure of house arrest, it may exceed the maximum limits set for detention. Thus, persons, who respect the conditions of house arrest without then being placed in detention, are in a more precarious position than those who have circumvented these conditions, *fact which violates the constitutional principle of justice*. Moreover, house arrest may exceed not only the maximum detention term set by Art. 109, but also the duration of the punishment established by the court for the committed offense, which violates the principle of presumption of innocence stated in Article 49 of the Constitution, which implies that until the imposed sentence becomes applicable, the suspect or defendant can not be imposed restrictions comparable in term and severity with the criminal punishment."

A similar case was resolved by the Constitutional Court of Romania on the former Criminal Procedure Code and under the 1991 Constitution before the revision. Referring, among others, to the constitutional principle of justice, the Court found that the provisions of Art. 338 of the Criminal Procedure Code are unconstitutional "if interpreted as if the measure of preventive arrest should not comply with the constitutional provisions regarding the duration of 30 days, as stated by Art. 23 para. (4) of the Constitution" (Decision no. 9 of 24 January 2000, published in the Official Journal of Romania, Part I, no. 221 of 19 May 2000).

5. Analysis of regulations on ways of appealing a court decision from the perspective of the principle of justice. Constitutionality

A violation of the principle of justice was invoked, for example, in a notification of unconstitutionality, whose author was dissatisfied mainly because of the fact, that according to law, he was entitled only to an appeal and not to a recourse.

Rejecting the notification of unconstitutionality as unfounded, the Court held that, in the new law of civil procedure, the legislator rearranged the ways of appealing a court decision, recourse being an extraordinary way of appealing that can be exercised by the discontented party on grounds of illegality and only in the circumstances provided by law. The appeal is the ordinary way of appealing and which has a devolutive character, the appellate court ruling both in fact and in law (Art. 476 of the Code of Civil Procedure). Generally, regarding the regulation of ways of appealing court decisions, in

its case law, the Court stated that, pursuant to Article 126 para. (2) of the Constitution, the legislator has exclusive competence to establish, in considering special circumstances, special rules of procedure, as well as special manners for the exercise of procedural rights, the meaning of free access to justice not being that of access in all cases to all judicial structures and all ways of appealing (Decision of the Plenum no. 1 of 8 February 1994, published in the Official Journal of Romania, Part I, no.69 of 16 March 1994, Decision no. 1132 of 16 October 2008, published in the Official Journal of Romania, Part I, no. 776 of 19 November 2008, or Decision no. 396 of 26 April 2012, published in the Official Journal of Romania, Part I, no. 368 of 31 May 2012). Also in connection with Article 129 of the Constitution, in its case law the Court emphasized that the fundamental law does not contain provisions regarding the mandatory existence of all ways of appealing, but states that the interested parties and the Public Ministry may exercise the ways of appealing, under the law (See Decision no. 99 of 23 May 2000, published in the Official Journal of Romania, Part I, no. 389 of 21 August 2000, Decision no. 1034 of 14 September 2010, published in the Official Journal of Romania, Part I, no. 763 of 16 November 2010, or Decision no. 1415 of 20 October 2011, published in the Official Journal of Romania, Part I, no. 839 of 28 November 2011). The Court also held that the fundamental law does not specify *in terminis* that free access to justice always involves the right to pursue both the way of appeal and that of recourse (Article 21).

As regards invoking as allegedly breached the text of Article 1. para. (3) of the Constitution, the Court held that this constitutional provision concerns the supreme values of the rule of law; it is a regulatory principle which represents the framework to which all the other norms of the fundamental law are attached. Therefore, so long as Article 21 of the Constitution does not specify *in terminis* that free access to justice always involves the right to pursue both the way of appeal and that of recourse, and according to Article 126 para. (2) of the Constitution the legislator has exclusive competence to establish the rules of procedure and according to Article 129 of the fundamental law the interested parties and the Public Ministry may exercise the ways of appealing, under the law, *justice, as supreme value of the state, is not violated*.

The motivation of this case reveals the procedural dimension of justice, in the sense of identifying the procedural measures designed to

ensure the realization of justice in the spirit of justice as supreme value.

6. The constitutional review in achieving of justice as supreme value of the Romanian state

In this section, we show that it is identifiable an implicit application of the principle of justice by the Constitutional Court, which should characterize each of its decisions. We consider that valuing justice in constitutional review means not only expressing an interpretation of constitutional norms, but identifying that sense that reveals their most fair, equitable character, and making a judgment of constitutionality subjected to the same fundamental value – justice.

The German Federal Constitutional Court pointed out in this regard, long before the rebuilding, on European bases, of constitutional review in Romania that "judicial activity [authors' note: in context, of the constitutional judge] is not only recognition and delivery of solutions of the legislator. It is possible that the mission of case law will make necessary to be brought to light and transposed into decisions – by an act of appreciation with evaluative character, which should not lack the elements of will – the intrinsic ideals of constitutional legal order, but not expressed or incompletely expressed in the texts of written laws. The judge must try to avoid arbitrariness; his decision must be based on rational argumentation. It must be made clear that the written law does not fulfill its function to fairly solve a matter of law. The judge's decision removes this shortcoming under the criteria of practical reason and the overall conception of the collectivity about justice" (BverfGE 34, 269, Sentence in the First Chamber of 14 February 1973, in *Selection of Decisions...op.cit.*, p.548). However, by the same decision, risks of this approach were also highlighted. Thus, starting from the premise, never contested, that it is the judge's task and competence "to search the law in a creative manner", the same Constitutional Court stressed that "debatable are only the limits that must be established in this search of the law in a creative manner, taking into account the principle of rule of law and case law. They cannot be included in a formula equally valid for all areas of law and for all created or controlled legal relationships."

From this perspective, the Constitutional Court must prove the virtue of self-limitation, but in a dual sense. Both the extension of jurisdiction beyond the constitutional and legal limits, with the risk of violating the jurisdiction of other public authorities, in an "aspiration to omnipotence"

prohibited by the constitutional legislator, and restrictive approaches, with the risk for the Constitutional Court not realize its constitutional role of guarantor of the supremacy of the constitution, are contrary to the principle of justice.

We believe that a meaningful example of taking plenary jurisdiction to review the constitutionality of laws and ordinances is the establishment of the admissibility of constitutional review of repealed norms, but which produce legal effects, meaning that they apply to legal relations in the litigation in which the exception of unconstitutionality was raised. Actually, the Court proceeded to remove self-imposed limits on this matter by a restrictive interpretation of the reference constitutional text. The arguments of the Romanian Constitutional Court, which proceeded on that occasion to reconsider the interpretation of the phrase "in force" contained in Article 29 of Law No.47/1992 on the organization and functioning of the Constitutional Court, lead to the idea of removing an injustice in terms of consecration of procedural tools to assert the rights of individuals. The Court held, *inter alia*, that "by the rigid application of the condition for the law or ordinance to be '*in force*' both at the time of the notification of unconstitutionality and at the date of its settlement by the Constitutional Court, legal provisions determinant in the case are removed from constitutional review. The Court finds that the phrase '*in force*' can be understood in the sense that the Constitutional Court is empowered to ensure the supremacy of the Constitution only in relation to laws and ordinances in force, and not also in relation to laws and ordinances that are no longer in force, although under them some legal relations were born and they subsequently continue to produce legal effects. In such cases, the Court has two options: to apply those legal provisions, even if they flagrantly contravene constitutional provisions, or to refuse their application on the ground that they are unconstitutional. In the first scenario, interpreting that the criticized legal provision through the unconstitutionality notification must be in force at the time of its settlement by the Court, means to accept that a party to a pending lawsuit may base his claims on a manifestly contrary to the Constitution legal provision, as the constitutionality of this provision can no longer be examined, as the criticized law was, in the meantime, repealed or, in the case of laws with temporary character, ceased its application. The same interpretation implies acceptance of a situation for an individual to have his rights irreparably violated through a legal

provision contrary to the fundamental law, on the grounds that the unconstitutional provision was temporary or has meantime been repealed, possibly during the trial or even after referral to the Constitutional Court, but before the Court has given a solution on the exception of unconstitutionality. So, in such a case, the violation of the Constitution is obvious." (Decision no. 766 of 15 June 2011, published in the Official Journal of Romania, Part I, no. 549 of 3 August 2011).

Another example supporting the same idea is the assertion by the Romanian Constitutional Court of its jurisdiction to review constitutionality of repealed norms and to establish the effects of the decisions confirming their unconstitutionality. According to the motivation of the Constitutional Court in several decisions (For a comprehensive analysis of the issue, see T. Toader, M. Safta, *The Dialogue of Constitutional Judges*, Universul Juridic Publishing House, 2015, pp.220-228), depriving the repealing norm of its legal effects by declaring it unconstitutional will result in the removal of the cause for cessation of legal effects of the repealed norm, with the result that the latter will restart producing legal effects. Lively contested by a part of legal literature, and even refuted by a decision of the High Court of Cassation and Justice in an appeal on points of law, these decisions of the Constitutional Court and the considerations that support them present a solution which, in its essence corresponds to a desire for justice. Another legal reasoning would lead to circumvention of the provisions of Art. 147 para. (4) of the Constitution, as the passivity of the legislator would practically lead to a "revival" of the norm found unconstitutional, as long as the unconstitutionality situation caused by the cessation of the legal effects of the repealed norms would continue to exist, in the absence of a legislative intervention.

Such a situation, which deprives constitutional review and even the role of the Constitutional Court of effectiveness, is unacceptable, being incompatible with the rule of law, with justice as supreme value.

CONCLUSIONS

The issues of justice can be addressed from multiple perspectives, out of which we have chosen that of the constitutional review. The selected landmarks to illustrate this perspective show both the substantive and the procedural dimension of justice as supreme value of the Romanian state (For conceptual distinctions in this regard see R. Gargarella, *The Constitution and Justice*, in *The Oxford Handbook ... op. cit.*, pp.337-349). With this express regulation, the constitutional legislator has practically proceeded to the normative orientation of the behavior of all recipients of the fundamental law, including the Constitutional Court, toward an ideal of justice.

As a result, through the balance shown in the realization of its responsibilities, the Constitutional Court implicitly achieves the desire for justice provided in Article 1. para. (3) of the Constitution. At the same time, express recognition of justice as a value/principle in constitutional review appears as a genuine factor of forming a "consciousness of justice" (See on the concept and its determinations, BverfGE 88, 203 - Sentence in the Second Chamber of 28 May 1993, in *Selection of Decisions of the German Federal Constitutional Court*, Konrad Adenauer Stiftung, C.H. Beck, 2013, p. 143), and thereby of constitutionalization of law in preventive effect.

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