Chapter 18

Constitutional Adjudication

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ABSTRACT

The present chapter deals with constitutional adjudication[1] in eight East Central European countries (in alphabetical order: Croatia, the Czech Republic, Hungary, Poland, Romania, Serbia, Slovakia and Slovenia). It concentrates primarily on the tasks and competences of the institutions performing the function of constitutional adjudication.

Constitutional adjudication is a broader concept than the activities of constitutional courts. It encompasses constitutional rights adjudication, which will be the subject of a separate chapter in this book, and all the mechanisms of constitutional adjudication that relate to the establishment and enforcement of violations of constitutional provisions. It is therefore important to note that the issue of constitutional adjudication does not extend to the proper investigation of the functioning of constitutional institutions but only to cases where someone (typically a state body) violates the provisions of the constitution, and this violation must be established and repaired by a body appointed to do so.[2] All the CEE countries under review adopt a so-called concentrated (centralised) constitutional adjudication, which means that constitutional protection will typically be the responsibility of a dedicated, separate body – the constitutional court. Other bodies in some of the legal systems under

1 The term 'constitutional adjudication' is distinct from 'constitutional review'; the latter is often used to refer to the activity performed by centralised constitutional adjudication bodies (as distinct from the 'judicial review' performed by ordinary courts conducting decentralised constitutional adjudication). That of the constitutional review is 'a system whereby judicial or quasi-judicial bodies can set aside and invalidate the democratically enacted laws on the basis of their alleged inconsistency with constitutional norms' (Sadurski, 2014, p. xii.). Centralised constitutional courts, however, do not merely review the conformity of norms with the constitution, but they also have a number of other functions which fall within the broader concept of adjudication, which is why we use the term 'constitutional adjudication' in the following and include all the powers in which the constitutional court may act with a decision-making role (or as a proposing or opinion-giving body of a decision-maker).

2 As defined by the President of the Hungarian Constitutional Court, Peter Paczolay, '[c]onstitutional protection can be of two kinds: in a broad sense, it means the protection and preservation of the stability of the order of society, while in a narrower sense, constitutional protection means the protection of the norms laid down in the Constitution and superior to other laws. The task of defending the Constitution may be carried out by a public body, such as a plenary of Parliament (England) or a parliamentary committee (Sweden, Finland). In a narrow sense, constitutional protection means the judicial defence of the constitutionality of the Constitution, which can be done through ordinary courts or through specially established constitutional courts' (Paczolay, 2003, p. 10).

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examination, however, may also provide constitutional protection. Although this chapter mentions the competences of these other bodies, only the constitutional courts themselves will be analysed in detail – in terms of their competences and functions – due to the space available.
Today, based mainly on the German model,3 five (plus one)4 typical main activities of concentrated constitutional courts function in all the CEE legal systems examined in this study: (1) norm5 control (both with abstract and concrete manner; (2) individual (direct) protection of fundamental rights (fundamental rights adjudication), (3) resolution of conflicts on competence; (4) adjudication regarding the functioning of the state (charges against public officers, banning of political parties etc); and (5) the adjudication on election disputes;6 furthermore, +1) the interpretation of the constitution in connection with all these and also as separate competence.7 All of this also indicates that constitutional adjudication is an activity separated (institutionally and mostly functionally) from ordinary adjudication and basically cannot be considered as the part of judicial system in the classical division of powers by Montesquieu.

KEYWORDS
Constitutional adjudication, judicial review, abstract norm control, concrete norm control, judicial initiative, constitutional complaint, jurisdictional disputes, election disputes.

1. The norm control (review of conformity of laws and legal regulations with the constitution)

The most traditional function of constitutional adjudication, being part of the Kelsenian model, is norm control: deciding on the constitutionality of legislation.[8] If, in the exercise of this power, a constitutional court finds that a statute or statutory

3 According to Allan F. Tatham, the most important causes why the CEE constitutional courts borrowed most of their institutions regarding constitutional adjudication in the 'post-communist era' from the German model are as follows: '1. Historic and legal cultural affinities; 2. Linguistic ability and intellectual stimulus; 3. Constitution and constitutional jurisdiction formation in the post-communist era; 4. Resultant influences on constitutional judicial practice' (Tatham, 2013, p. 45).

4 As per the author's own classification.

5 A norm is a provision prescribing a course of conduct. Several types of norms exist, and only one type thereof is the legal norm. Legal norms can be rules (legal provisions laying down specific regulation for a particular situation) or legal principles (legal provisions laying down a general value for a variety of situations with common characteristics). In the following, we deal with a special types of legal norms – constitutional norms.

6 Although in the majority of the countries examined, constitutional courts have other powers in addition to these, the competences listed above are the most typical ones, which can be considered the core of constitutional adjudication and the characteristic powers of constitutional courts; thus, in the following, we only analyse and present these five main types of competences listed here.

7 It is only the constitutional court that is entitled, with *erga omnes* effect, to interpret the constitution (within the so-called concentrated constitutional adjudication). The constitutional court necessarily performs it during the exercise of any of its other concrete competences, and in general, in some countries (Hungary, Slovakia), it is also entitled to perform it to protect the unity of constitutional order in abstract manner, in a special, distinct proceeding independently from concrete cases.

8 In the case of norm control, a body (e.g. the Constitutional Court) annuls a law or a legal provision because of a conflict with a higher legal norm (e.g. due to its unconstitutionality). This form of constitutional adjudication is also known as 'negative legislation', after Hans Kelsen as, in this case, the Constitutional Court eliminates from the legal system the norm that governs the rights and obligations of the natural and legal persons, i.e. (from the moment the Constitutional Court decision takes effect), and it cannot, as a rule, have legal effects.

provision is unconstitutional, it annuls the statute (statutory provision), so that it cannot produce legal effects once the annulment has taken effect. Therefore, it is a necessary condition of the concentrated constitutional adjudication that the constitutional court functioning independently could examine the constitutionality of any legal regulation or the compliance thereof with the provisions of the constitution and could annul these provisions if they were found to be unconstitutional, i.e. it could also formally take them out from the existing legal system. Two types of norm control exist: abstract and concrete norm control. (1/A) abstract norm control means that, on the motion of the entitled persons and organs, the constitutional court examines the compliance of a norm with the constitution in a general manner (independently of a specific case or procedure), while in case of (1/B) concrete norm control, a concrete case (procedure) in which the possibility of the unconstitutionality of a given statute (statutory provision) arises is implied.

1.1. Abstract norm control

A type of norm control that is closely linked to the classical Kelsenian model of constitutional protection and inseparable from the concept of concentrated constitutional adjudication is abstract norm control (i.e. norm control that can be conducted independently of a specific, individual case and procedure). This function/competence is characterised by the fact that the Constitutional Court acts to safeguard the integrity of the constitutional order, irrespective of whether there is (already) a specific natural or legal person who has suffered damage as a result of the unconstitutional law. In this case, harm involves the loss of stability of the constitutional order, confidence in the constitution and the smooth functioning of the state, which is ultimately, indirectly, in the interests of all natural and legal persons. The perception of an abstract risk of such harm is the reason for initiating such proceedings, which may occur before or after the promulgation of the challenged legislation. The former is known as ex-ante review or preliminary norm control and the latter as ex-post review or posterior norm control.

1.1.1. Ex-ante review

No preliminary norm control is possible at all in Croatia. Such limited review is available in Slovenia only in relation to international conventions: if an international treaty is ratified, based on the proposal of the president of the republic, the government or one-third of the deputies of the National Assembly, the Constitutional Court issues an opinion on the conformity of such treaty with the constitution. The petitioners concerned have discretionary rights to decide whether or not to request the Constitutional Court to act. In Slovakia, also in the framework of the pre-ratification control of international treaties, the President of the Slovak Republic or the government may submit a proposal for a decision concerning such negotiated international treaties to which the assent of the National Council of the Slovak Republic is necessary.

In the Czech Republic, in the framework of ex-ante review, only international treaties may also be examined, but – in case of treaties regulating certain subjects – of

a mandatory, automatic nature[9] (thus, no petitioners are specified here). In Serbia, the constitutional review of adopted laws can also be initiated before promulgation. In addition, in the frame of the jurisdiction called 'procedure for deciding on suspending the entry into force of a decision of an autonomous province authority', the examination of constitutionality or legality of a decision of an autonomous province authority that has not yet entered into force can also be initiated. In such case, the government can propose to the Constitutional Court to suspend the entry into force of the contested decision until the Constitutional Court decides on its constitutionality or legality.

The Romanian and Hungarian constitutional courts and the Polish Constitutional Tribunal have the strongest powers of ex-ante review. In Romania, on the one hand, there is also the possibility of a preliminary assessment of the constitutional conformity of international conventions; this procedure may be initiated by the president of either of the chambers of the parliament – at least 50 Deputies or at least 25 Senators. In addition, the constitutionality of laws (acts) may be reviewed by the Constitutional Court before promulgation, partly at the initiative of the above-mentioned public actors but also at the initiative of the President of Romania, the government, the High Court of Cassation and Justice and the Advocate of the People (Ombudsman). Lastly, the Constitutional Court may also review the conformity of not yet promulgated laws with the constitution *ex officio*. However, the most interesting power, which is not found in the constitutions of any of the other states under study, is the competence of verification on the constitutionality of initiatives for the revision of the Constitution. In the course of it, before submission to the parliament to initiate the legislative procedure for the revision of the constitution, the bills or the legislative proposals concerning the revision of the existing constitutional regulations are to be handed in to the Constitutional Court, which must declare within 10 days that the preliminary proposal to amend the constitution has been made in compliance with and in consideration of the existing constitutional norms. This rule allows an exceptional examination of the constitutionality of the content, but it can also ensure that constitutional procedural standards are respected.[10]

In Poland, the president of the republic can send an adopted bill, before they sign it, to the Constitutional Tribunal; if they deem to have already found it in accordance with the Constitution, they must sign it; if the Tribunal held that the whole act is

9 In the Czech Republic, a preliminary assessment of constitutional compliance is automatically required for international treaties that affect the rights or duties of persons; that concern alliance, peace or that are of other political nature; by which the Czech Republic becomes a member of an international organisation; that are of a general economic nature; which concern additional matters the regulation of which is reserved to statute; and by which certain powers of Czech Republic authorities may be transferred to an international organisation or institution (Cf.: Constitution of the Czech Republic, Art. 49).

10 The substantive review is essentially limited to the violation of the provisions of Art. 152 (the eternity clause) of the Romanian Constitution. Varga, 2020, p. 71.

unconstitutional, the bill returns to the Sejm (lower house of parliament) for reconsideration. If the discordance with the constitution relates to particular provisions of the bill, and the Tribunal has not judged that they are inseparably connected with the whole bill, the president of the republic may sign the bill with the omission of those provisions considered as being unconstitutional or may return the bill to the Sejm for the purpose of removing the unconstitutional regulations.[11] The president of the republic has the possibility of initiating the ex-ante review of international treaties as well, i.e. before ratifying an international agreement, they may turn to the Constitutional Tribunal with a request to adjudicate upon its conformity to the constitution.

However, the most complex legislation on ex-ante control among the countries examined exists in Hungary. The Hungarian Fundamental Law considers the preliminary examination of the constitutionality of laws (i.e. acts made by the parliament) to be an ideal-typical case of this power. This can be initiated by two public actors, namely the parliament (National Assembly) itself and the president of the republic. The former provision is unique since there is no example in the legal systems under consideration (and it is rare even in other legal systems) that such an organ would make the Constitutional Court check the constitutionality of legal norms which are to be made by itself, i.e. the body that is responsible for the creation of these norms. Accordingly, the parliament can send the adopted but not yet promulgated law to the Constitutional Court for examination of its conformity with the Fundamental Law[12] (only the whole law, not some of its provisions). If the Constitutional Court finds the bill unconstitutional, the parliament reopens the lawmaking process (after which the parliament can re-initiate the preliminary review); if the law is not unconstitutional, the Speaker of the Parliament signs the bill and send it to the president of the republic. If the parliament has not requested a preliminary review by the Constitutional Court, and the president of the republic considers the law or any of its provisions to be unconstitutional, they send the adopted bill to the Constitutional Court for examination of its conformity with the constitution. If the Constitutional Court finds that the bill in question is unconstitutional, the parliament reopens the process. If the Constitutional Court, however, does not establish any conflict with the Fundamental Law, the president must sign the act and order its promulgation.[13]

11 Besides the possibility of initiating the ex ante review process ('constitutional veto'), the Polish Constitutional Tribunal (just as the Hungarian Constitutional Court) is also empowered to return the bill to the Parliament for reconsideration if they disagree with the content of the adopted but not yet promulgated bill ('political veto').

12 It can do it by a motion of the initiator of the act, the government or the Speaker of the National Assembly. The initiation must be submitted before the final vote on the bill.

13 In addition, similarly to the situation in Poland, the president of the republic has the right not only to a constititutional veto but also to a (temporary) political veto.

However, it is not only laws that are subject to constitutional review before the Hungarian Constitutional Court but also international treaties.[14] In Hungary, after ratification, one more step is required for an international treaty to enter into force, namely for the competent authority (either the president of the republic, in the case of international treaties promulgated by law, or the minister responsible for foreign polic,y in the case of international treaties promulgated by government decree, and exceptionally the prime pinister) to acknowledge the binding force of the international treaty. On the motion of the president of the republic in the former case or of the government in the latter, the Constitutional Court conducts a preliminary review of the conformity of the international treaty or of its provisions with the Fundamental Law. In addition, there exists the possibility of an ex-ante examination of an internal normative act, i.e. the Standing Orders of the Parliament, which does not constitute a law, on the motion of the initiator thereof, the government or the Speaker of the Parliament. Finally, the Constitutional Court also has the power to examine, solely for conformity with the procedural provisions of the constitution (and not for substantive constitutionality), a new constitution (fundamental law) or an amendment to the constitution (amendment to the fundamental law) which has been adopted but not yet promulgated.

1.1.2. Ex-post review

In Croatia and the Czech Republic, ex-post review can be initiated to examine both the constitutionality of laws and regulations and the legality of lower-level norms by the respective constitutional Court.[15] In Hungary, in addition to the Constitutional Court's review of the constitutionality of legislation, the Supreme Court (Curia) is responsible for reviewing the legality of local government decrees. It is also possible to apply to the Constitutional Court for review of the constitutionality of international treaties and of uniformity decisions made by the Curia (as abstract norms) as well as for reviewing the conflict of domestic laws and other statutory regulations with international conventions.

In Poland, the Constitutional Tribunal adjudicates concerning the conformity of statutes and international agreements to the constitution, the conformity of a statute to ratified international agreements and the conformity of legal provisions issued by central State organs to the constitution, ratified international agreements or statutes. In Slovakia, the Constitutional Court can also rule both on the compliance of laws

14 At the beginning of its operation, the Constitutional Court was also given the special right to rule on the constitutionality of bills still under discussion in Parliament and to express its – binding – opinion on bills during the political debate. However, it never exercised this power, and long before its formal repeal, in 1991, it stated in its self-limiting decision [Decision 16/1991. (IV. 20.) AB] that "the Constitutional Court is not a consultant of the Parliament but the judge of the legislative outcome of the Parliamment's work" (Cf. Csink and Schanda, 2012, pp. 164–165).

15 In the Czech Republic, statutes may provide that in place of the Constitutional Court, the Supreme Administrative Court shall have jurisdiction to annul legal enactments other than statutes or individual provisions thereof if they are inconsistent with a statute (Constitution of the Czech Republic, Art. 87[3]).

(acts), government decrees and generally binding legal regulations of ministries and other central state administration bodies with the constitution, constitutional laws or ratified international treaties; and on the compliance of generally binding legal regulations of the local bodies of state administration and generally binding regulations of the bodies of territorial self-administration with the constitution, constitutional laws, ratified international treaties, government regulations and generally binding legal regulations of ministries and other central state administration bodies.[16]

In Romania, posterior abstract norm control (as opposed to ex-ante abstract norm control and ex-post concrete norm control) is narrowly available. On the one hand, the Constitutional Court has jurisdiction to examine the conformity with the Constitution of the Standing Orders of the Parliament or of parliamentary resolutions on the functioning of the lower and upper houses.[17] On the other hand, the Constitutional Court may, on the motion of the Advocate of the People (ombudsman), inquire whether any law or ordinance, or of any provision thereof,[18] which is in force is unconstitutional.[19] Finally, Slovenia and Serbia have very similar rules: the constitutional courts of both countries are empowered to review the constitutionality of laws and other central legislation as well as international conventions, the legality of lower-level legal norms (central decrees, municipal regulations and general acts issued for the exercise of public authority) and, in particular, the conflict of laws and other legal norms with ratified international treaties or general standards of international law (in Serbia, 'generally accepted rules of the international law'; in Slovenia, 'general principles of international law').

In Slovakia and Slovenia, in connection with the constitutional review, the constitutional courts of these countries also have the power to suspend the application of the effective legal regulation under review. The Slovak Constitutional Court can suspend the effect of the challenged statutes or their provisions either if fundamental rights and freedoms may be threatened by their further application or if there is a risk of serious economic damage or other serious irreparable consequence. Similarly, in Slovenia, until a final decision, the Constitutional Court may suspend in whole or in part the implementation of a law, other regulation or general act issued for the exercise

16 In Slovakia, however, the promulgation of a decision of the Constitutional Court does not invalidate a lower-level regulation declared to be in conflict with a higher-level legal norm as the constitution provides that these bodies (that issued these legal regulations) are obliged to harmonise them with the higher-level norm. Only if they fail to do so within 6 months will the legal provisions concerned cease to be valid (Cf., e.g., Láštic and Steuer, 2019, p. 187).

17 In 2012, the government sought to withdraw this power from the Constitutional Court with Emergency Ordinance 38/2012, but later that year, the Constitutional Court found this power-limiting ordinance to be unconstitutional. Cf. Nergelius, 2015, p. 303.

18 The Romanian Constitutional Court acted with a special power not explained by the constitution and the Constitutional Court Act, when it annulled the High Court of Cassation and Justice's 21/2016 resolution of questions of law on the allowances for doctoral degrees. Cf. Varga, 2020, p. 84.

19 The Advocate of the People has the right to petition not only for violations of fundamental rights but also to allege in its petition violations of any constitutional norm and to seek the annulment of laws and legal provisions on the basis of those norms.

of public authority if difficult to remedy harmful consequences could result from the implementation thereof. In the other countries under scrutiny, constitutional courts do not have such powers – at least in the context of ex-post review of legal rules.

In most of the countries examined, ex-post review can be initiated by specific public actors, whose scope and the types of legal norms that they can refer to constitutional review are extremely varied. In most countries, the petitioners include the government, the president of the state, a certain number or proportion of deputies (and/or senators where there is a senate), the ombudsman or various bodies or officials of the judiciary;[20] in some countries, the right to petition has also been granted to enti-

20 In Croatia, one-fifth of the members of the Croatian Parliament, any committee of the Croatian Parliament, the President of the Republic of Croatia, and the Government of the Republic of Croatia may initiate the ex-post review (both the constitutionality and the legality of regulations). As a special procedure, local and regional self-governments have the right to initiate proceedings for an ex-post review if they consider that a law regulating their organisation, competence or financing does not conform with the constitution. In the end, the Constitutional Court itself may decide to institute proceedings to review the constitutionality of the law and the review of constitutionality and legality of other regulations. In the Czech Republic, the examination of the constitutionality of laws in the context of abstract norm control may be initiated by the president, a group of at least 41 Deputies (this is the most common way of initiating an a posteriori abstract review – cf. Šipulová, 2019, p. 37) or a group of at least 17 Senators and the government, while the examination of the constitutionality or legality of other (lower-level) legal norms may be initiated by the government, a group of at least 25 Deputies or a group of at least 10 Senators, the representative body of a region, the ombudsman ('Public Protector of Rights'), the Interior Minister, the competent ministry or other central administrative office, the director of a regional office, the representative body of a municipality and the head of a county office. In Poland, the President of the Republic, the Marshal of the Sejm, the Marshal of the Senate, the Prime Minister, 50 Deputies, 30 Senators, the First President of the Supreme Court, the President of the Chief Administrative Court, the Public Prosecutor-General, the President of the Supreme Chamber of Control and the Commissioner for Citizens' Rights (ombudsman) may petition the ex-post review on a general basis, and the National Council of the Judiciary may initiate it specifically in case of violation of judicial independence; moreover, the constitutive organs of units of local self-government have the right of petition. In Hungary, an inquiry into the abstract constitutionality of legislation and its conflict with international treaties may be initiated by one quarter of members of Parliament, the government, the President of the Curia, the Prosecutor General or the Commissioner for Fundamental Rights (ombudsman). The Slovak Constitutional Court may proceed with an ex-post review upon a motion submitted by at least one-fifth of all members of Parliament, the President of the Slovak Republic, the Government of the Slovak Republic and the Attorney General. In Slovenia, the procedure for the review of the constitutionality or legality of regulations or general acts issued for the exercise of public authority can be initiated, by a request of, as typical movers, the National Assembly, one-third of the deputies, the National Council, the government, the ombudsman for human rights, the 'information commissioner', the State Prosecutor General, representative bodies of local communities and, due to the Protection Against Discrimination Act of 2016, the Advocate of the Principle of Equality (if, in this latter case, a statute's unconstitutionality or illegality takes the form of discrimination). In Romania, as mentioned above, the ex-post review of legal norms can be, in general, initiated only by the ombudsman (Advocate of the People), while the constitutionality of the Standing Orders of the Parliament can be examined by the Constitutional Court on the motion of the presidents of the two Chambers, a parliamentary group or a number of at least 50 Deputies or 25 Senators. Finally, in Serbia, state bodies, bodies of territorial autonomy or local self-government and at least 25 deputies can initiate a proceeding on examining the

ties which make this possibility unique among countries with concentrated constitutional adjudication.[21] Croatia also has (uniquely among the examined jurisdictions, and as a rare exception in the whole world)[22] an *actio popularis*,[23] i.e. in Croatia any natural or legal person may apply to the Constitutional Court for a declaration that a law or subordinate legislation is unconstitutional.[24] However, the decision to initiate proceedings in this case is upon the Croatian Constitutional Court, as opposed to the mandatory initiation of proceedings on the motion of any of the public entities.

1.2. Concrete norm control

Concrete norm control is a type of constitutional review where the court, the Constitutional Court or another body empowered to do so interprets the constitution in the underlying cases before them (i.e. in case-by-case disputes). The constitutional review of a legal norm is therefore not conducted in an abstract manner but in relation to a specific litigation or non-litigation case or legal proceeding of a particular person, and typically, the decision in the case of a norm control can also affect the concrete case before the ordinary court or another body.

1.2.1. Judicial initiative for ex-post review in concrete cases

Constitutional review on the initiative of an ordinary court in an individual case is possible in all the jurisdictions examined. A specific feature of these cases is that the

constitutionality or legality of statutes or statutory provisions, and this procedure may also be instituted by the Constitutional Court itself upon a well-reasoned proposal of the president, a working body or a judge of the Constitutional Court.

21 In Slovenia, the Bank of Slovenia, the Court of Audit, representative associations of local communities and national representative trade unions can initiate posterior norm control. In Poland, constitutive organs of units of local self-government, national organs of trade unions, national authorities of employers' organisations and occupational organisations and churches or other religious organisations can be petitioners if the challenged legal regulation relates to matters relevant to the scope of their activity.

22 The *actio popularis* cannot be considered either as a normal or expected instrument of individual legal protection or as an abstract defence of the constitutional order. In fact, the example of Croatia has shown where allowing the petition for review of the constitutionality of norms without any legal interest leads to; the possibility of this has led to the overburdening of the Croatian Constitutional Court. This is why even one of the main advocates of constitutional protection, the Venice Commission, does not recommend its introduction – precisely because of the Croatian experience (as regards the new Hungarian constitutional changes of 2011, cf.: Venice Commission, CDL-AD[2012]009, Opinion on Act CLI of 2011 on the Constitutional Court of Hungary, para. 49).

23 In Hungary, until 1 January 2012, when the old Constitution expired, *actio popularis* was also possible; however, this unlimited right of petition, which was not linked to legal interest or the holding of public office, was abolished by the new Fundamental Law. For details about these issues and their impact, see Tóth J., 2012, pp. 11–19 and iss. 2012, pp. 29–37.

24 In Croatia, municipal decrees are 'general acts', and the Constitutional Court rejects its competence regarding 'general acts', except for statutes of local self-government. See, e.g., Decision U-II-6111/2013 from 17 October 2017. The Constitutional Court established, by its practice, that it is competent only for 'other regulations' (Art. 125 of the constitution). The legality, but not the constitutionality of 'general acts', is examined by the High Administrative Court.

court, in the course of the proceedings before it, finds that the rule (either substantive or procedural) applicable to the case in question is unconstitutional and asks the Constitutional Court to declare this and to annul the rule and/or to exempt it from the obligation to apply the rule in a particular case. In this case, therefore, unlike in the abstract review, there is a concrete proceeding in which the ordinary court must decide on the rights and obligations of a client or, if there are opposing parties in the procedure, on the resolution of a legal dispute. Exceptionally, the unconstututionality of legal regulations may not only arise before a court but before other state organs; however, it is also a typical feature of such cases that the decisions made in them (the vast majority of them) can be challenged before a court. Therefore, it seems to be appropriate to treat the possibility of the latter together with the concrete norm control on the initiative of courts. In addtion, this concern can also be justified on the grounds that where such a possibility exists, the constitutional rules themselves, in a general way, stipulate the right of initiative of the courts and that of other bodies together and regulate them in a very similar way.

According to the Croatian Constitutional Court Act, either the Supreme Court of the Republic of Croatia or any other ordinary court can initiate proceedings before the Constitutional Court if the issue of constitutionality of laws and regulations or legality of decrees and other regulations has arisen in proceedings conducted before that particular ordinary court of justice. If a law or a provision of a law is contrary to the constitution, the court hearing the case must stay proceedings and apply for a declaration to the Constitutional Court that the unconstitutional law or provision is unconstitutional; until the Constitutional Court has ruled on the case, the court may not apply the challenged rule. However, if a lower-level statute would not be in accordance with the constitution, the ordinary court must continue its proceedings and pass a decision, in addition to initiating the constitutional court proceedings.

In Poland, any court (including, in addition to common courts, specialised courts) may turn to the Constitutional Tribunal as to the conformity of a normative act to the constitution, ratified international agreements or statute, if the answer to such question of law will determine an issue currently before such court. In Romania, too, not only courts of law but also courts of commercial arbitration have the right to turn to the Constitutional Court if they consider that the laws and ordinances which they apply and which are in force, or any provision thereof, are contrary to the constitution. They may do so either *ex officio*, on the motion of the parties, or, in criminal cases, on the motion of the public prosecutor. However, the Constitutional Court Act does not provide for a mandatory stay of proceedings.

In Slovenia, a court which has taken the initiative to declare the unconstitutionality of the applicable legal rule by the Constitutional Court must, together with the submission of this initiative, issue a separate order to stay proceedings. If the Supreme Court finds that the rule applicable to the proceedings before it is unconstitutional, it stays proceedings in all cases in which it should apply such law or part thereof in deciding on legal remedies. In Hungary, if a court is required to apply a legal regulation which it finds to be unconstitutional in an individual case, it must

stay the proceedings and ask the Constitutional Court to declare the provision unconstitutional. If the rule is no longer in force, as the Constitutional Court has already ruled that it is unconstitutional and annulled it, but the rule should still be applied in the specific case (which was initiated before the rule expired), the court may request a declaration that the legal regulation in question should not be applied to the specific proceedings (i.e the court is also allowed to ask the exclusion of the application of the legal regulation contrary to the Fundamental Law). The court may initiate an examination of the constitutionality not only of statutes but also of normative decisions and orders, uniformity decision of the Curia (Supreme Court) and the conflict of all of these with an international treaty, if the decision in the individual case should be made in whole or in part on the basis of the latter.

In Slovakia, the Constitution merely provides that, among other public actors,

> [t]he Constitutional Court shall commence proceedings upon a motion submitted by [...] a court", and the Constitutional Court Act only adds that in such a case, i.e., if the proposal was submitted by a court in relation with its decision-making activity, the secondary parties to the action are the parties of the proceedings which were brought to the court which submitted the proposal.[25]

The Serbian Constitutional Act stipulates that if during a procedure before a court of general or special jurisdiction, the issue of compliance of law or other general act with the constitution, generally accepted rules of international law, ratified international agreements or law is raised, the court shall, if it finds that the issue has grounds, adjourn the procedure and initiate a procedure for assessing the constitutionality or legality of that act before the Constitutional Court. Finally, the Constitution of the Czech Republic also provides for the possibility of the judicial initiatiative since if a court concludes that a statute which should be applied in the resolution of a matter is in conflict with the constitutional order, it must submit it to the Constitutional Court.[26]

1.2.2. Concrete norm control on the motion of natural and legal persons

In almost all countries surveyed, both natural and legal persons can initiate a specific review of the legal rules. This can be done against legal provisions which have been applied in proceedings before a court (exceptionally another public body), i.e. against statutory regulations on which the court's decision was based. These provisions, like in the course of the review that can be initiated by judges, can be either substantive or procedural rules. However, this type of procedure differs from the former in that the underlying judicial (exceptionally other) proceedings have already ended and there

25 In addition, in cases of criminal law, if the proceedings relate to the criminal trial proceedings, the party to the action is represented by a person against which the legal action (the criminal trial proceedings) is taken and the prosecutor.
26 Constitution of the Czech Republic, Art. 95(2).

is a final decision of which the natural or legal person bringing the action considers to be in breach. The constitutional stipulations governing these proceedings also provide that the harm must consist not merely in an incorrect interpretation of the applicable law or a judicial error in the determination of the facts but specifically in the fact that the law applied is contrary to the constitution (or in some legal systems, to other, higher level statutory regulations). It is not always a requirement that the petitioner must have been a party to the underlying legal proceedings (or a defendant in criminal proceedings), but it is a requirement that their right, obligation or legal position must be affected by a judicial decision based on the challenged legislation.

In Poland, this competence is known as a constitutional complaint; however, it cannot be used against the judicial decision itself but only to challenge the unconstitutionality of the underlying legislation. It can be brought by any natural person whose constitutional freedoms or rights – according to them – were violated either by a court or an organ of public administration; nevertheless, legal persons can use this legal institution by a limited manner.[27] In Slovenia, the constitutionality of a legal rule may be examined on individual initiative not only if it was based on a judicial (or other formal public authority) decision but also if it was applied directly, without any formal public authority decision. In the former case, anyone who demonstrates legal interest[28] may lodge a petition for this kind of review in their own concrete case. In the latter case, if these unconstitutional regulations have direct effects and interfere with the rights, legal interests or legal position of the petitioner, a petition may be lodged within 1 year after such act enters into force or within 1 year after the day the petitioner learns of the occurrence of harmful consequences. The situation is similar in Hungary; two of the three specific types of legal instrument referred to here as 'constitutional complaints' fall within the scope of the specific review of the law discussed in this chapter. One type of constitutional complaint may also be lodged in the case of the alleged unconstitutionality of a statute or legal provision applied in court proceedings and may be initiated by the natural or legal person affected by the court decision. The other type of complaint can be lodged (within 180 days of the entry into force of the unconstitutional act) if the rights guaranteed by the Fundamental Law were violated directly, without a judicial decision, i.e. if the rule is directly applicable or directly effective without a judicial decision (e.g. changes to pension rules, changes to employment conditions or provisions on dismissal, modifications on the regulation of enterprises etc.).

In Serbia, the same legal instrument is called 'constitutional appeal', and certainly, persons can use it if they consider any law or legal regulation unconstitutional or a lower-level legal norm unlawful, provided that the application of the unconstitutional or unlawful norm 'by state bodies or organisations exercising delegated public

27 According to the Constitutional Tribunal, legal persons of private law can initiate such proceedings if they deem that such a right was infringed of which they can be subjects (e.g. right of property).
28 According to the Constitutional Court Act of Slovenia, legal interest is deemed to be demonstrated if a regulation or general act issued for the exercise of public authority whose review has been requested by the petitioner directly interferes with their rights, legal interests or legal position.

powers' violated or denied human or minority rights and freedoms guaranteed by the constitution, if other legal remedies for their protection have already been applied or not specified. However, since decisions of other public bodies which affect the substantive rights of persons can always be challenged in court, this rule is intended to deal with unconstitutional situations caused by judicial decisions which infringe human rights, where the decision is final, and the unconstitutionality or illegality does not arise from the application of the law by the judiciary but from the law itself. In addition, the Serbian Constitutional Court has a special and unique competence, namely the competent body of an autonomous province may institute a proceeding of assessing the constitutionality or legality of laws and regulations of the Republic of Serbia or the legal act of the local self-government unit which violates the right to the mover's provincial autonomy; moreover, a municipality has the same right if the constitutionality or legality of any statutory rule of the Republic of Serbia or of an autonomous province violates the initiator's right to local self-government.

In Croatia, both natural and legal persons may apply to review the constitutionality of the provision of a law or the constitutionality and legality of the provision of another regulation, not only – reasonably – in the context of an ex-post abstract review of a norm based on actio popularis but also in the context of an individual concrete review of a norm. The latter is preferable for the petitioner because in this case, if the Constitutional Court accepted the proposal of the petitioner and repealed the challenged provision of the law or the challenged provision of another regulation, they have the right to submit a request to the competent body to change the final individual act whereby their right was violated, and which was passed on the basis of the repealed provision of the law, or the repealed provision of the other regulation.

In the Czech Republic, a constitutional complaint includes a direct (so-called 'real' or 'full') constitutional complaint against a judicial decision. A complaint for review of a norm (which is the subject of the present subchapter) is possible only in connection with the real constitutional complaint (and not on its own, without challenging the judicial decision). The complainant may submit, together with their constitutional complaint, a petition by which they propose the annulment of a law, decree or individual provisions thereof, the application of which resulted in the situation that is the subject of the real constitutional complaint.[29] In Slovakia, on the other hand, there is no possibility of individual review of a norm on the initiative of the persons concerned; only a court may initiate a specific review of a norm, and individuals merely have the right to contest the problematic judicial decision directly (by means of a so-called real constitutional complaint) before the Constitutional Court but not the norm applied by the court in their case. Finally, in Romania, the parties do not have the possibility to challenge the law applied in the judicial procedure before the Constitutional Court; they only have the right to initiate the court's constitutionality review during the pendency of the case, i.e. to ask the court to exercise its power (judicial initiative for ex-post review) described in subsection 3.1.2.1.

29 Constitutional Court Act (182/1993 Sb.) of the Czech Republic, Art. 74.

2. Fundamental rights adjudication: the ('real') constitutional complaint

The typical form of fundamental rights adjudication is constitutional complaint and, in particular, its form developed in German constitutional law, the so-called 'real constitutional complaint' (*Urteilsverfassungsbeschwerde*). In this type of complaint, any natural (and/or legal) person concerned in a judicial (or sometimes administrative) process can turn to the constitutional court even if it is not the legal regulation applied by the court (or the administrative organ) that the person considers to be unconstitutional but (with recognising the constitutionality of the legal regulation) the court's (administrative organ's) decision itself or the legal procedure leading to that decision. It means that the constitutional problem is about the unconstitutional application of the otherwise constitutional norm (including not only procedural mistakes but, first and foremost, the unconstitutional interpretation of the given norm).[30]

In Slovenia, a constitutional complaint may be lodged against individual acts by which state authorities, local community authorities, or bearers of public authority decided the rights, obligations or legal entitlements of individuals or legal persons in case these decision-makers are deemed to have violated any of the human rights or fundamental freedoms of the concerned subjects. As is the case with the competence to lodge a real constitutional complaint in general, the ordinary remedies available must be exhausted.[31] The same is the case in Serbia: a 'constitutional appeal' may be filed by everyone who believes that their human or minority rights and freedoms guaranteed by the constitution have been violated or denied by an individual act or action of a state authority or organisation vested with public authority (since a judicial review is always conducted against decisions of public authorities taken in individual proceedings affecting the rights of individuals, in practice, such a constitutional appeal is possible only after a final judicial decision.)[32] In addition, similarly to the competence of the Constitutional Court of Serbia related to the abstract norm control presented above, by the appeal of the competent body of the autonomous province, the Constitutional Court can assess if an individual legal act or action of a state body

30 A 'real' constitutional complaint, thus, is a legal institution where the concerned person, following a final court decision on the merits of the case affecting their rights, obligations and legal situation, may appeal to the Constitutional Court not against the law applied by the court but against the court's decision itself and the interpretation of the law contained therein, which they consider unconstitutional. In this case, the (allegedly) unconstitutional situation is not caused by the inherently unconstitutional nature of the law but by the fact that the judge interpreted and applied the otherwise constitutional norm in such a way that it resulted in an unconstitutional situation. In such a case, the Constitutional Court has the power not to annul the law but to annul the decision of the court itself, without affecting the effectiveness of the statutory regulation on which the contested judicial dicision was based.

31 There is one exception: before all extraordinary legal remedies have been exhausted, the Constitutional Court may exceptionally decide on a constitutional complaint if the alleged violation is manifestly obvious and if irreparable consequences for the complainant would result from the implementation of the individual act.

32 Cf. Korhecz, 2020, p. 61.

or body of local self-government unit obstructs performing the competences of the autonomous province that lodged the appeal, or, on the initiative of the competent body of a municipality, an individual legal act or action by a state body or body of local self-government unit obstructs performing the competences of the municipality

In Croatia, the scope of the rules regarding the real constitutional complaint are broader: this complaint can be lodged against decisions taken by state bodies, bodies of local and regional self-government and legal persons vested with public authority, provided that such decisions violated human rights and fundamental freedoms or, in special cases, the right to local and regional self-government guaranteed by the constitution. Such a complaint can be lodged by any natural person (including suspects and defendants in criminal proceedings). As an exception, the procedure of the Croatian Constitutional Court may be invoked even before the exhaustion of the ordinary remedies available, if the ordinary court did not decide within a reasonable time about the rights and obligations of the petitioner in the judicial proceeding or about the suspicion or accusation for a criminal offence, or in cases when the disputed individual act grossly violates constitutional rights, and it is completely clear that grave and irreparable consequences may arise for the applicant if Constitutional Court proceedings are not commenced. There also exists a special institution regarding the protection of judicial independence and judges' personal right to hold their office: the judges of ordinary court can lodge an appeal to the Constitutional Court against a decision relieving them of judicial office or against a decision by the National Judicial Council on their disciplinary accountability.[33] In addition, the Serbian ordinary judges, public prosecutors and deputy public prosecutors can also lodge an 'appeal' to the Constitutional Court against the decision[34] by which the tenure of their office was terminated.[35]

In the Czech Republic, there may also be a real constitutional complaint if constitutionally guaranteed fundamental rights and basic freedoms have been infringed as a result of the final decision in a proceeding to which the petitioner was the party. In addition, a representative body of a self-governing region can also lodge such a complaint against an "unlawful encroachment by the state".[36] The Constitutional Court of Slovakia, however, also may decide on complaints of natural and legal persons if they are pleading the infringement of their fundamental rights or freedoms or human rights and fundamental freedoms resulting from the international treaty which has been ratified by the Slovak Republic and has been promulgated. In this case, claimants can lodge a constitutional complaint not only to challenge a judical

33 If the judge lodges such an appeal, this excludes their right to file a constitutional complaint.
34 A judge's tenure of office may be terminated by the decision of the High Judicial Council. A public prosecutor's tenure of office may be terminated by the decision of the National Assembly. A deputy public prosecutor's tenure of office may be terminated by the decision of the State Prosecutors Council.
35 This 'appeal' is not identical to the legal institution of 'constitutional appeal', and in case of the former, the latter cannot be initiated.
36 Constitutional Court Act (182/1993 Sb.) of the Czech Republic, Art. 72(1).

act but also on a judicial omission.[37] Slovakia also has a special kind of constitutional complaint regarding the rights of municipalities: if an unconstitutional or unlawful judicial decision or state action infringes the municipalities' rights related to a matter of territorial self-administration, the concerned municipality can turn to the Constitutional Court.

In Hungary, the real constitutional complaint, i.e. the third main type of the institution of constitutional complaint – as a 'compensation' for the abolition of *actio popularis*[38] – was introduced by the Fundamental Law that entered into force on 1 January 2021, and it acquired its current form in 2019. Originally, this complaint could be lodged by a natural person, legal entity or other organisation concerned by an individual judicial proceeding if the decision on the merits or other decision ending the court proceedings violated the petitioner's right guaranteed by the Fundamental Law. In 2019, public law entities (public authorities, courts and other public bodies) were also granted the right to file such a complaint; since 20 December 2019, they have also been able to lodge a constitutional complaint if, like other petitioners, the decision on the merits of the case or any other decision ending the court proceedings violated any of their rights guaranteed by the Fundamental Law and also if such a court decision limited their powers in an unconstitutional manner.

The Constitutional Tribunal of Poland only has competence to rule on norms applied by a court or organ of public administration as a special kind of constitutional complaint ('appeal') but it has no power for adjudicating on real constitutional complaint lodged directly against the judicial decision. In Romania, too, there is no possibility of a real constitutional complaint (nor, as could be seen above, of a complaint for review of a norm on the motion of the persons concerned).[39]

3. Other powers of the Central and Eastern European constitutional courts

3.1. Resolution of jurisdictional disputes

During adjudication on jurisdictional disputes, which is, just as the power of abstract norm control, also the part of the original model of Kelsen, the Constitutional Court settles the disputes between other constitutional bodies regarding their competence. This means that if the state's different constitutional bodies disagree[40] on which of them may proceed and make a decision in certain cases, the Constitutional Court will

37 See, e.g., Mészáros, 2020, p. 73.

38 The abrogation of *actio popularis* was also supported by the Venice Commission, which suggested, as a better means of individual rights protection, the introduction of the real constitutional complaint (a suggestion that was accepted by the constitution maker). Cf., e.g., Sonnevend, Jakab and Csink, 2015, p. 47.

39 There, the concrete review of a norm is only possible through a judicial initiative.

40 The Constitutional Court typically judges only the conflicts between *different types* of public bodies. The conflicts within a given organisational system (e.g. disputes on the competence of courts) will be resolved by the 'key organisation' of the given system (e.g. in case of conflict of competence between ordinary courts, the Supreme Court).

decide the dispute by interpreting the constitution's relevant provisions. The conflict of competence may be 'positive' if two or more bodies wish to proceed in a given case or make a certain type of decision, and it may be 'negative' if no organisation wants to resolve a task resulting from the constitution.

In all the countries under scrutiny, constitutional courts have the power to rule on jurisdictional disputes. In Slovakia, the Constitutional Court can rule on disputes between central state administration bodies; in Romania, on disputes between public authorities in the broad sense; and in Poland, on conflicts of jurisdiction between central constitutional organs of the state. The Croatian Constitutional Court has a broader competence: it can rule on jurisdictional disputes between the legislative, executive and judicial branches. In the Czech Republic, the Constitutional Court and the Supreme Administrative Court are authorised by the constitution to decide on jurisdictional disputes between state bodies and bodies of self-governing regions.

In Slovenia, the Constitutional Court may decide on jurisdictional disputes between the state and local communities, between local communities, between courts and other state authorities and, in the end, between the National Assembly, the president of the republic and the government. In Hungary, the Constitutional Court of Hungary may proceed if the conflict of competence arises between state organs or between a state organ and local government organs, with the exception of jurisdictional disputes between courts and public administration authorities. The Constitutional Court of Serbia may decide on the conflict of jurisdictions between courts and state bodies, between republic and provincial bodies or bodies of local self-government units, and between provincial bodies and bodies of local self-government units.

Most jurisdictional disputes can be brought before the Constitutional Court by the bodies concerned; in some countries, public actors specifically designated by the constitution or the Constitutional Court Act (in Romania, the President of Romania, the president of either of the Chambers of Parliament, the prime minister or the President of the Superior Council of Magistracy; in Poland, the president of the republic, the Marshal of the Sejm, the Marshal of the Senate, the prime minister, the First President of the Supreme Court, the President of the Chief Administrative Court and the President of the Supreme Chamber of Control) have the right to file a petition.

3.2. Adjudication regarding the functioning of the state

In all examined countries, there exists a possibility of impeachment of the president of the state, in which the Constitutional Court has a role in each jurisdiction. The exceptions are Poland, where this power is exercised by the Tribunal of State, and Romania, where the impeachment procedure is conducted by the High Court of Cassation and Justice (here the Constitutional Court only may give an advisory opinion on the proposal to suspend the President of Romania from office). These proceedings are initiated by the parliament (by members of parliament, deputies or senators) according to varying procedural rules and are based on the grounds that the president of the state has deliberately violated the constitutional rules or the provisions of the constitution (Croatia, Hungary, Czech Republic, Slovakia, Poland, Serbia and

Slovenia), deliberately committed a serious breach of the law (Hungary and Slovenia), committed treason or high treason (Czech Republic, Slovakia and Romania) or other crimes (in Hungary, any deliberate crime). The Constitutional Court (or the Tribunal of State in Poland and the High Court of Cassation and Justice in Romania) decides on the liability of the president or on the rejection of a motion by the parliament (a certain proportion of MPs or senators) in a special procedure (e.g. in Croatia, liability requires the agreement of two-thirds of all the judges of the Constitutional Court; in Hungary, the agreement of two-thirds of the plenary session members present; in Slovenia, a two-thirds majority vote of all judges).

It is a common rule that during the impeachment proceedings, the president may not exercise the powers of their office; however, in Slovenia, although the Constitutional Court is merely allowed to order the president not to exercise their power, it is not obligatory for the Constitutional Court to do so. It is also a common feature that finding of the president's responsibility entails their removal from office (they lose the presidency). In Hungary, however, the Constitutional Court *may* remove the president of the republic from office, but this is not mandatory; it is up to the Constitutional Court to decide whether the president who has deliberately violated the constitution or the law or committed a deliberate criminal offence may remain in office.

In Poland and Slovenia, public officials other than the president may also be accountable and held liable under public law. In Poland these are the prime minister, ministers, the President of the National Bank of Poland, the President of the Supreme Chamber of Control, members of the National Council of Radio Broadcasting and Television, persons to whom the prime minister has granted powers of management over a ministry, and the Commander-in-Chief of the Armed Forces. A deputy or a senator of the parliament may also forfeit their mandate if the Tribunal of the State establishes that they performed any business activity involving any benefit derived from the property of the State Treasury or local self-government or to acquire such property; in addition, the Constitutional Tribunal, on request of the Marshal of the Sejm, is entitled to determine whether there exists an impediment to the exercise of office by the president of the republic.[41] In Slovenia, members of the government, i.e. the prime minister and the ministers, in addition to the president of the state, can be brought before the Constitutional Court for an impeachment proceeding on charges of violating the constitution and laws during the performance of their office.

In Slovakia, the Constitutional Court (or more precisley, the president thereof) has a role regarding the resignation of the President of the Slovak Republic, who may resign from their office with a written announcement delivered to the President of the Constitutional Court (which will be effective at the time that the President of the Constitutional Court received it). In addition, in the event that the president cannot perform the duties of their office for more than 6 months, the Constitutional Court may declare that the post of president has become vacant. The latter function is also

41 If the Constitutional Tribunal so finds, it requires the Marshal of the Sejm to temporarily perform the duties of the president of the republic.

practised by the Croatian Constitutional Court; if the president cannot perform their duties for a longer period, the Constitutional Court, at the proposal of the government, may declare the vacancy. On account of this declaration, the Speaker of the Parliament may perform the duties of the President of Croatia.

Another frequent competence is the task of monitoring the constitutional functioning of political parties. In exercising this power, a country's Constitutional Court may find that a party is operating in an unconstitutional manner and may ban the party. In Hungary, the Constitutional Court does not have such powers (the public prosecutor has the power to control the functioning of political parties, and the ordinary courts can decide on the basis of the public prosecutor's motion for abolishing a party (as a special form of association engaged in political activity) that is operating unconstitutionally or unlawfully. Similarly, in Slovakia, the Constitutional Court cannot rule on the banning of a party but on whether a decision dissolving a political party or movement, suspending political activities or rejection of an application for registration thereof is in conformity with the constitutional laws and other laws. The constitutional courts of all other countries have jurisdiction to ban parties that operate unconstitutionally.

In Romania, however, the Constitutional Court may also establish the reality of the circumstances justifying the interim in the exercising of the office of President of Romania.

3.3. Review of decisions in election disputes

In most of the jurisdictions examined, constitutional courts have special power at the border between adjudication regarding the functioning of the state and adjudication on election disputes. In Slovakia and the Czech Republic, the Constitutional Court can decide on a complaint against a decision verifying or rejecting verification of the mandate of a member of parliament (in Slovakia) or of a deputy or senator (in the Czech Republic). This is also the case in Serbia, where an 'appeal' can be lodged against decision regarding the confirmation of mandate of members of parliament. In Slovenia, the candidate in the elections whose mandate was not confirmed by the National Assembly can turn to the Constitutional Court by a special kind of constitutional complant asking it to confirm that they have been elected deputy.

All CEE constitutional courts have responsibilities in relation to parliamentary and/or municipal elections. In Hungary, the decisions of election committees acting on election objections can be reviewed by the ordinary court, and a constitutional challenge can be brought to the Constitutional Court against the court's decision as against any other final decision of an ordinary court. In Slovakia, a constitutional complaint can also be submittedabout unconstitutionality or unlawfulness of the elections to the Slovak parliament or to a body of a local self-government, on one hand, or against the result of the elections, on the other. As a result, the Constitutional Court of Slovakia is entitled either to proclaim the results of elections not to be valid or to cancel the contested result of the elections. In Serbia, a petition for deciding on electoral disputes may be lodged in cases for which a court's jurisdiction is not defined

by law. In Croatia, the Constitutional Court monitors whether elections are conducted in compliance with the constitution and laws and may resolve electoral disputes which fall outside the jurisdiction of the ordinary courts. In this competence, on one hand, the Constitutional Court can undertake relevant measures, performing the control of the constitutionality and legality of the elections if the electoral activities are being conducted in discordance with the constitution and the law.[42] On the other hand, however, the Croatian Constitutional Court, acting as a court of appeal, can also decide on *par excellence* electoral disputes, i.e. on appeals against the ruling of the competent electoral commission.

Constitutional courts also have special powers (not closely related to elections in the strict sense) in relation to referendums. In Hungary, for example, the Constitutional Court can, on the basis of a real constitutional complaint, act in cases relating to referendum disputes, similarly to electoral cases. In such cases, the decision of the ordinary court hearing the application for judicial review against the decision of the electoral commission can be challenged. A parliamentary decision to order a referendum may also be contested: according to the Fundamental Law, parliamentary resolutions ordering a referendum or dismissing the ordering of a referendum to be obligatorily ordered can be reviewed by the Constitutional Court with regard to constitutionality and legality on anyone's petition. Similarly, in Slovakia, the Constitutional Court may decide, on the initiative of the President of the Slovak Republic, on whether the subject of a referendum to be declared upon a petition of citizens or a resolution of the National Council of the Slovak Republic is in conformity with the constitution or constitutional law, but it can also decide on complaints against the result of a referendum and complaint against the result of a plebiscite on the recall of President of the Slovak Republic. In Croatia, the Constititutional Court also controls the constitutionality and legality of national referendums and, similarly to those, measures, procedures and competences which were presented above in accordance with the competence deciding on the constitutionality and legality of the elections or on the electoral disputes.

In Romania, the Constitutional Court supervises the observance of the procedure for the organisation of and call for a referendum and confirms its results. In addition, the Romanian Constitutional Court, even *ex officio*, verifies the fulfilment of the conditions for the citizens' exercise of the legislative initiative (plebiscite) by which the parliament can pass an act on the subject contained by this initiative. In the end, as a special compentence, it may also supervise the observance of the procedure for the election of the president of Romania and validate the mandate of the president-elect.

Poland, in the end, is the only CEE country under scrutiny where the Constitutional Tribunal has no jurisdiction to review the verification of parliamentary mandates nor to proceed in electoral or referendum disputes.

42 When the Constitutional Court of Croatia ascertains that the participants in the elections act contrary to the constitution and the law, it informs the public over the media – and if needed, warns the competent bodies – and in case of violation which influenced or might have influenced the results of the elections, it annuls all or separate electoral activities and decisions that preceded such violation.

4. Conclusion

The constitutional courts of the eight CEE countries examined perform largely similar functions and consequently exercise similar powers. The concentrated constitutional courts, as a consequence of the implementation of the Kelsenian model, necessarily carry out norm control. Croatia is the exception as it also covers the possibility of ex-ante review, but this does not necessarily mean checking the conformity of domestic legislation with the constitution; in several countries under scrutiny, this possibility is limited for the constitutional courts to check the constitutionality of international treaties that have been ratified but not yet promulgated. By contrast, an ex-post abstract review of norms can be conducted in all countries because it is at the heart of centralised constitutional administration, without which constitutional courts would not exist as autonomous bodies. *Actio popularis*, however, is only possible in the Croatian constitutional system. In addition, and in keeping with the European tradition of constitutional adjudication, concrete norm control is now also part of the essence of constitutional review, whereby either the ordinary court proceeding in an individual case or the persons concerned may turn to the Constitutional Court if they consider that a legal rule applicable or applied in a specific case is unconstitutional. Judicial initiative is possible in all the countries examined, while concrete norm control on the motion of the persons concerned is not possible in only two countries, Romania and Slovakia, but is an existing and functioning institution in the others.

The 'real' constitutional complaint (*Urteilsverfassungsbeschwerde*), developed by the German constitutional law, and the German *Bundesverfassungsgericht* did not originally form part of the concept of concentrated constitutional adjudication; the original Kelsenian model completely lacked the possibility for citizens (or other natural and/or legal persons) to challenge the constitutionality of judicial decisions before the Constitutional Court. However, due to the spreading influence of German practice, such powers now exist in most European countries with centralised constitutional courts. This is also true for the vast majority of the CEE countries examined, and it is only in Romania and Poland that no 'real' constitutional complaint exists. However, more importantly, where it exists, it has become a core competence of the constitutional courts, as most of the petitions before the constitutional courts, and the majority of the decisions on unconstitutionality thereof are taken in this competence.[43]

43 In Serbia, for example, constitutional complaints account for more than 98% of all cases (cf. Korhecz, p. 63). In Slovakia, these account for about 85% of all Constitutional Court proceedings (Cf. Mészáros, 2020, p. 74). In Hungary, over 90% of cases are 'complaints'. Complaints based on ex-post facto concrete norm control constituted more than half of all complaints; however, among the successful ones, there are many more 'real' complaints, i.e. those submitted against judgements rather than against the law on which the judgement is based (Cf. Tóth J., 2018, pp. 95–107). In Poland, where no direct fundamental rights adjudication exists, the number of complaint cases based on concrete ex-post norm control, the cases of abstract review concerning the constitutionality of laws (acts) and the legality of sub-statutory regulations decided by the Constitutional Tribunal on the merits were all about a few dozens each year (Cf. Wołek and Kender-Jeziorska, 2019, pp. 130–131 as regards only the complaint cases).

Finally, a further common feature of the rules on the jurisdiction of the constitutional courts under scrutiny is that based on the Kelsenian model, constitutional courts can act in cases of jurisdictional disputes between state organs belonging to (typically) different branches of division of power. Further, they are also empowered to resolve certain situations of extreme danger to public order caused by state bodies (adjudication regarding the functioning of the state) and, in most countries, to proceed in electoral jurisdiction – in addition to other radically diverse competences that may be exercised in some of the countries analysed.

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