

**International Conference**  
**"Constitutional Justice: Doctrine and Practice"**

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**Speech by**  
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*Chairman,*  
*Honourable judges,*  
*Your Excellences,*  
*Ladies and Gentlemen,*

I am very pleased to be in St. Petersburg again, to take part in the international conference on "*Constitutional Justice: Doctrine and Practice*," hosted by the Constitutional Court of the Russian Federation, marking the opening of the VII<sup>th</sup> St. Petersburg International Legal Forum.

It is always a great pleasure for me to attend events organised by the Russian Constitutional Court, an institution that the Venice Commission has known, valued and cooperated with for a long time. I would like to particularly thank its President, Valery Zorkin, for our long-standing work together.

Our co-operation started in the early 1990s, even before Russia became an associate member of the Venice Commission, and we had the opportunity to work with the Constitutional Commission at the time. Russia became a full member of the Venice Commission almost a decade later, in 2002. All Chairmen of the Constitutional Court of the Russian Federation, Valdimir Toumankov, Marat Baglay and of course you, Valery Zorkin, contributed as its members to the success of the Venice Commission.

It was, in 1994 that we provided our first opinion for Russia on its draft Constitution, which was then adopted by referendum and is still in force today – albeit with a few amendments made since then!

*Chairman,*  
*Ladies and Gentlemen,*

Today's topic, "*Constitutional justice: doctrine and practice*" addresses an interesting aspect of constitutional justice and – I believe – it nicely describes the work of the Venice Commission, as we are the Council of Europe's advisory body on constitutional matters. Indeed, the Commission's members are academics – notably university professors and often, constitutional law professors; but also practitioners – notably, and among others, constitutional and supreme court judges.

This brings the academic world together with the practitioners to offer, what – we hope – is a comprehensive overview of constitutional justice, providing both an academic and practical perspective, in the interest of our member States.

This type of composition also applies to constitutional courts, the members of which are often appointed or elected among university professors, mostly professors of public law. For instance, the French *Conseil constitutionnel* has had, as members, prominent professors such as Georges Vedel, Robert Badinter, Jean-Claude Colliard or Jacques Robert. And to take another example, it was great figures such as Antonio La Pergola, who also happened to be the founding father and the first President of the Venice Commission, who were part of at the Italian Constitutional Court. Some constitutional courts have professors that are not professors of law at all, but of economics or history.

This type of composition enriches the constitutional court, providing it with a source of information hailing from people with different backgrounds. Their doctrine tends to influence the constitutional court in its judgments, which may begin as dissenting opinions, but may lead to convincing the majority of the court's judges.

Besides the direct composition of the members of the constitutional court, I believe that it is also important for these courts to benefit from a coherent, dogmatic framework for their activity and universities are keen to analyse the courts' activity.

Scholars do not only describe new tendencies in judicial practice, but also integrate such developments into the larger theories of constitutional justice and the rule of law.

It is the constitutional doctrine that distinguishes Constitutional Court from politics. Constitutional Courts often have to decide on issues that are crucial for the future of their country. However, they do not render decisions based on their political position. They have to base their arguments on sound constitutional doctrine – arguments and interpretation techniques that cannot shift from one case to another.

Constitutional doctrine must be based on sound interpretation techniques, whether literal or historical but, may also be founded on teleological interpretation. Reference to teleological interpretation allows the Court to address the needs of society rather than petrify the Constitution.

Several techniques concur. With the introduction of proportionality, developed in German administrative law, enhanced by the German Federal Constitutional Court, then taken up by other Constitutional Courts and the European Courts, we have seen the ascent of sound constitutional doctrine that is capable of revealing the essence of modern Constitutions: the protection of human rights developed together with genuine democracy and the rule of law.

*Chairman,  
Ladies and Gentlemen,*

Judges are not alone in developing constitutional doctrine. They are in a constant dialogue with academics.

Judges deliver the Courts' decisions. Academics analyse them, they criticise them and this has an - often positive - influence on future judgments of the Court and on the coherence of the Court's doctrine.

And it is not only scholars and academics that influence constitutional justice, let us not forget that it is also the lawyers who breathe life into the rights contained in the constitution, by applying the fundamental principles it contains to situations at hand, making it relevant in everyday life.

It is therefore also very important to underscore the crucial role that universities and law schools play in strengthening legal education, so as to ensure that the values of constitutionalism do not remain a dead letter, but live and thrive.

*Chairman,  
Ladies and Gentlemen,*

I believe that the Constitutional Court not only provides for the stability of the Constitution and respect for the rule of law, but has – beyond this classical approach – a distinctive role to play in the strengthening, the continuity and the development of democracy and the rule of law – using the Constitution as its main pillar.

As a result of international co-operation, other courts' experiences and the exchange of information through conferences, has helped constitutional courts in further building their legitimacy.

The Venice Commission – as a part of the Council of Europe, the aim of which is to protect human rights, democracy and the rule of law – understood from the outset that the dissemination and consolidation of a common constitutional heritage is key in strengthening common standards throughout Europe and beyond, based on the continent's fundamental legal values.

This is what the Venice Commission calls “*cross fertilisation.*” While constitutions may differ, their basic underlying principles, such as the respect for the constitution and the rule of law, are the same. This, in turn, helps to further promote the development of a common constitutional heritage throughout Europe and beyond.

The Venice Commission sees constitutional justice as providing for the respect of the constitution, democratic principles and fundamental rights and it is also playing an important role in strengthening democracy and in ensuring its continuity.

Constitutional justice is a key element in fostering and deepening the basic values that are contained in constitutions, which form the basis of the work of the constitutional courts, the decisions of which have a decisive impact on society.

There is a general concern for the defence of human rights and the rule of law and in doing so, the increasing mutual inspiration that constitutional courts of different countries draw from one another is encouraging.

*Ladies and Gentlemen,*

In this context, I would now like to turn to the relationship between constitutional courts and international courts, which is often said to be fraught with difficulties because these courts are at odds with one another.

I do not subscribe to this point of view and I strongly believe that this is the wrong approach to take. On the contrary, these courts should be seen as complementary.

At the international level, the international courts deal with issues falling within their jurisdiction, such as the responsibility of States for violations of, for instance, the European Convention on Human Rights, if we refer to the Strasbourg Court – which is an easy example for me to take, since it is a part of the Council of Europe.

The constitutional courts, on the other hand, act within the national sphere, to ensure that the principles contained in the constitution are not violated.

These courts, therefore, do not have the same jurisdiction.

In addition, international courts are courts of last resort. For instance, in the protection of human rights, it is impossible for the Strasbourg Court to deal with absolutely all the human rights violations that occur in the member States of the Council of Europe.

This is why there is the requirement – an admissibility criterion – that all effective domestic remedies be exhausted first before turning to the Strasbourg Court.

This means that member States are strongly encouraged to introduce effective remedies in their national legal systems to protect Convention rights.

And it is important to underline that the judgments of the Strasbourg Court strengthen the human rights protection system at the domestic level.

In other words, the constitutional courts and international courts work hand-in-hand, ensuring that fundamental rights are respected and protected. This means that if sufficient protection and remedies against such breaches are available on the national level, there will be less of a need to turn to international courts. That is the ultimate aim to be achieved.

On this positive note, Ladies and Gentlemen, let me end by saying that I wish you to have very fruitful and interesting discussions on *Constitutional Justice: Doctrine and Practice!*

Thank you very much for your attention.