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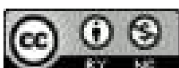

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The role of the constitutional courts in maintaining peace: judicial public policy

O papel dos tribunais constitucionais na manutenção da paz: política pública judicial

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ABSTRACT
The study approaches the theme of Peace as a value enshrined in the constitutions of the States of the world and defended by instruments regulated in the Constitutions, especially the constitutional review. It is difficult to identify a more important topic of reflection and joint effort for all of us as inhabitants of this planet. Considering this importance, this study is an invitation to reflect on Peace as a constitutional value: how this value is regulated in the constitutions of the states of the world; the dimensions of Peace as a constitutional value; how the constitutional courts and equivalents defend Peace. The decisions and judgments of constitutional courts often have a "calming effect" on social tensions. They play a significant role in mitigating and resolving social conflicts and maintaining and sustaining social Peace. Given this role, it is vital to closely understand and follow constitutional justice developments in our States and the world. Constitutional justice has lights but also shadows, meaning a lot of power but also vulnerabilities. The awareness of all these aspects can lead to more solid institutions capable of being guardians of Peace and the rule of law in such a tumultuous and fragmented world.

KEYWORDS:
Constitutional review; Constitutional courts; Peace; Constitutional values.

RESUMO
O estudo aborda o tema da Paz como valor consagrado nas constituições dos Estados do mundo e defendido por instrumentos regulamentados nas Constituições, especialmente a revisão constitucional. É difícil identificar um tema de reflexão e esforço conjunto mais importante para todos nós como habitantes deste planeta. Considerando esta importância, este estudo é um convite à reflexão sobre a Paz como valor constitucional: como este valor é regulamentado nas constituições dos Estados do mundo; as dimensões da Paz como valor constitucional; como os tribunais constitucionais e equivalentes defendem a Paz. As decisões e julgamentos dos tribunais constitucionais têm frequentemente um "efeito calmante" nas tensões sociais. Desempenham um papel significativo na mitigação e resolução de conflitos sociais e na manutenção e sustentação da paz social. Dado este papel, é vital compreender e acompanhar de perto os desenvolvimentos da justiça constitucional nos nossos Estados e no mundo. A justiça constitucional tem luzes, mas também sombras, o que significa muito poder, mas também vulnerabilidades. A consciência de todos estes aspectos pode levar a instituições mais sólidas, capazes de ser guardiãs da Paz e do Estado de Direito num mundo tão tumultuado e fragmentado.

PALAVRAS-CHAVE:
Revisão constitucional; Tribunais Constitucionais; Paz; Valores constitucionais.

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1. INTRODUCTION

The topic of the paper is inspired by the most recent Congress of the World Conference on Constitutional Justice on the theme "Constitutional Justice and Peace" which took place in the first week of October 2022, in Indonesia, Bali. This Congress is the 5th in the history of the World Conference of Constitutional Justice (a framework of Cooperation of the Constitutional Courts at the Global level, whose Statute was signed in the capital of my country, Romania, in 2011).

The Congress should be noted for at least two reasons: its scope, as a worldwide meeting of constitutional justice, which brought together 94 constitutional courts and equivalent institutions from around the world, meaning almost 600 participants; **the generous topic, PEACE, as a value enshrined in the constitutions of the States of the world and defended by instruments regulated in the Constitutions, especially the constitutional review.**

It is difficult to identify a more important topic of concern and joint effort for all of us as inhabitants of this planet. Considering this importance, this study is an invitation to reflect on Peace as a constitutional value: how this value is regulated in the constitutions of the states of the world; the dimensions of Peace as a constitutional value; how the constitutional courts and equivalents defend Peace.

2. PEACE AS A FUNDAMENTAL VALUE IN CONSTITUTIONS

2.1 GENERAL REMARKS

A comparative approach of the constitutions leads us to the conclusion that most of them refer to peace, addressing various dimensions of the concept, depending on the history, tradition, and experiences that influenced and still influence the evolution of the States.

Thus, they can be identified: a dimension of peace as a value that characterizes the universal harmony and peaceful coexistence of States in the international community; a dimension derived from the first mentioned, which places the State in the global context as an active participant in peacekeeping efforts; a dimension that projects the State both in external and internal relations, and, capitalizing on the historical experience, marked by conflicts, approaches peace as a commitment to reconciliation; an internal dimension, especially in the sense of social harmony, which can be approached on multiple coordinates.

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We have selected the relevant provisions and will present them to create a comprehensive approach to consecrating the multiple dimensions of peace in world constitutions.

2.2 THE GOAL OF UNIVERSAL HARMONY: PEACEFUL RELATIONS WITH OTHER STATES

Peace as a vocation of States, as members of the international community, in relations with other States of the world appears most often **in the preamble of the Constitutions**, but also in the section dedicated to **general principles.**

In this sense they are, for example (in alphabetical order): **Andorra** (1985):

> Eager to use every endeavour to promote values such as liberty, justice, democracy and social progress, and to keep and strengthen the harmonious relations of Andorra with the rest of the world, and especially with the neighbouring countries, on the basis of mutual respect, co-existence and peace; Desiring that the motto 'virtus, unita, fortior', which has presided over the peaceful journey of Andorra over its more than seven hundred years of history, may continue to be a completely valid principle and may always guide the conduct of Andorrans.

Burkina Faso (2015): "DESIROUS to promote peace, international cooperation, the peaceful resolution of differences between States, with justice, equality, liberty and the sovereignty of peoples"; **Brazil** (1988):

> We the representatives of the Brazilian People, convened the National Constituent Assembly, to institute a democratic state destined to ensure the exercise of social and individual rights, liberty, security, well-being, development, equality and justice as supreme values of a fraternal, pluralist and unprejudiced society, founded on social harmony and committed, in the domestic and international orders, to the peaceful solution of disputes (…).

Cambodia (1993):

> Having awakened to stand up with resolute determination and commitment to strengthen our national unity, to preserve and defend Cambodia's territory and its precious sovereignty and the prestige of Angkor civilization, to build the nation up to again be an 'Island of Peace' based on a liberal multi-party democratic system, to guarantee human rights and the respect of law, and to be responsible for progressively developing the prosperity and glory of our nation; Art. 1 para. 2 The Kingdom of Cambodia shall be an independent, sovereign, peaceful, permanently neutral and non-aligned country.

Cote d'Ivoire (2016): "Taught by lessons from our political and constitutional history, desirous of building a Nation that is brotherly, united, in solidarity, peaceful and prosperous, and with a concern for preserving political stability". **Georgia** (2004), "the commitment to strengthen State independence and the peaceful relations with other peoples". **Indonesia**

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(1945): "Government should participate toward the establishment of a world order based on freedom, perpetual peace and social justice". **Japan** (1946):

> We, the Japanese people, acting through our duly elected representatives in the National Diet, determined that we shall secure for ourselves and our posterity the fruits of peaceful cooperation with all nations and the blessings of liberty throughout this land, and resolved that never again shall we be visited with the horrors of war through the action of government, do proclaim that sovereign power resides with the people and do firmly establish this Constitution. (…) We, the Japanese people, desire peace for all time and are deeply conscious of the high ideals controlling human relationship, and we have determined to preserve our security and existence, trusting in the justice and faith of the peace- loving peoples of the world (…).

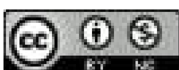
Korea (1948): "the commitment to elevate the quality of life for all citizens and contribute to lasting world peace and the common prosperity of mankind and thereby to ensure security, liberty and happiness for ourselves and our posterity forever". **Kazakhstan** (1995): "We, the people of Kazakhstan, united by common historic fate, creating state on the indigenous Kazakh land, considering ourselves peace-loving and civil society". **Pakistan** (1973): "So that the people of Pakistan may prosper and attain their rightful and honoured place amongst the nations of the World and make their full contribution towards international peace and progress and happiness of humanity". **Sao Tome and Principe** (1975):

> Article 12. International Relations The Democratic Republic of São Tomé and Príncipe is determined to contribute toward the safeguarding of universal peace, toward the establishment of equal rights and mutual respect for sovereignty amongst all States and toward the social progress of humanity, on the basis of the principles of international law and peaceful coexistence.

Senegal (2001): "the people affirm their determination to strive [lutter] for peace and fraternity with all the peoples of the world". **Spain** (1978): "the commitment to Cooperate in the strengthening of peaceful relations and effective cooperation among all the peoples of the earth". **Switzerland** (1999): "The Swiss People and the Cantons, (…) resolved to renew their alliance so as to strengthen liberty, democracy, independence and peace in a spirit of solidarity and openness towards the world". **Togo** (1992): "We affirm our determination to cooperate in peace, amity and solidarity with all people of the world enamored of the democratic ideal, on the basis of the principles of equality, of mutual respect and of sovereignty".

3. PROTECTION AGAINST THE AGGRESSION. PEACEFUL SETTLEMENT OF THE CONFLICTS. PARTICIPATION IN COLLECTIVE SECURITY SYSTEMS

Some Constitutions reference the peaceful resolution of conflicts, the rejection of war, and protection against aggression, including by regulating participation in collective security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systems. Perhaps the most pronounced form of rejection of war and participation in any armed conflict can be found in the **Japan Constitution** (1946), which includes a chapter entitled "RENUNCIATION OF WAR",

> Article 9: Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes. In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized.

The rejection of aggression can be also found in the preamble or provisions of the Constitutions of:

Estonia (1992): "created to protect the peace and defend the people against aggression from the outside"; **Italy** (1947), "Art.11: Italy rejects war as an instrument of aggression against the freedom of other peoples and as a means for the settlement of international disputes". **Kyrgyzstan** (2010),

> Art.14: (1). The Kyrgyz Republic has no goals of expansion, aggression or territorial claims to be resolved by military force. It rejects the militarization of state life and the subordination of the State and its activity to the purposes of waging a war. The Armed Forces of Kyrgyzstan shall be formed in accordance with principles of self-defense and defensive sufficiency. (2.The right to wage war shall not be recognized except in cases of aggression against Kyrgyzstan and other States bound by obligations of collective defence. The permission in each instance of displacement of the units of the Armed Forces of the Kyrgyz Republic beyond the territory of Kyrgyzstan shall be granted by decision of the JogorkuKenesh adopted by a majority of not less than two thirds of the total number of deputies.(3) The use of the Armed Forces of the Kyrgyz Republic to attain domestic political objectives shall be prohibited.; (4) The Kyrgyz Republic shall strive for universal and just peace, mutually beneficial cooperation and the resolution of global and regional problems by peaceful means.

Mozambique (2004),

> Article 22. Policy of Peace: (1) The Republic of Mozambique shall pursue a policy of peace and shall only resort to the use of force in the case of legitimate self-defence. (2) The Republic of Mozambique shall support the primacy of negotiated solutions to conflicts. (3) The Republic of Mozambique shall uphold the principle of general and universal disarmament of all States. (4) The Republic of Mozambique shall advocate the transformation of the Indian Ocean into a nuclear free zone of peace.

Portugal (1976),

> Article 7. International relations: (1) In its international relations Portugal shall be governed by the principles of national independence, respect for human rights, the rights of peoples, equality between states, the peaceful settlement of international conflicts, non-interference in the internal affairs of other states and cooperation with all other peoples with a view to the emancipation and progress of mankind.

Regarding the express mention of the participation of States in collective defense systems, in some cases even with the acceptance of some limitations of sovereignty for defense

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purposes, we mention, as examples, the Constitutions of: **Finland** (1999), “Section 1: Finland participates in international co-operation for the protection of peace and human rights and for the development of society”. **Germany** (1949),

> Preamble: Inspired by the determination to promote world peace as an equal partner in a united Europe, art. 24 (2) permits the Federation to enter in mutual collective security to maintain peace: Article 24 [Transfer of sovereign powers – System of collective security] (1) The Federation may, by a law, transfer sovereign powers to international organisations. (1a) Insofar as the Länder are competent to exercise state powers and to perform state functions, they may, with the consent of the Federal Government, transfer sovereign powers to transfrontier institutions in neighbouring regions. (2) With a view to maintaining peace, the Federation may enter into a system of mutual collective security; in doing so it shall consent to such limitations upon its sovereign powers as will bring about and secure a lasting peace in Europe and among the nations of the world.(3) For the settlement of disputes between states, the Federation shall accede to agreements providing for general, comprehensive and compulsory international arbitration. Article 26. [Securing international peace]: (1) Acts tending to and undertaken with intent to disturb the peaceful relations between nations, especially to prepare for a war of aggression, shall be unconstitutional. They shall be made a criminal offence. (2) Weapons designed for warfare may be manufactured, transported or marketed only with the permission of the Federal Government. Details shall be regulated by a federal law.

Italy (1947), “Article 11: Italy agrees, on conditions of equality with other States, to the limitations of sovereignty that may be necessary to a world order ensuring peace and justice among the Nations. Italy promotes and encourages international organisations furthering such ends”; **Portugal** (1976),

> Article 7. International relations: (1)Portugal shall advocate the abolition of imperialism, colonialism and all other forms of aggression, dominion and exploitation in the relations between peoples, as well as simultaneous and controlled general disarmament, the dissolution of the political-military blocs and the setting up of a collective security system, all with a view to the creation of an international order with the ability to ensure peace and justice in the relations between peoples.

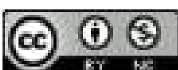
Romania (1991),

> Article 149. Accession to the North Atlantic Treaty: Romania's accession to the North Atlantic Treaty shall be decided by a law adopted by the Chamber of Deputies and the Senate in joint session, with a majority of two-thirds of the deputies and senators.

Slovakia (1992), “art. 7: The Slovak Republic may, with the aim of maintaining peace, security and democratic order, under the terms laid down by an international treaty, join an organization of mutual collective security.”

4. PEACE AND RECONCILIATION

The concept of reconciliation, sometimes with the evocation of certain acts that end the conflicts that marked the history of those States, can be found, for example, in **Angola** (2010):



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“Armed with a culture of tolerance and profoundly committed to reconciliation, equality, justice and development”. **Benin** (1990): “Thus, the National Conference of Active Forces of the Nation, held in Cotonou from February 19 to 28, 1990, in giving back confidence to the people, has permitted the national reconciliation and the advent of an era of democratic revival”. **Bosnia and Hertegovina** (1995), a Constitution “dedicated to peace, justice, tolerance, and reconciliation”; **Burundi** (2018): “Reaffirming our faith in the ideal of peace, of reconciliation, and of national unity in accordance with the Arusha Accords for Peace and Reconciliation in Burundi of August 28, 2000 and the Ceasefire Accords”. **Madagascar** (2010): Conscious that it is indispensable to implement a process of national reconciliation”. **Namibia** (1990): “will strive to achieve national reconciliation and to foster peace, unity and a common loyalty to a single state”. **Rwanda** (2003): “MINDFUL that peace, security, unity and reconciliation of the people of Rwanda are the pillars of development”.

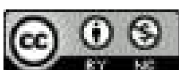
5. AN INTERNAL PROJECTION OF PEACE. SOCIAL PEACE

The previous examples place the State within the international community and in historical context. However, peace as a fundamental value appears frequently in the context of relationships within the State, as well as in connection with the exercise of fundamental rights. Likewise, the ideal of social peace appears expressly mentioned in some Constitutions, and implicitly in the other Constitutions.

Thus, the idea of peaceful coexistence on the territory of the same State appears in the preamble of the Constitution of **North Macedonia** (1991): “the provision of peace and a common home for the Macedonian people with the nationalities living in the Republic of Macedonia” and also in Constitutions of: **Belarus** (1994): We, the People of the Republic of Belarus, (...), desiring to maintain civic concord”. **Dominican Republic** (2015):

> We, representative of the Dominican people, (…) ruled by the supreme values and the fundamental principles of human dignity, liberty, equality, the rule of law, justice, solidarity, and fraternal coexistence, social well-being, ecological equilibrium, progress and peace, essential factors for social cohesion.

Kyrgyzstan (2010): “Acting on behest of our ancestors to live in peace and accord, in harmony with nature, hereby adopt the present Constitution”. **Lithuania** (1992), the Lithuanian nation “fostering national concord in the land of Lithuania”. **Sudan** (2019),



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> Triving to implement measures to achieve transitional justice, fight corruption, recover stolen funds, reform the national economy, achieve a state of prosperity, welfare and social justice, reform institutions of the state and public service, strengthen the pillars of social peace, deepen the values of tolerance and reconciliation between the components of the Sudanese people and rebuild trust between all the people of Sudan.

Moldova (1994); "CONSIDERING the rule of law, civic peace, democracy, human dignity, fundamental human rights and freedoms, the free development of human personality, justice and political pluralism as supreme values". **Spain** (1978), "Section 10: The dignity of the person, the inviolable rights which are inherent, the free development of the personality, the respect for the law and for the rights of others are the foundation of political order and social peace". **Togo** (1992),

> Article 48: Every citizen has the duty to see to respect for the rights and freedoms of other citizens and of the safeguarding of the public security and of the [public] order. [They] work for the promotion of tolerance and of dialogue in their relations with others. [They] have the obligation to preserve the national interest, the social order, peace, and national cohesion. Any act or any manifestation of a racist, regionalist, [or] xenophobic character is punished by the law.

Ukraine (1996): "The Verkhovna Rada of Ukraine, on behalf of the Ukrainian people – citizens of Ukraine of all nationalities, (…) caring for the strengthening of civil harmony on Ukrainian soil". As regards the connection of this value with fundamental rights, examples can be mentioned on **Right to education,** in **Austria** (1920), art. 145 a:

> Democracy, Humanity, solidarity, peace and justice as well as openness and tolerance towards people are the elementary values of the school, based on which it secures for the whole population, independent from origin, social situation and financial background a maximum of educational level, permanently safeguarding and developing optimal quality.

Right to petition, in **Japan** (1946),

> Article 16: Every person shall have the right of peaceful petition for the redress of damage, for the removal of public officials, for the enactment, repeal or amendment of laws, ordinances or regulations and for other matters; nor shall any person be in any way discriminated against for sponsoring such a petition.

Right to association/political parties, in **Namibia** (1990)[2], "article 17. Political Activity: All citizens shall have the right to participate in peaceful political activity intended to influence the composition and policies of the Government". **Right to assemble peacefully** in **Kyrgyzstan, Romania, Lithuania**.

[2] The texts of the Constitutions were cited using CONSTITUTE, available online https://www.constituteproject.org/.

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6. CONSTITUTIONAL REVIEW, A GUARANTEE OF PEACE

6.1 GENERAL REMARKS

The enshrinement of peace in the States Constitutions determines that this fundamental value enjoys the protection of instruments provided by the Constitution itself. Among these instruments, constitutional review represents, in almost all States of the world, a main form of ensuring the supremacy of the Constitution, being, in this light, an outstanding achievement of the rule of law and democracy. Regardless of the model of constitutional review, American, European, or mixed forms of review, and the specific particularities from country to country, the constitutional courts and the equivalent institutions have the vital mission of guaranteeing the fundamental values they enshrine, among which also peace. This role determines that the constitutional courts become, practically, "actors of conflict resolution" or genuine "mediators" (JR Figueroa, 2017).

As the concept of the mentioned Congress emphasized, taking into account the position that such courts have in the system of State authorities and the powers entrusted to them, the idea of "peace" usually used in the constitutional review is not the concept of public international law that relates to conflicts between states. It is used in the sense of peace within the state as the peaceful settlement of disputes of various natures and, most often, in the sense of social peace. In this regard, the constitutional courts play a crucial role. They have a specific or general mandate in maintaining peace, as long as **"**constitutional courts not only defend but also interpret the Constitution. On the one hand, they make explicit the principles and mandates implicit in the Constitution; on the other hand, they establish a means by which to interpret and harmonize precepts in the Constitution, which may appear to be in conflict or even unrelated to each other. The interpretative role of constitutional courts, as opposed to their purely defensive function, **has a positive impact in providing general criteria and guidance for the acts of public powers** (Venice Commission, 1994). Consequently, the regulation of new powers, more or less different from the traditional role of the constitutional courts as simple "negative legislators," appears justified.

In this light, generally speaking, all constitutional courts' powers compete to achieve social peace. Thus, social tensions can be caused by legal disputes of a constitutional nature between public authorities, by the adoption of legislative acts, or by voting exercises, such as elections or referendums. As a result, the regulation of powers enabling constitutional courts to intervene at such times appears to be essential for the 'de-escalation' of social or political

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conflicts, even if the latter does not fall directly within the jurisdiction of the Constitutional Court.

For example, the Constitution of Romania enshrines the role of the Constitutional Court (CCR), organized on the European model, as guarantor for the supremacy of the Constitution. Through its wide range of powers, reviewing both legislative acts and actions, deeds and attitudes, the Court makes an essential contribution to maintaining social peace. According to Article 146 of the Constitution and Law No 47/1992 on the organisation and functioning of the Constitutional Court, the CCR has the following powers: to adjudicate on the constitutionality of laws, before promulgation [point (a), first sentence]: to adjudicate, *ex officio*, on initiatives to revise the Constitution [point (a), second sentence] and on the law for revision adopted by Parliament [Article 23 of Law No 47/1992]: to adjudicate on the constitutionality of treaties or other international agreements [point (b)]: to adjudicate on the constitutionality of Standing Orders of Parliament [point (c)]; to adjudicate on the constitutionality of decisions of the plenary session of the Chamber of Deputies, the Senate or the two Chambers of the Parliament [point (l)]: the same rules as for the power governed by Article 146 (c) of the Constitution; to adjudicate on the constitutionality of exceptions of unconstitutionality of laws and ordinances raised before courts of law or commercial arbitration [point (d), first sentence]; to adjudicate on the constitutionality of exceptions of unconstitutionality of laws and ordinances raised directly by the Advocate of the People [point (d), second sentence]. Furthermore, the CCR: settles legal disputes of a constitutional nature between public authorities, at the request of the President of Romania, the President of either of the Chambers, the Prime Minister or the President of the Superior Council of Magistracy [point (e)]; guards to the observance with the procedure for the election of the President of Romania and confirms the ballot returns [point (f)]; establishes the existence of circumstances justifying the interim in the exercise of the office of President of Romania and communicates its findings to Parliament and the Government [point (g)]; gives an advisory opinion on the proposal to suspend from office the President of Romania [point (h)]; guards to the observance with the procedure for the organisation and conduct of the referendum and confirms its returns [point (i)]; checks compliance with the conditions for the exercise of the legislative initiative by citizens [point (j)]; rules upon the challenges of unconstitutionality of a political party [point (k)].

Many of these powers are common to other constitutional courts, an aspect which was also emphasized in the Concept of the Congress, where it is shown that:

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> many constitutional courts have in common the exercise of a multiple control mission, including that of the constitutionality of norms, the settlement of disputes between state bodies and that or the regularity of the electoral processes leading to the election of the authorities producing these norms. In all these functions, constitutional courts can be an actor of regulation and stabilisation of political life and thus contribute to achieving peace (2021, p. 02).

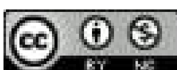
We will point out here only two main powers of the courts, also mentioned within the Congress, which are essential from the perspective of our topic: the constitutional review of laws and the settlement of legal conflicts of a constitutional nature.

7. CONSTITUTIONAL REVIEW OF NORMATIVE ACTS

With particularities related to the object (the scope of the reviewed acts, the moment when this review is carried out, the subjects who can notify the Court), the constitutional review of the normative acts is perhaps the main power of the constitutional courts and the equivalent institutions. Historically, it is also the first power that the courts assumed as guarantors of the constitution, if we think about the beginning of the constitutional review in the famous case of the US Supreme Court, Marbury vs. Madison (1803).

Finding the unconstitutionality of normative acts adopted in violation of the Constitution, the constitutional courts ensure, *among other things*, the achievement of a general principle of legal security in the quality component of the law, which is the essence of the rule of law. **The constitutional court contributes to the citizens' trust in the law** and the courts by ensuring respect for the rule of law and the legislative process. Moreover, by sanctioning unconstitutional laws, the **Courts provide adequate protection of fundamental rights and freedoms by sanctioning the slips of the legislator**. This role of the constitutional courts must be particularly emphasized because protecting human rights is a precondition to resolving conflicts and peace. The President of the Constitutional Court of Indonesia showed in his speech to Congress that without fulfilling the constitutional rights of the citizens, it is impossible to ensure a just life, and without a just life for every citizen, it is impossible to achieve peace. So **as key actors in the promotion of human rights, constitutional courts directly contribute to social peace** (Usman, 2021).

Inevitably, there are moments of social tension arising either from the adoption of legislative acts or from measures taken by public authorities, often against political competition between government and opposition parties. For example, in Romania, the restrictive regulatory measures on rights in the context of the COVID-19 pandemic, the amendments to the justice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laws, or the legislative changes related to pensions or other social rights were such moments of social tension. **Thus,** concerning the issue of general interest relating to the context of the COVID-19 pandemic, in Romania, at the start of the pandemic, the Government restricted the exercise of certain fundamental rights and freedoms using an emergency ordinance. Upon referral by the Advocate of the People, the Constitutional Court of Romania ruled that the legislative act restricting/affecting the fundamental rights and freedoms of citizens or basic institutions of the State can only be a law, as a formal act of Parliament, adopted in compliance with Article 73 (3) (g) of the Constitution, in the form of organic Law. The Court invoked the constitutional provisions of Article 53 – *Restriction on the exercise of certain rights and freedoms* which expressly refer to 'law', as well as those of Article 115 – *Legislative delegation,* which prohibit the Government from adopting emergency ordinances which 'may affect' the system of the fundamental institutions of the State, the rights, freedoms and duties provided for in the Constitution, and electoral rights. As a result, the CCR found that Government Emergency Ordinance No 34/2020 amending Government Emergency Ordinance No 1/1999 was unconstitutional because its legislative content was intended to restrict the exercise of certain fundamental rights and freedoms (the right to property, the right to work and to social protection, the right to information, and economic freedom) (2020). In the same context, the CCR upheld the exception of unconstitutionality raised before a court of law and found unconstitutional the provisions of Article 72 (2) of Law No 55/2020 on certain measures to prevent and combat the effects of the COVID-19 pandemic. The Court held, in essence, that the contested provisions did not ensure effective access to justice, since the persons interested in challenging, in administrative proceedings, a Government decision declaring or extending the state of alert did not have the possibility of obtaining a judicial decision within the time-limit for the applicability of that judgment, so that the unlawful effects and consequences thereof on the rights of the person seeking judicial redress can be effectively ruled out (2021). We think that the same period was a challenge for the constitutional courts worldwide[3].

There have been many other situations in which social peace was at risk, sometimes boosted by phenomena such as economic or political crises. Thus, for example, more than ten years ago, against the backdrop of the economic crisis of 2009-2010, the Romanian

[3] See, for example: Lima, J., Safta, M. **Responses to the COVID-19 Pandemic from the Brazilian Supreme Court and Romanian Constitutional Court**. 2021. Available at: https://revistadedreptconstitutional.ro/wp-content/uploads/1contents/2021_2/Jairo_LIMA_Marieta_SAFTA_UJ_Revista_de_drept_constitutional_nr_2_2021__BT.pdf. Accessed on: 2022.

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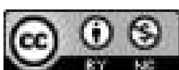
Government undertook a series of austerity measures, including cuts in contributory pensions and cuts in the salaries of staff in the public sector, materialised in laws adopted by Parliament. The regulations thus enacted, which gave rise to serious social grievances, were challenged before the CCR. The Court partially upheld the referrals of unconstitutionality. In terms of contributory pensions, the Court held that it was unconstitutional to reduce them because:

> The amount of the pension, determined in accordance with the principle of contribution, is an earned right, with the result that a reduction in that pension cannot be accepted even on a temporary basis. Through the sums paid in the form of social security contributions, the person concerned had in practice gained the right to receive a pension in the amount resulting from the application of the contribution principle; thus, contributiveness as a principle is of the essence of the right to a pension, and the derogations, even temporary, relating to the obligation of the State to pay the amount of the pension, resulting from the application of that principle, affect the substance of the right to a pension (2010).

As regards the measure consisting of reduction of salaries in the public sector, it was found to be constitutional, provided that the measure was of a temporary nature (2009). Now, on the verge of a new crisis, social protection measures and especially the issue of pensions are causing social tensions in Romania again, so new legislative changes in this regard and referrals to the Constitutional Court are expected.

Interesting cases cited in the public reports of Congress (Arslan, n.d., *online*) (because not all of them have been published yet) concern conflict situations with ethnic or religious connotations. Thus, in **North Macedonia**, ethnic tensions linked to the display of Albanian and Turkish flags in addition to the state flag were temporarily resolved following a decision of the Constitutional Court and later, ultimately with the adoption of a law passed by the parliament with a view of regulating the use of the flags of the communities. In **Switzerland**, the Federal Court ruled in cases related to the French-speaking minority, living in a German-speaking canton. Due to existing tensions, the administration has prohibited meetings in the public domain by separatist movements. The Federal Court ruled that the prohibitions were compatible with the principle of proportionality due to serious risk of danger. **The Belgian Constitutional Court** decided that the difference of treatment and categorisation as “manual” or “intellectual” between workers and employees were unconstitutional. After the single statute for blue and white-collar workers was introduced, the Court has settled numerous disputes and thus continued to safeguard social peace. **The Court of Cassation of France** upheld the ban on barristers wearing a headscarf or other religious symbols in courtrooms. The case was brought by a French lawyer, who challenged a rule set by the Bar Council that banned religious symbols in its courtrooms on the ground that it was discriminatory. The Court of Cassation concluded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that the ban was "*necessary and appropriate, on the one hand, to preserve the independence of the lawyer and, on the other, to guarantee the right to a fair trial*".

It can be noticed from that examples and it was also emphasized in the Congress that:

> **Human rights are contextual**. Respect, promotion, protection, and fulfilment of human rights are highly dependent on the local wisdom of each country, culture, tradition, and civilization of each country. In other words, human rights must be understood in the cultural context of each country, and cannot be generalized. In such a framework, it must be admitted, the challenges of protecting and advocating human rights in Asian and African countries are very different from those of Western countries or other developed countries. In developed countries, challenges can include contemporary issues, such as pressure on journalists, blocking of internet resources, economic rivalry, same-sex marriage, forms of censorship that are incompatible with media pluralism, the right to access information, the right to protect personal data, and other rights related to the threat of negative excesses of the digital industry. Meanwhile, in Asian-African countries, the enforcement of human rights is still related to the effects of instability or internal state political conflicts, violence, intolerance, freedom of expression, discriminatory treatment of minorities and vulnerable groups, rights of persons with disabilities, access to health, migrant workers, and the like (Hidayat, 2022).

Despite these differences, the aim and purpose of the constitutional courts remains the same because regardless of the context, they must ensure the full achievement of these rights, and through the interpretation of the Constitution the compliance with the highest standards of protection of fundamental rights, as, for example, it expressly provides the Constitution of Romania (1991), in Article 20[4].

A separate discussion in this framework concerns the powers of the constitutional courts to verify the amendments made to the constitutions, a situation in which even those provisions that regulate peace as a supreme value can be questioned. As for the Constitution of Romania, even if it does not expressly regulate peace as a value, the current constitutional framework only allows an upward revision when fundamental rights and freedoms are in question.

8. SETTLEMENT OF LEGAL CONFLICTS OF A CONSTITUTIONAL NATURE

Some Constitutional Courts have the power to settle the legal conflicts of a constitutional nature between public authorities exercising power in the State.

[4] "ARTICLE 20 - International treaties on human rights. (1) Constitutional provisions concerning the citizens' rights and liberties shall be interpreted and enforced in conformity with the Universal Declaration of Human Rights, with the convenants and other treaties Romania is a party to. (2) Where any inconsistencies exist between the covenants and treaties on the fundamental human rights Romania is a party to, and the national laws, the international regulations shall take precedence, unless the Constitution or national laws comprise more favourable provisions" (Romania, 1991).

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In exercising the duties and jurisdiction specific to the unitary or federal character of the State, such State bodies may, vertically or horizontally, generate legal disputes resulting from lawful acts or the deeds, actions, or omissions thereof. Excesses of power must be restricted effectively to protect the rights and liberties of especially those who are not in control. The possibility of the constitutional courts to settle legal disputes of a constitutional nature is a powerful tool - but challenged, as the interference with the political area of these cases often brings accusations against the constitutional courts from one side or the other of the political scene. As regards the object of the dispute, in the case of a unitary state, they can be disputes of jurisdiction – horizontally – between the State bodies, conflicts of jurisdiction – vertically – between central State bodies and regions, or disputes between regions in Italy, or disputes of jurisdiction between central bodies and local autonomous entities, in the Czech Republic, Montenegro, Serbia, disputes related to the defense of local autonomy, like in Spain. In the case of a federative State, there may be federal disputes (between the State and the bodies of the entities – communities/regions/ cantons/lands) or between the bodies of the entities themselves, as well as legal disputes/institutional disputes at the state level – between the federative State's institutions. This is the case of Austria, Belgium, Bosnia, Herzegovina, Germany, and Switzerland[5].

As concerns Romania, the settlement of legal disputes of a constitutional nature between public authorities is governed by Article 146 (e) of the Constitution. In interpreting the constitutional framework of reference, the CCR noted in this regard that:

> If (...) the resolution of interinstitutional disputes fails, public authorities have the possibility to use constitutional mediation instruments, namely **the procedure for settlement of legal disputes of a constitutional nature, provided for in Article 146 (e) of the Constitution, which is specifically intended to restore constitutional normative order**, by interpreting the provisions of the relevant Basic Law and laying down specific benchmarks of fair conduct in relation to constitutional values and principles (ROMANIA, 2017).

The Court has also held that the rule as regards the exercise of its jurisdiction

> **Is that, in so far as there are mechanisms for the public authorities to regulate themselves through their direct and uninfluenced action, the role of the Constitutional Court becomes a subsidiary one. On the other hand, in the absence of such mechanisms,** in so far as the task of regulating the constitutional system falls exclusively to the individual, who is thus placed in a position to seek to safeguard his rights or freedoms against an unconstitutional but

[5] See: MOTOC, I.A.; TURCU, C.C.; CHIOREAN, I.M. Resolution of Organic Litigations by the Constitutional Court. In: **Constitutional Justice**: Functions and relationship with the other public authorities General report prepared for the XVth Congress of the Conference of European Constitutional Courts by The Constitutional Court of Romania. Available at: https://www.ccr.ro/wp-content/uploads/2020/08/raportgeneraleng.pdf. Accessed on: 2022.

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> institutionalised legal paradigm, the role of the Constitutional Court becomes one of main and fundamental importance for removing the constitutional deadlock (...). (ROMANIA)".[6]

The Court has sanctioned in this regard behaviours by which the Parliament arrogates to itself powers in the sphere of judicial power or the High Court of Cassation and Justice arrogates to itself the role of legislator, disputes between the President and the Prime Minister regarding the representation at the works of the European Council, the use of constitutional procedures contrary to the purpose for which they are were established (for example, forcing the dissolution of the Parliament in the procedure for appointing the Government, by repeatedly appointing the same Prime Minister who stated that he did not want to propose a new Government)[7].

Both from the experience of Romania and other States, it is found that many of the disputes arise precisely from the unclear nature of the Constitutions and against the background of the disloyal behaviour of political actors. In interpreting the constitution, the constitutional judge can make a positive contribution by attenuating the cause of conflict. The constitutional judge can thus contribute to pacifying the political life by favouring solutions that remain within the framework of the constitutional order. However, this attribution must be approached with caution to avoid drawing the constitutional courts into political conflicts. Perhaps more than in the exercise of other attributions of the courts, there is a risk that in this case even the decisions of the constitutional courts may become sources of conflict.

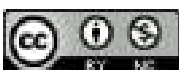
9. CONCLUSIONS

Facing such a vast subject, we try to briefly sum up showing that the decisions and judgments of constitutional courts often have a "calming effect" on social tensions. They play a significant role in mitigating and resolving social conflicts and maintaining and sustaining social Peace.

> Even if most of the constitutional courts have not directly adjudicated cases relating to peace and reconciliation, they have contributed to peaceful co-existence of society by securing and promoting the constitutional principles such as separation of powers, rule of law, democracy and human rights (ARSLAN, n.d.).

[6] Refer to Decision No 685/2018, published in the Official Gazette No 1021 on 29 November 2018, and Decision No 26/2019, available in the Official Gazette on 12 March 2019.

[7] See: Toader, T., Safta, M. Dezlegările date conflictelor juridice de natură constituțională. Available at: https://www.juridice.ro/essentials/2169/dezlegarile-date-conflictelor-juridice-de-natura-constitutionala. Accessed on: 2022.



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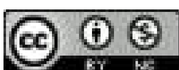
It should be noted in this regard an interesting proposal coming from the host country of the Congress, namely the Constitutional Court of Indonesia, to establish a **Constitutional Supremacy Index (CSI) to measure the progress and development toward constitutional compliance, in line with the principles of constitutionalism[8].**

However, the possibilities of intervention of the constitutional courts are limited by their role and powers. We have to see the risks and counteract them: interference with politics (especially in legal disputes of a constitutional nature), with the activity of courts (where there is a European model of constitutional review), with international and supranational courts, and disputes of potential jurisdiction (such as in the EU). The constitutional courts are also vulnerable to the authoritarian tendencies they are called to limit, which can unbalance them or even cause their political "capture". The awareness and careful follow-up of these severe issues for the rule of law and democracy constitutes the object of the concerns of international forums such as the Venice Commission or the collaboration structures of constitutional courts and their equivalent. That is why **the independence and, in context, the vulnerabilities of the courts that carry out constitutional** justice have been the subject of a separate section of Congress[9].

Finally, to achieve the pacifying effect (perhaps even to impact of the Peace of our minds, according to a famous formula used by the president of the European Parliament in a recent intervention on the role of public authorities and persons in Europe and which supports

[8] See: Chakim, M. Lutfi. The Indonesian Proposal to Establish a Constitutional Supremacy Index. IACL-AIDC Blog, nov. 2022. Available at: https://blog-iacl-aidc.org/new-blog-3/2022/11/10/the-indonesian-proposal-to-establish-a-constitutional-supremacy-index. Accessed on: 2022.

[9] (The World Conference on Constitutional Justice, 2022a). In addition to the main theme, the 5th Congress was also an opportunity – in accordance with the practice established at previous Congresses – to take stock of the independence of the constitutional courts members of the World Conference. The 5 th Congress concluded: "There is a need for mutual respect between constitutional courts and other state powers, also to prevent discontinuity between constitutional adjudication and initiatives of the legislature (i.e. delayed enforcement of decisions of constitutional courts), which can also be detrimental to the trust placed in constitutional courts.; Openness, accessibility, and transparency in communication, without losing sight of the need for self-restraint, fosters trust in constitutional courts and enhances their standing as independent institutions; When faced with fierce and unfair criticism or undue pressure from the executive and legislative branches after having taken decisions that displeased other state powers or political actors or with misinformation campaigns by lobby and pressure groups, member courts of the World Conference can rely on the solidarity of counterpart courts, expressed through the regional groups and the World Conference, which can help a court to resist such pressures. The Bureau of the World Conference is ready to offer its good offices to courts under pressure, including through statements of support; The 5th Congress called upon judges of the member courts of the World Conference to resist pressures from other state powers and to make their decisions only on the basis of the Constitution and the principles enshrined therein. Furthermore, considering the dynamic constitutional system in each country, the Congress noted the initiative of the Constitutional Court of the Republic of Indonesia to establish a Constitutional Supremacy Index (CSI) to measure the progress and development toward constitutional compliance, in line with the principles of constitutionalism." The World Conference on Constitutional Justice, 2022b).



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Strong democratic institutions, competent leadership)[10], it is important to maintain public trust in the constitutional courts and the judiciary in general. **Public trust to the court is further enhanced through the transparent of court procedures, providing public information regarding the court processes and hearing schedules, easy access to the court, and services for accessing the public documents such as decisions, regulations, e-journals, and research report.**

So it is essential to closely understand and follow constitutional justice developments in our States and the world. My approach today is part of this effort to realize it, even if it only emphasizes certain aspects. Constitutional justice has lights but also shadows, meaning a lot of power but also vulnerabilities. The awareness of all these aspects can lead to more solid institutions capable of being guardians of the peace and rule of law in such a tumultuous and fragmented world. From this perspective is important also to have more **interaction between judges and academics**.[11]

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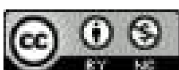
[10] The speech can be viewed at the following link: http://eplinkedin.eu/q9sx. Accessed on: 2022.

[11] See on this topic: STEUER, M. 'You Are Not Alone': judges, academics, and politicians at the 5th Congress of the World Conference on Constitutional Justice. Verfassungsblog. Available at: https://verfassungsblog.de/you-are-not-alone/?fbclid=IwAR2EUkhKFuRJQ2RN69SAY6pqj65ytndcaMZCb7ajsNa9f2AowtzNoo_AyP8. Accessed on: 2022.



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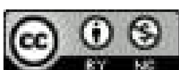

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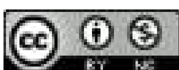

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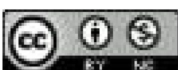

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