

# International Journal of Social Science Exceptional Research

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## Critiques Constitutional Courtroom: A Case Report

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### Article Info

**ISSN (online):** XXXX-XXXX

**Volume:** 01

**Issue:** 01

**January-February 2022**

**Received:** 15-01-2022;

**Accepted:** 05-02-2022

**Page No:** 19-22

### Abstract

Even though permitting justices of constitutional courts to put up their separate opinions has ended a clean trend in Europe, until an amendment to the regulation at the Constitutional courtroom in 2008, the justices of the Constitutional court docket of the Republic of Lithuania did not have this opportunity. But, after the advent of this group in Lithuania, grievance changed into voiced through the general public concerning its legal regulation. Consequently, this article examines the legal regulation governing the institution of a separate opinion of a justice of the Constitutional court, in addition to the usage of this institution in Lithuania. The object seeks to reveal the shortcomings of this law, in addition to to offer proposals for its development. The issues in query are examined in the context of the prison framework governing the organization of a separate opinion in different EU countries (with a selected recognition on Jap and primary EU countries). In order to provide a basis for this studies, the article also examines the group of a separate opinion inside the context of the precept of the secrecy of the deliberation room and the secrecy of voting consequences in the choice-making procedure of constitutional justice establishments.

**Keywords:** Critiques, Courtroom, Constitutional

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### Introduction

The right to dissent derives from the precept of judicial independence, as a assure of judges' intrinsic independence, which ensures that a choose listening to a case in chambers can keep his or her assessment of the case whilst it differs from the view of the majority of the chamber of judges and to report and publicize it (Kelemen 2011). Initially, a separate opinion of a judge became only recognized within the America, in addition to in different nations of the commonplace regulation way of life. After many political and theoretical disputes, separate reviews gradually became established in constitutional justice establishments of continental Europe. Whilst EU systems of constitutional review have their roots inside the Austrian version, some European countries have additionally introduced a feature of yankee constitutional evaluate-the group of a separate opinion (European Commission for Democracy via Regulation 2010). The possibility for justices of constitutional courts to put up separate reviews is mounted in countries consisting of Spain, Portugal, and Germany. Specifically, this group has spread within the new democracies of Japanese and primary European- rope, inter alia, Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, and Slovenia. It's far frequently argued that the book of reasoned separate critiques can toughen the transparency and collegiality of the judiciary and inspire deeper and more designated discussions in the deliberations of justices, which could cause better reasoned and coherent decisions (Parliament Directorate widespread for internal regulations 2012).

But, a few nations, which includes Austria, Belgium, France, Italy, Luxembourg, and Malta, do now not understand separate opinions of their constitutional overview structures, and the effects of the vote are stored mystery, with neither the results of the vote nor the names of the justices made public. In Italy, the separate opinion is taken into consideration incompatible with the principle of the collegiality of the court docket; in France, it's far considered that the individualization of a judicial opinion could deliver the judiciary too much influence (EU fee for Democracy via law 2010).

Thus, the opportunity for justices of constitutional courts to explicit separate opinions is not conventional. And there is sincerely no basis for claiming that the authority of the Austrian, Belgian, French, and Italian constitutional justice institutions within the

Without going into an in depth discussion, it have to be noted that the main arguments towards the creation of separate reviews are the subsequent: maintaining the authority of the courts and their choices, retaining the outside independence of judges from political pressures, keeping the clarity and irrefutability of the court docket judgment, and preserving the collegiality of the courtroom. in the meantime, the main arguments in want of separate opinions are as follows: safeguarding the internal independence of judges and their freedom of expression, enhancing the quality and persuasiveness of court docket judgments, selling transparency, and growing communicate with the destiny composition of the court docket.<sup>2</sup>

Whilst there's no strict correlation between constitutional justice and the booklet of separate reviews, allowing the justices of constitutional courts to publish their dissents has end up a clean trend in Europe (Kelemen 2013). In most of the people of ecu Union (eu) Member States (specifically, greater than 20 States), constitutional judges have the proper to put up separate reviews every time they do now not accept as true with the court judgment (this consists of nations wherein ideally suited court judges, to a sure volume, have capabilities similar to those of constitutional judges<sup>3</sup>) (European fee for Democracy thru law 2018). This might be because of the expanded need for transparency in constitutional adjudication and to the endless debate over the democratic legitimacy of constitutional courts; but, even supposing today the general public of eu constitutional courts are allowed to submit separate reviews, there may be lots heterogeneity as to how they make use of this opportunity (Kelemen 2013).

despite the fact that reviews vary at the need for separate reviews, a look at summarizing the exercise of ecu Member States on the organization of separate evaluations argues that a separate opinion best achieves its goals whilst it is utilized in notable cases, when a dissenting opinion is circulated most of the judges in advance, and whilst a dissenting opinion is written in a deferential fashion (European Parliament Directorate fashionable for inner guidelines 2012). it is also argued that, if a separate opinion is exercised with restraint and is constrained to matters of essential importance, it's far a high quality device: it encourages dialogue and search for a compromise, at the same time as inside the occasion of failure to attain a consensus, it forces most of the people of the judges to enhance their arguments in the light of the arguments of the minority and, on this manner, it may also enhance the excellent of choices (European Parliament Directorate wellknown for internal guidelines 2012).

### **Separate critiques and the Secrecy of the Constitutional courtroom's Deliberation Room and voting effects: A Comparative attitude**

There are varieties of procedural practice in drafting decisions of constitutional justice institutions. within the not unusual law subculture, it is always clean from the decision of the constitutional justice organization which justice is the author of the respective doctrine and which justices have joined it<sup>5</sup>; within the international locations of the continental felony lifestyle, the authorship of judicial decisions (consisting of in constitutional justice cases) is tons extra disguised<sup>6</sup> than inside the common regulation tradition; in such jurisdictions, it is nearly impossible to envision the contribution of person justice to the final results of a specific case (Kuris 2012b).

As Kelemen factors out, there can be special ranges of transparency inside the final level of the decision-making process. The primary degree is to allow judges to post their dissent. The rule is they cannot actually country their confrontation, however also have to provide motives for it, although their confrontation simply takes the shape of becoming a member of any other decide's separate opinion. The second degree of transparency is the possibility of moreover revealing the number of votes in want and in opposition to the selection. That is implemented in Germany, albeit in a limited way, on the grounds that there it is not a duty, however a possibility. Eventually, the third diploma of transparency is represented by the American (and English) exercise wherein the vote of each decide is public, whether or not or not they select to put in writing their dissent (Kelemen 2013).

The second one group includes countries whose law on constitutional justice institutions requires the secrecy of the deliberation room and the outcomes of the vote, but wherein the justices of the constitutional court docket have the possibility of filing separate critiques, i.e., wherein the expression of a separate opinion does no longer constitute a violation of the principle of the secrecy of the deliberation room and the vote. In Spain, judges can also reflect their disagreeing opinion in a separate opinion (*voto unico*), which has been defended inside the deliberation. Separate opinions can be integrated into the judgment and will be published inside the legitimate gazette, collectively with the judgment, order, or assertion to which they refer.<sup>7</sup> In Portugal, the regulation of the Constitutional court affords that the judges of the Constitutional Tribunal have the proper to desk their reasons for a dissenting vote (*voto vencido*; defeated vote).<sup>8</sup> In Germany, the German Constitutional court docket takes its selections in the secrecy of the deliberation room, however the chambers of that court docket can also announce the outcomes of the vote in their choices. The Federal Constitutional courtroom Act explicitly offers minority judges the proper to post their separate evaluations (*Sondervotum*).

In Japanese and important Europe, the second institution of countries includes Estonia, the Czech Republic, Poland, Romania, and Slovakia. In Estonia, in which constitutional review is accomplished with the aid of one of the very best court divisions (the Constitutional Chamber), judgments are followed by easy majority votes at the same time as safeguarding the confidentiality of deliberations. A choose or several judges who disagree with the judgment or the reasons may append a (joint) dissenting opinion to the judgment.<sup>10</sup> In Romania, deliberations and balloting are mystery, but justices who have given a bad vote may additionally formulate a separate opinion. Regarding the reasoning behind the decision, they will additionally write a concurring opinion. Eleven In Poland, the Constitutional Tribunal adopts its final acts in camera<sup>12</sup>; a judge who disagrees with the general public may additionally, earlier than the shipping of the ruling, submit a dissenting opinion, presenting a written announcement of grounds for his or her dissent.<sup>13</sup> inside the Czech Republic, the Constitutional court Act establishes categories of questions about which vote casting is secret. A choose who disagrees with the decision of the Plenary or with its reasoning has the right to have his or her character opinion referred to in the record of discussions and appended to the selection together with his or her name stated.<sup>14</sup> The Slovak Constitutional court docket Act affords that simplest judges

and a member of the court docket's body of workers may also take part in the vote and that the vote on the matters provided for in Article 136(2) and (three) of the constitution shall be with the aid of secret poll; a choose who disagrees with a choice (both of the plenary or of a senate) has the right to have his or her separate opinion in short mentioned within the report on voting and posted as the other components of the choice.

### **Separate evaluations and the Secrecy of the Deliberations inside the Lithuanian Constitutional court**

Following the recuperation of the independence of Lithuania in 1990, the charter of the Republic of Lithuania became adopted in 1992, and for the first time in the history of the state, it furnished for the constitutional justice group—the Lithuanian Constitutional courtroom. The Lithuanian Constitutional court commenced its pastime in 1993, so this yr marks the thirtieth anniversary of the Constitutional court docket's hobby. Constitutional courts in vital and Japanese states, which include Lithuania, were established to make certain democratic constitutional stability to keep away from the denial of democratic values (Pūraite'-Andrikiene' 2021). The Lithuanian Constitutional court docket has already for three many years efficaciously performed this challenge in Lithuania. The jurisprudence of the Constitutional court docket notably contributed to the a success transition from the previous regime to a brand new legal-political system, that is harmonized with eu and worldwide felony requirements and is primarily based on the rule of thumb of regulation and the protection of human rights and freedoms. The Lithuanian Constitutional court has been converting the country wide prison device now not best via direct intervention in the consequences of the law-making procedure, i.e., by using ruling that the contested felony act or its component is opposite to the charter or every other higher-ranking felony act, but additionally via the creation of the steady legit constitutional doctrine<sup>21</sup>. Consistent with the maximum current public opinion polls, the Lithuanian Constitutional court docket is among the maximum trusted establishments. Universal, forty six.7% of respondents have complete self-belief inside the Constitutional courtroom. Confidence inside the Constitutional court docket is maximum amongst all of the classical public government (legislative, government, judicial) and two times as excessive as in the other courts (Constitutional courtroom of the Republic of Lithuania 2021b).

However, constitutional justice had by no means existed in Lithuania for a single day earlier than the time the constitutional justice model become created; this determined that a careful technique become adopted by way of the creators of this model to this institution. Constitutional regulation research highlight that the concept of jurisdiction assigned to the Constitutional court docket underneath bankruptcy VIII of the Lithuanian constitution is minimalist (specifically, until 2019, when an amendment to the constitution changed into adopted at the establishment of character constitutional court cases) (Sadurski 2005; Pūraite'-Andrikiene' 2021). Before the constitutional amendments of 2019, the Lithuanian constitutional justice model had gone through no good sized changes. Despite the fact that the LCC had previously been extra than once amended and supplemented, those modifications produced no profound changes inside the constitutional justice model<sup>23</sup>. Despite the fact that, some of the amendments

certainly constituted as a substitute full-size changes, including the advent of a separate opinion of a justice of the Constitutional courtroom. Because of the above-stated careful technique of the creators of the constitutional justice version, Lithuania has long been an exception to the principle of the secrecy of the deliberation room the various international locations of eastern and crucial Europe.

### **Conclusions**

Union countries have very unique tactics to making sure the secrecy of the deliberations and the balloting effects within the selection-making technique of the constitutional justice establishments. on this recognize, European countries can be divided into 3 major businesses:

(1) nations where the absolute secrecy of the deliberation room and the voting consequences is respected, and the justices of constitutional courts do no longer have the possibility of filing separate evaluations; (2) nations wherein the balloting outcomes are mystery, however the justices of the Constitutional court docket have the opportunity of filing separate evaluations; and (three) international locations in which the voting results aren't mystery.

Inside the first years of the Constitutional court docket's interest, Lithuania can be included inside the first organization of nations where the precept of the absolute secrecy of the deliberation room and the balloting results are respected and wherein the justices of constitutional courts are not allowed to express separate reviews. But, the 2008 amendments to the LCC, by means of introducing the institution of separate evaluations of a justice of the Constitutional court, modified the state of affairs. Lithuania is presently inside the 2d organization of nations in which the rules governing constitutional justice method calls for the secrecy of the deliberations and the effects of the vote, but where the expression of a separate opinion does now not represent a contravention of the principle of the secrecy of the deliberation room and the outcomes of the vote. while the opportunity of expressing separate critiques become introduced, the justices of the Constitutional courtroom were very energetic in exercise it, but the amendments to the policies adopted in 2015, together with a positive properly-hooked up way of life of expressing separate evaluations, have caused a miles extra limited use of this possibility.

A separate opinion of a justice of the Constitutional court docket may be used as a powerful tool for convincing the justices of the Constitutional courtroom to rethink the instances that led them to undertake a selected role in a constitutional justice case. In maximum eu Union international locations that have brought separate reviews with the aid of a justice of the Constitutional courtroom, a separate opinion needs to be delivered before the ebook of the act in question and is posted collectively with the act or whilst a part of it. But, underneath the prison regulation mounted in the LCC, consistent with which a justice who disagrees with an act followed by using the Constitutional court may also document a separate opinion inside 5 working days of the pronouncement of the act in the court docket, the said feature of a separate opinion is rendered meaningless. A separate opinion isn't effective if It's miles submitted within 5 days from the pronouncement of the final act inside the court docket, as it is no longer feasible to find any compromise. Any such felony law also does no longer comply with the tips of the Venice commission.

The LCC ought to be corrected systematically, by means of

distinguishing between the adoption of the very last act of the court docket and its pronouncement to the public: the second manner ought to no longer be executed right away after the first one. it may be proposed to leave the only-month time restrict for the adoption of the act and add extra days (e.g., 10 operating days) for the education of a separate opinion and for the pronouncement of the act involved. The LCC ought to explicitly nation which acts of the Constitutional court can be the subject of a separate opinion.

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