PRAVNI ZAPISI, God. XVI, br. 2 (2025)
UDK 342.565.2(497.5)

DOI 10.5937/pravzap16-61889

ORIGINAL SCIENTIFIC ARTICLE

*Đorđe Gardašević**
*Niko Jarak***

THE CONSTITUTIONAL COURT OF CROATIA AND THE CONCEPT OF INHERENT POWERS

Abstract: *The article examines the Croatian Constitutional Court's interpretive approach to the existence of its own "inherent" powers and their relationship to the powers enumerated in the Constitution. In this context, we analyze the relevant case law of the Constitutional Court through several key questions: does the Court exercise its "inherent" powers through the concept of a descriptive or autonomous norm, does this result in significant changes in the Court's procedures, does the Court apply measures defined by the Constitution, and does this significantly disrupt the constitutional balance of competences and powers. The findings show that the Court applies the concept of the autonomous norm, thereby significantly altering both its procedures and the measures it is authorized to impose. We conclude that such an approach by the Court significantly undermines the principle of the balance of powers as envisaged in the Constitution.*

Key words: Constitutional Court of the Republic of Croatia, Constitutional Adjudication, Constitutional Interpretation, Inherent Powers, Enumerated Powers, Separation of Powers.

1. Introduction

The Constitutional Court of the Republic of Croatia is a Kelsenian[1] constitutional court whose status and powers are regulated by the Constitu-

* Professor, University of Zagreb, Faculty of Law; e-mail: dgardase@pravo.hr ORCID ID: 0000-0002-2103-6139

** Assistant and PhD Student, University of Zagreb, Faculty of Law; e-mail: niko.jarak@pravo.unizg.hr ORCID ID: 0000-0002-6773-6632. This article was written as part of the institutional research project of the Faculty of Law, University of Zagreb, METUS (IIP-METUS-25-16). The institutional project is available at: https://www.pravo.unizg.hr/metus.

1 Kelsen, H., Who Ought to Be the Guardian of the Constitution?, in: Vinx, L., (ed. and trans.), 2015, *The Guardian of the Constitution: Hans Kelsen and Carl Schmitt on the Limits of Constitutional Law*, Cambridge, Cambridge University Press, pp. 174–221. See also Kelsen, H., 1942, Judicial Review of Legislation: A Comparative Study of the

tion of the Republic of Croatia[2] and the Constitutional Act on the Constitutional Court of the Republic of Croatia[3] (CACC), which is equivalent to the Constitution in terms of its legal force.

Article 125 of the Constitution, as a *lex generalis*, stipulates that the Constitutional Court has the power to conduct constitutional review, as well as other "ancillary powers".[4] The procedural avenues of using these powers are further elaborated in detail in the CACC. For example, the CACC provides that the control of the constitutionality of programs and activities of political parties procedurally is contingent on the request submitted by specifically designated actors[5] and that the control of constitutionality of a citizen-initiated referendum question is initiated at the request of the Parliament.[6]

However, Article 2 (1) CACC, which describes the basic constitutional position and functions of the Constitutional Court, has proven to be instrumental in the Court's expansive reading of its own powers, which has led to the circumvention of procedural limitations prescribed in the CACC. Article 2 (1) of the CACC stipulates that the Constitutional Court "shall guarantee compliance with and application of the Constitution of the Republic of Croatia and shall base its work on provisions of the

---

Austrian and the American Constitution, *The Journal of Politics*, Vol. 4, No. 2, pp. 183–200.

2 The consolidated text of the Constitution of the Republic of Croatia, *Official Gazette of the Republic of Croatia*, Nos. 56/90, 135/97, 113/00, 28/01, 76/10 and 5/14, edited and translated by the Constitutional Court, (https://www.usud.hr/en/the-constitution, 30. 9. 2025).

3 The consolidated text of the Constitutional Act on the Constitutional Court of the Republic of Croatia, *Official Gazette of the Republic of Croatia*, No. 49/02 of 3 May 2002, (https://www.usud.hr/en/constitutional-act, 30. 9. 2025).

4 Ginsburg, T., Elkins, Z., 2009, Ancillary Powers of Constitutional Courts, *Texas Law Review*, Vol. 87, No. 7, pp. 1431–1462. These "ancillary powers" include the Constitutional Court's power to decide on constitutional complaints; to monitor compliance with the Constitution and laws and to report to the Croatian Parliament on detected violations thereof; to decide on jurisdictional disputes between the legislative, executive, and judicial branches; to decide on the impeachment of the President of the Republic; to monitor compliance of the programs and activities of political parties with the Constitution (with the possibility of banning noncompliant political parties); to monitor the constitutionality and legality of elections and referenda; to resolve electoral disputes falling outside the jurisdiction of the courts; and to perform other duties specified by the Constitution. See Article 125 of the Constitution.

5 Article 86 CACC stipulates that the request to ban the work of a political party or its section may be submitted "by the President of the Republic of Croatia, the Croatian Parliament, the Government of the Republic of Croatia, the Supreme Court of the Republic of Croatia, the body authorized for registration of the parties and the Attorney General of the Republic of Croatia".

6 Article 95 (1) CACC.

Constitution of the Republic of Croatia and the CACC."[7] By relying on Article 2 (1) CACC, the Constitutional Court has developed a body of case law in which it has constructed a concept of "general constitutional control"[8] (GCC), which enabled it to base its actions beyond its enumerated powers or even beyond its implied powers, which are constructed on the basis of enumerated powers.[9] This approach to interpreting the

7 We have identified similar provisions that describe the basic functions and tasks of constitutional courts in certain Central and Eastern European states. See Article 11 (6) of the Constitution of Montenegro ("Constitutionality and legality shall be protected by the Constitutional Court."), (https://www.constituteproject.org/constitution/Montenegro_2013, 4. 11. 2025); Article 1 (1) of the Constitutional Court Act that regulates Slovenian Constitutional Court ("The Constitutional Court is the highest body of the judicial power for the protection of constitutionality, legality, human rights and fundamental freedoms."), (https://www.us-rs.si/en/legal-basis/statutes, 4. 11. 2025); Article 2 (1) of the Law of 24 October 2018 on the Constitutional Court of the Slovak Republic ("The Constitutional Court is an independent judicial authority charged with the protection of constitutionality."), (https://codices.coe.int/codices/documents/law/C3723E53-4F16-4D4D-848B-08DC0D38DFC5, 4. 11. 2025); Article 1 (1) of the Law No. 47/1992 – On the Organisation and Operation of the Constitutional Court that regulates the Constitutional Court of Romania ("The Constitutional Court is the guarantor of the supremacy of the Constitution."), (https://www.ccr.ro/en/legal-basis/, 4. 11. 2025); Article 24 (1) of the Fundamental Law of Hungary ("The Constitutional Court shall be the principal organ for the protection of the Fundamental Law."), (https://www.constituteproject.org/constitution/Hungary_2016, 4. 11. 2025). These comparative examples demonstrate that the issue of interpreting a provision that describes the basic functions of a constitutional court, as a basis for the construction of its independent powers that go well beyond its enumerated and implied powers, could be relevant for other legal orders as well.

8 Also known as general control powers and general controlling powers. See, respectively, Gardašević, Đ., 2016, Constitutional Interpretations of Direct Democracy in Croatia, *Iustinianus Primus Law Review*, Vol. 7, No. 1, pp. 15–16; and Barić, S., 2016, The Transformative Role of the Constitutional Court of the Republic of Croatia: From the ex-Yu to the EU, *Analitika – Center for Social Research*, Working Paper 6/2016, p. 24.

9 For the relationship between enumerated and implied powers in United States (US) law, see Constitution Annotated, *ArtI.S1.3.3 Enumerated, Implied, Resulting, and Inherent Powers*, (https://constitution.congress.gov/browse/essay/artI-S1-3-3/ALDE_00013292/, 30. 9. 2025). See also *McCulloh v. Maryland, 17 U.S. 316 (1819)* in which the US Supreme Court held that the Congress has the power to establish a federal bank because this power is "necessary and proper" for exercising the enumerated congressional power to tax and spend. In the context of Croatia, an implied power of the Constitutional Court would be, for example, the power to control the compliance of laws with international treaties that are part of the Croatian legal order, as implied by the power of constitutional review of laws, having in mind the fact that international treaties that "have been concluded and ratified in accordance with the Constitution, which have been published and which have entered into force shall be a component of the domestic legal order of the Republic of Croatia and shall have

Constitutional Court's own powers resembles the theory of inherent powers,[10] which is well known and criticized in comparative law[11] due to its likelihood to jeopardize the rule of law,[12] checks and balances,[13] democratic legitimacy,[14] and the overall idea of a written constitution and limited powers.[15]

Notwithstanding the growing importance and consequential character of this case law, the concept and the use of GCC in Croatia has not yet been subjected to thorough academic analysis. Therefore, in this paper we aim to critically assess the case law on the Constitutional Court's use of GCC in order to demonstrate how the expansive reading of Article 2 (1) CACC threatens the basic idea rooted in the concept of the rule

primacy over domestic law" (Article 134 of the Constitution), meaning that control of compliance of laws with international treaties amounts to effective enforcement of the hierarchy of positive sources of law. See Constitutional Court, U-I-745/1999, 8 November 2000.

10 Also known as "prerogative, residual, inherent, autonomous, general, unilateral", and "non-statutory powers" (Cohn, M., 2015, Non-Statutory Executive Powers: Assessing Global Constitutionalism in a Structural-Institutional Context, *The International and Comparative Law Quarterly*, Vol. 64, No. 1, p. 69), or "plenary", "exclusive" and "extra-constitutional powers" (Fisher, L., 2010, The Unitary Executive and Inherent Executive Power, *University of Pennsylvania Journal of Constitutional Law*, Vol. 12, No. 2, p. 571). Originally developed in the context of the debates on the extent of executive power in US law, inherent powers, unlike enumerated and implied powers, relate to those powers that cannot be traced to a constitutional provision that contains a specific power. On the contrary, inherent powers are based on a vague categorical grant of power due to their (alleged) inextricable connection to the basic nature of the institution in question. See Fisher, L., 2007, Invoking Inherent Powers: A Primer, *Presidential Studies Quarterly*, Vol. 37, No. 1, pp. 1–2. For differences between the notions of implied powers and inherent powers in the strong sense, see Kinkopf, N., 2007, Inherent Presidential Power and Constitutional Structure, *Presidential Studies Quarterly*, Vol. 37, No. 1, pp. 37–38.

11 See Fisher, L., 2007, pp. 1–22; Cohn, M., 2015, pp. 65–102; Casey, C., 2017, Underexplored Corners: Inherent Executive Power in the Irish Constitutional Order, *Dublin University Law Journal*, Vol. 40, No. 1, pp. 1–36; Martinez, J. S., 2006, Inherent Executive Power: A Comparative Perspective, *The Yale Law Journal*, Vol. 115, No. 9, pp. 2480–2511; Chemerinsky, E., 1983, Controlling Inherent Presidential Power: Providing a Framework for Judicial Review, *Southern California Law Review*, Vol. 56, No. 1, pp. 863–911. For Croatian literature, see Gardašević, Đ., Dioba vlasti u Ustavu Sjedinjenih Američkih Država, in: Kostadinov, B., (ed.), 2022, *Poredbeno ustavno pravo – dioba vlasti*, Zagreb, Pravni fakultet Sveučilišta u Zagrebu, pp. 16–26. The literature we list here relates to inherent powers of the executive branch of government.

12 Fisher, L., 2010, p. 591.

13 Kinkopf, N., 2007, p. 48.

14 Cohn, M., 2015, pp. 68–69.

15 Martinez, J. S., 2006, pp. 2510–2511; Kinkopf, N., 2007, p. 39.

of law and of a written constitution according to which state institutions should base its proceedings, as well as its substantive decisions, on legal bases that are prescribed by law.[16] In other words, we will scrutinize the potential of Article 2 (1) CACC to be used as a fruitful "repository"[17] of independent powers that transcend the textual and purposive limits of the Constitution.

In that respect, we put forth three main claims. First, there are two possible approaches to interpreting Article 2 (1) CACC: the descriptive norm approach and the autonomous norm approach, the latter being the approach according to which Article 2 (1) is a source of independent powers of the Court. Second, the Constitutional Court has used Article 2 (1) CACC as an autonomous legal norm. Third, we claim that the autonomous norm approach to Article 2 (1) has serious negative implications for the balance of powers in Croatian legal order.

The paper is structured as follows. First, we will give an outline of relevant case law by describing factual and legal problems that arose in cases in which the Constitutional Court developed and used the concept of GCC. Second, we will provide a detailed structural analysis of GCC as it has been used in examined cases. More precisely, after explaining the factual scenarios that triggered the activation of GCC (the question of "serious threats"), we will first develop a methodological framework for analysis, which will then be applied to the relevant case law. In our analysis, we will identify two possible approaches to interpreting Article 2 (1) CACC: the descriptive norm approach and the autonomous norm approach. The issue relating to whether the Court in a certain case used descriptive norm approach or the autonomous norm approach to Article 2 (1) CACC will be called the "basic issue". In order to address the basic issue, we will look at which specific procedural grounds the Court formally invoked in the introductory part of its acts (the "technical issue"); we will examine whether the Court somehow affected the procedure it was formally supposed to follow (the "procedural issue"); we will detect whether the Court substantively imposed the measure it was entitled to impose (the "substantive issue"); and we will assess whether the Court expanded its own zone of authority at the detriment of exclusive competences and powers of other constitutional actors (the "spillover issue"). Finally, we will offer concluding remarks in which we will synthesize the dangers that the GCC concept poses for the balance of powers in Croatian constitutional law.

16 Compare Martinez, J. S., 2006, pp. 2510–2511; Kinkopf, N., 2007, pp. 47–48.

17 See Cohn, M., 2015, p. 83.

2. An Outline of the Case Law on the Development and the Use of GCC

In the following section we will examine the cases in which the Court developed and used the concept of its GCC. The cases are the following: the *Referendum* case,[18] the *10 April Street* case,[19] the *Milanović* cases,[20] and the *Judges' Mandates* case,[21] as well as its aftermath in the *Ruling on the Report* case.[22]

2.1. THE *REFERENDUM* CASE: UNLEASHING THE CONCEPT OF UNCONSTITUTIONAL CONSTITUTIONAL AMENDMENTS AS AN AVENUE OF PROTECTING CROATIAN CONSTITUTIONAL IDENTITY

The genesis of the concept of GCC can be traced back to the 2013 Statement of the Constitutional Court[23] (the *Referendum* case) issued in relation to the "Marriage Referendum" – the first successful national citizen-initiated referendum that intended to, and eventually succeeded in, amending the Constitution so that it would include a heterosexual definition of marriage that had previously already been present in the Family Act.[24] The Court found the Parliament's decision to call a national referendum[25] to be a convenient opportunity to present several constitutional stances that touch upon the state of Croatian referendum law, both in general and in relation to the specific "Marriage Referendum", as well

18 Constitutional Court, Statement on the Popular Constitutional Referendum on the Definition of Marriage, SuS-1/2013, 14 November 2013.

19 Constitutional Court, U-II-6111/2013, 10 October 2017.

20 Constitutional Court, Warning related to the Statement of the President of the Republic Mr. Zoran Milanović about his intention to run as a candidate on the elections for Croatian Parliament called by the decision of the President of the Republic of Croatia from 15 March 2024, U-VII-1263/2024, 18 March 2024 (*Milanović I*); and Constitutional Court, Communication and Warning to Participants in the Elections Held on 17 April 2024, U-VII-1263/2024-II, 19 April 2024 (*Milanović II*).

21 Constitutional Court, Report on the failure to elect ten judges to the Constitutional Court of the Republic of Croatia, U-X-5162/2024, 6 December 2024.

22 Constitutional Court, U-II-804/2025, 8 July 2025.

23 Constitutional Court, SuS-1/2013, 14 November 2013.

24 For a detailed legal analysis of the 2013 referendum (including its substantive aspects), see Horvat Vuković, A., Referendum narodne inicijative 2013 – Ustavni identitet kao osnova ustavnosudskog aktivizma, in: Podolnjak, R., Smerdel, B., (eds.), 2014, *Referendum narodne inicijative u Hrvatskoj i Sloveniji: Ustavnopravno uređenje, iskustva i perspektive*, Zagreb, Hrvatska udruga za ustavno pravo, pp. 166–169.

25 *Official Gazette of the Republic of Croatia*, No. 134, 9 November 2013.

as to develop a brand new understanding of the nature of its own powers, which would eventually introduce the doctrine of unconstitutional constitutional amendments in Croatian law.[26]

In order to better explain how the concept of the Court's GCC was "announced" (if not also de facto fully activated) in the area of control of constitutionality of referendum, for the first time in the *Referendum* case, it is first necessary to examine Article 95 (1) CACC. This article states that "[a]t the request of the Croatian Parliament, the Constitutional Court shall, in the case when ten percent of the total number of voters in the Republic of Croatia request calling a referendum, establish whether the question of the referendum is in accordance with the Constitution and whether the requirements in Article 86, paragraphs 1–3, of the Constitution of the Republic of Croatia for calling a referendum have been met."

It follows from the text of Article 95 (1) CACC that the Court's control of the constitutionality of the citizen-initiated referendum question is contingent on the parliamentary request. In other words, the parliamentary request is the procedural requirement that activates the Court's competence to rule on the issue.

However, in the 2013 Statement[27] the Court self-activated its jurisdiction to control constitutionality of the referendum question by invoking its GCC. This way, the Court developed an independent ground for review that is not limited by a special provision that regulates in detail the control of constitutionality of referendums (Article 95 (1) CACC), at the same time limiting it to exceptional circumstances that relate to undermining Croatian constitutional identity.[28]

This invocation of the concept of the GCC was developed and articulated by the Court as follows: "On the basis of Article 125.9 of the Constitution and Articles 2 (1) and 87.2 [CACC], the Constitutional Court possesses the general constitutional duty to guarantee respect for the Constitution and to supervise constitutionality of a state referendum, right until the formal end of the referendum procedure. Accordingly, after the Croatian Parliament decides on calling a referendum on the basis of a popular constitutional initiative, without before acting upon the Article 95 (1) CACC, the Constitutional Court does not lose its general control

26 The Statement is analyzed in detail in Gardašević, Đ., 2016, pp. 13–18.

27 The legal basis for issuing this Statement remains unclear. See *infra* 3.3.1.

28 For previous invocation of Croatian constitutional identity, see Constitutional Court, U-I-3597/2010, U-I-3847/2010, U-I-692/2011, U-I-898/2011, and U-I-994/2011, 29 July 2011. See also Kostadinov, B., Ustavni identitet, in: Bačić, A., (ed.), 2011, *Dvadeseta obljetnica Ustava Republike Hrvatske*, Zagreb, Hrvatska akademija znanosti i umjetnosti, pp. 305–337.

powers over constitutionality of such a referendum. However, taking into account the constitution-making power of the Croatian Parliament as the highest law-making and representative body in the State, the Constitutional Court assesses that it can use general control powers in such a situation only exceptionally, when it determines such a formal or substantial unconstitutionality of a referendum question, or such a grave procedural error which threatens to undermine the structural features of the Croatian constitutional state, its constitutional identity, including the highest values of the constitutional order of the Republic of Croatia (Articles 1 and 3 of the Constitution). Primary protection of these values does not exclude the power of the constitution-maker to expressly exclude some other issues from the range of permitted referendum questions."[29]

The Court has thus de facto "relaxed" the procedural requirement of receiving "a request from the Croatian Parliament" from Article 95 (1) CACC by relying on GCC, which is presented as a self-standing ground[30] for control of constitutionality of the referendum process. Therefore, the Court's GCC in principle exists independently of the *lex specialis* that is Article 95 (1) CACC.

However, being aware of the fact that a "power grab" of this kind goes "*ultra et extra* of the text of the Constitution and the CACC",[31] the Court qualified its use by relying on the concept of "structural features of the Croatian constitutional state", designating its GCC as an exceptional, *ultima ratio* avenue of protecting Croatian "constitutional identity" from its erosion by unconstitutional constitutional amendments – this time in the area of control of citizen-initiated referendums for amending the Constitution.[32]

On the merits, the Court expressed the need to uphold the Parliament's Decision, which was adopted with more than two-thirds of the votes.[33] Even though the Court found that there were no present indications to use its GCC and examine the constitutionality of the referendum question – relying also on the fact that the heterosexual definition of marriage was found in the Family Law Act, which would bar it from examining

29 Constitutional Court, SuS-1/2013, 14 November 2013, pp. 2–3. Translation taken from Gardašević, Đ., 2016, pp. 15–16.

30 This was confirmed in Constitutional Court, U-VIIR-164/2014, 13 January 2014, para. 10 ("In the 14 November 2013 Statement the [Court] has established that it has, outside of and independently of Article 95 [CACC], general control powers during the entire referendum process."), translated by authors.

31 Horvat Vuković, A., 2014, p. 154, translated by authors.

32 Gardašević, Đ., 2016, p. 17.

33 Constitutional Court, SuS-1/2013, 14 November 2013, p. 11.

the constitutionality of that piece of legislation extra-procedurally[34] – it conducted a de facto control of constitutionality presented as "informal dicta".[35] The Court relied on international, European and constitutional guarantees that apply to same-sex life unions, concluding that "a potential amendment of the Constitution with the [heterosexual definition of marriage] cannot in any way influence the further development of the legislative framework of [heterosexual] extramarital union and same-sex union in line with the constitutional requirement to guarantee respect and legal protection for everyone's private and family life, and human dignity."[36] Having in mind these considerations, the Court concluded that the proposed referendum question was not unconstitutional.

The precedential character of the Statement is evident, especially in regard to the invocation of Article 2 (1) CACC expressing a general position of the Court in the Croatian constitutional system, explicitly stating that the Court bases its work on the provisions of the Constitution and the CACC. This, however, may indicate that this legal basis is more of a "restrictive" rather than "expansive" tool for interpreting the limits of constitutional adjudication in Croatia.[37]

In the remainder of this section it will be shown that the 2013 Statement unleashed a far-reaching concept that would later spill over into other areas of constitutional adjudication, incrementally redefining the scope of the Court's powers and further relaxing certain procedural requirements for activating its jurisdiction. Regarding the subsequent case law on control of constitutionality of referendums, the Court once again did not intervene *proprio motu* because in all future instances the Parliament had requested control of constitutionality of the proposed referendum questions.[38]

34 *Ibid*., p. 8.

35 Gardašević, Đ., 2016, p. 14.

36 Constitutional Court, SuS-1/2013, 14 November 2013, p. 12, translated by authors. For additional well-argued criticism of the Court's treatment of the substantive issues in this case, see Horvat Vuković, A., 2014, pp. 166–169.

37 Thus, such a restrictive approach to the interpretation of Article 2 (1) conforms with the descriptive norm approach that we describe *infra*. On the other hand, one of the possible explanations for using the expansive approach in case law was the Court's motivation to construct its "self-defense" strategy, in order to strengthen its position towards other branches of power in Croatia. Specifically, it is possible that the Court expanded the reach of its powers to contain the control of substantive constitutionality of constitutional amendments (even beyond the control of constitutionality of a citizen-initiated referendum question that aims to amend the Constitution) as a response to certain statements made by politicians and other public actors at the time, which called for abolishing the Court as an institution (Gardašević, Đ., 2016, p. 33).

38 Constitutional Court, U-VIIR-4640/2014, 12 August 2014 (referendum on the Cyrillic script); U-VIIR-7346/2014, 10 December 2014 (referendum on the election

2.2. THE *10 APRIL STREET* CASE: CONTROL OF THE CONSTITUTIONALITY AND LEGALITY OF "GENERAL ACTS" OF LOCAL UNITS THAT THREATEN CROATIAN CONSTITUTIONAL IDENTITY

The second instance of invoking GCC was related to the expansion of powers of the Constitutional Court at the detriment of the High Administrative Court (HAC), and contrary to the statutory provisions on objective administrative dispute.[39] In addition, the invocation of the concept has once again been entangled with the doctrine of Croatian constitutional identity.

In particular, in the *10 April Street* case[40] the Court bypassed an explicit provision of Article 3 (2) of the Administrative Dispute Resolution Act[41] which established the competence of the HAC to review the legality of general acts of bodies of units of local and regional self-government (local units).[42] On its merits, the case concerned a request for a constitutionality review of a "general act" of a local unit submitted to the Constitutional Court by the Government in 2013. The "general act" was a local decision (Decision on changing street names in Slatinski Drenovac) on naming streets in Slatinski Drenovac in the municipality of Čačinci, which was disputed because local authorities named one of the streets honoring the WWII-era Ustashe fascist movement.

The procedural dilemma was the following. In 2010, the concept of an objective administrative dispute was introduced in the Administrative

system); U-VIIR-1158/2015, 21 April 2015 (referendum on monetization of Croatia's highways); U-VIIR-1159/2015, 8 April 2015 (referendum on outsourcing); U-VIIR-2180/2022, 16 May 2022; and U-VIIR-2181/2022, 16 May 2022 (the COVID-19 referendums). For a detailed overview and criticism of some of these cases, see Horvat Vuković, A., 2016, Ustavni sud Republike Hrvatske i referendumi narodne inicijative 2013. – 2015.: Analiza i prijedlozi, *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, Vol. 37, No. 2, pp. 805–835. It is interesting to point out that the Court did reference its GCC in Constitutional Court, U-VIIR-343/2020, 19 May 2020 (referendum on retirement age), para. 4, at the request of the parliamentary Committee on the Constitution, Standing Orders and Political System, which asked for guidance in case when the necessary number of signatures has been collected by the citizen initiative, but the Parliament has since adopted legislative measures that were the subject matter of the proposed referendum question.

39 On objective administrative dispute in Croatian law, see Omejec, J., Banić, S., 2012, Diferencijacija propisa i općih akata u budućoj praksi Ustavnog suda i Upravnog suda u povodu Zakona o upravnim sporovima (2010), *Zbornik radova Pravnog fakulteta u Splitu*, Vol. 49, No. 2, pp. 309–324.

40 Constitutional Court, U-II-6111/2013, 10 October 2017.

41 *Official Gazette of the Republic of Croatia*, No. 20/10.

42 On competence of the HAC, see Omejec, J., Banić, S., 2012, p. 316 ff.

Dispute Resolution Act, prescribing that the HAC is competent to review legality of "general acts" of, inter alia, local units.[43] Up until 2012, when the Act came into force, the Constitutional Court has reviewed certain "general acts" that could have been subsumed under the definition of "other regulations" from Article 125.2 of the Constitution (including certain general acts of local units) because no other body had the competence to decide on these issues.[44] According to its case law that followed the introduction of the objective administrative dispute, in the transitional period of 1 January 2012 until February 2014, the Constitutional Court would have referred the submitted proposals which relate to control of legality of general acts to the HAC. After the transitional period had expired, the Constitutional Court would have rejected the proposal.[45]

Notwithstanding the described regime and conflicting previous case law, the Court did not refer the case to the HAC[46] nor did it reject the case due to competence issues but instead relied on Article 2 (1) CACC and decided that it "imposes a positive obligation [for the Court] to conduct general constitutional control in case when it judges that the commitment to democracy embodied in the Constitution is at stake, i.e., when fundamental values of a democratic state based on the rule of law and human rights protection, are endangered".[47] After invoking the concept of GCC, the Court limited it to "situations in which the Government requests a constitutionality review of general acts of local units on the basis of Article 35.4 CACC in relation to Article 80 of the [Law on Local and Regional Self-Government], and which requests consideration of questions important for the identity of the Croatian constitutional state".[48] After establishing the described procedural framework, the Court examined the case on its substance and nullified[49] the relevant article of the Decision on changing street names in Slatinski Drenovac, clarifying that naming a street after the date related to the WWII fascist movement represented

43 Omejec, J., Banić, S., 2012, pp. 316–317.

44 See *ibid*., pp. 313–314.

45 See Constitutional Court, U-II-5157/2005, 5 March 2012, and the dissenting opinion of Judge Šumanović, in Constitutional Court, U-II-6111/2013, 10 October 2017, para. 2.2. See also Constitutional Court, U-II-6111/2013, 10 October 2017, para. 9.

46 The Government's request was referred to the Court in 2013, in the period when the Court still referred wrongly submitted requests to the HAC. Judge Šumanović also emphasises that, under relevant Croatian laws, the Government is only allowed to request a control of constitutionality of statutes of local units, and not of its general acts. See the dissenting opinion of Judge Šumanović, in Constitutional Court, U-II-6111/2013, 10 October 2017, para. 2.1.

47 Constitutional Court, U-II-6111/2013, 10 October 2017, para. 10.1.

48 *Ibid*., para. 11.

49 *Ibid*., I.

"the annulment of the rights and freedoms guaranteed by the Constitution within the framework of a democratic state based on the rule of law".[50]

The dissenting opinion of Judge Šumanović harshly criticized both the procedural and the substantive aspects of the decision. In regard to the procedural aspect, which is relevant for this article, Judge Šumanović rejected the concept of GCC and described it as "an usurpation" of competence from ordinary courts which are entitled to review the legality of general acts of local units.[51] He emphasized that Article 2 (1) CACC has "no jurisdictional character" because it regulates the constitutional position ("role and tasks") of the Court in a general manner.[52] In other words, unlike Article 125 of the Constitution which is a legal basis for competence, Article 2 (1) CACC is not a provision that contains a specific power.[53] In addition, Judge Šumanović claimed that the concept of GCC does not stem from the intentions of the constitution-maker because the CACC explicitly regulates powers of "specific constitutional control" (such as control of constitutionality of programs and activities of political parties and control of constitutionality and legality of referendums) which would be "superfluous" if there existed a concept of general control.[54] It should also be noted that Judge Šumanović distinguished the use of GCC in the present case and its use in the *Referendum* case on the grounds that the *Referendum* case relates to special control powers of the Court, which are enumerated in Article 125.9 of the Constitution.[55]

This case illustrates how the concept of GCC extends to other areas of Croatian constitutional law as a tool of strengthening the Court's position and maneuvering space. In particular, it shows the Court's willingness to put aside provisions that regulate the jurisdiction of administrative courts, as well as its established previous case law, in order to intervene when it deems it appropriate – once again employing the doctrine of Croatian constitutional identity as a benchmark for expansion of its own powers.

2.3. THE *MILANOVIĆ* CASES: EXTRA-PROCEDURAL CONTROL OF THE CONSTITUTIONALITY AND LEGALITY OF ELECTIONS

The third instance of reliance on GCC has manifested in the second of the two "*Milanović* cases", and those cases are in fact two self-initiated

50 *Ibid*., para. 20.

51 Dissenting opinion of Judge Šumanović, in Constitutional Court, U-II-6111/2013, 10 October 2017, para. 1.

52 *Ibid*.

53 *Ibid*., para. 2.4.

54 *Ibid*.

55 *Ibid*.

distinct acts of the Court: the Warning related to the Statement of the President of the Republic Mr. Zoran Milanović about his intention to run as a candidate in the elections for Croatian Parliament called by the decision of the President of the Republic of Croatia from 15 March 2024 (*Milanović I*),[56] and the Communication and Warning to Participants in the Elections Held on 17 April 2024 (*Milanović II*).[57]

The warning in *Milanović I* was provoked by a statement given at a press conference by Zoran Milanović, the incumbent President of the Republic, in which he expressed his intention to run for office in parliamentary elections as an independent member of the opposition coalition led by the Social Democratic Party (SDP).[58] President Milanović emphasized that he would resign from the position of the President of the Republic only after the (potential) electoral "victory", adding that he would be the SDP's "candidate for the position of the Prime Minister" regardless of whether he was formally listed as a candidate in the parliamentary elections.[59] The Constitutional Court reacted *proprio motu* by relying on provisions that regulate its role in control of constitutionality of elections,[60] holding on the substance that being a candidate or acting as a candidate in parliamentary elections is "incompatible with the constitutional position of the President of the Republic and the principle of separation of powers" found in Article 4 of the Constitution.[61] If the holder of the office of the President of the Republic intended to be a candidate on parliamentary elections or to be pointed out as a candidate, he should immediately resign.[62] The Court announced that it would strictly monitor the electoral process and, in case of unconstitutional behavior of actors in that process, it would use its powers which included the power to annul certain electoral activities.[63] Finally, the Court warned both President Milanović and the SDP to "cease and desist" from unconstitutional activities, while also demanding that the State Electoral Commission of the Republic of Croatia (SEC) ensure that the electoral

56 Constitutional Court, U-VII-1263/2024, 18 March 2024.

57 Constitutional Court, U-VII-1263/2024-II, 19 April 2024.

58 Constitutional Court, U-VII-1263/2024, 18 March 2024, para. 1.

59 *Ibid*.

60 Article 125.9 of the Constitution, Article 87.1 CACC, and Article 96 (1) of the Law on the Election of Members of the Croatian Parliament, *Official Gazette of the Republic of Croatia*, Nos. 116/99, 109/00, 53/03, 69/03, 44/06, 19/07, 20/09, 145/10, 24/11, 93/11, 120/11, 19/15, 104/15, 98/19 (Law on the Election of Members of the Croatian Parliament).

61 Constitutional Court, U-VII-1263/2024, 18 March 2024, para. 4.

62 *Ibid*., para. 5.

63 *Ibid*., para. 6.

process is conducted in line with relevant legal requirements, including this opinion expressed by the Court.[64]

The dissenting opinion of three judges[65] offered a more nuanced and better argued analysis of the pending constitutional controversy, in essence agreeing that the President of the Republic cannot be a candidate in parliamentary elections as long as they still remain in the function. However, the dissenting judges heavily criticized certain important procedural aspects of the *Milanović I* warning, including the fact that the Court chose the form of a "warning" in order to circumvent important procedural guarantees for resolving constitutional controversies required by the Constitution and the CACC.[66] In other words, the Court decided on "interests and rights of participants in the electoral process", which is a decision on the merits that required the form of a decision.[67] To briefly summarize this point of the dissenting opinion, we should examine the text of Article 89 CACC which reads as follows: "When the Constitutional Court ascertains that the participants in the elections act contrary to the Constitution and the law, it shall inform the public over the media, if needed warn the competent bodies, and in case of violation which influenced or might have influenced the results of the elections, shall annul all or separate electoral activities and decisions, which preceded such violation." The dissenting judges analyzed this provision and concluded that the decision that amounts to ascertaining that the participants in the elections act contrary to the Constitution should not be delivered in the form of a warning. Rather, the Court should have delivered a decision with all the necessary procedural guarantees that are encompassed by this form of the Court's act (the structure of the act should include, inter alia, both the operative part and the arguments, while the part which includes instructions to the SEC should have been delivered in the form of a ruling).[68] Only after the decision on the merits is given the Court may decide to inform the public and the competent bodies about the assessed unconstitutionality and the appropriate measures needed to rectify it.[69]

The dissenting judges also pointed out that the case in question dealt with the SDP's freedom of (political) expression[70] and the freedom

64 *Ibid*., para. 7.

65 Dissenting opinion of judges Abramović, Kušan and Selanec in case U-VII-1263/2024, 18 March 2024.

66 *Ibid*., pp. 2–3.

67 *Ibid*., p. 3.

68 *Ibid*., pp. 2–3.

69 *Ibid*., p. 2.

70 Article 38 of the Constitution.

of political action,[71] which were restricted in an unprincipled manner because the claim that the SDP's actions were contrary to the Constitution had not been substantiated.[72] In this aspect, the dissenters claimed that the majority of the Court denied the SDP the right to a fair trial.[73]

It was necessary to examine the most striking aspects of the constitutional controversy that was addressed in *Milanović I* in order to fully grasp the magnitude of the Court's involvement in the political process and the (inadequate) procedural avenue that was chosen for intervening. The story continued when the Court disproportionately intervened in the political process after the parliamentary elections were held on 17 April 2024, this time openly invoking its GCC.

In *Milanović II*, in a self-initiated[74] Communication and Warning that was issued after the disputed parliamentary elections were held, the Court concluded that President Milanović's behavior disqualified him as a (potential) candidate to be entrusted with the mandate to form the Government or to become the Prime Minister of the future Government.[75] This time, the Court relied both on its powers of control of the electoral process and its GCC.[76] On substance, the Court held that President Milanović's aforementioned statements, which were given during the election campaign without his resignation from the position of the President of the Republic somehow "contaminated" the electoral process[77] which, in the Court's opinion, meant that President Milanović could not be proposed as the person designated with the task to form the Government even if he resigned from the position.[78] In particular, the Court

71 Article 6 of the Constitution.

72 Dissenting opinion of judges Abramović, Kušan and Selanec in case U-VII-1623/2024, 18 March 2024, pp. 4–5.

73 Article 29 of the Constitution. Dissenting opinion of judges Abramović, Kušan and Selanec in case U-VII-1623/2024, 18 March 2024, pp. 4–5.

74 Just like in *Milanović I*, the *proprio motu* activation of the Court's jurisdiction is very problematic, considering that Article 88 CACC specifically prescribes the exhaustive list of applicants in cases of review of the constitutionality of elections. According to Article 88 CACC, the specified applicants in such cases are "political parties, candidates, not less than 100 voters or not less than 5 percent of voters of the constituency in which the elections are held". See also Articles 96–100 of the Law on the Election of the Members of the Croatian Parliament.

75 Constitutional Court, U-VII-1263/2024-II, 19 April 2024, paras. 6–7.

76 The GCC are referenced both in the introductory part of the act and in para. 7.

77 However, in *Milanović II* the Court in fact did not carry out a control of constitutionality of the election process because it was concerned with the appointment of the Prime Minister-designate. This procedure is, by its definition, a post-election activity which necessarily depends on the results of the already conducted elections and thus falls outside of the notion of the election process.

78 Constitutional Court, U-VII-1263/2024-II, 19 April 2024, para. 7.

concluded that President Milanović had not respected the instruction given in *Milanović I* because he had persistently acted as a participant in the elections, thereby acting contrary to Article 5 (2) of the Constitution as well as endangering the rule of law and democratic multiparty system of Croatia.[79] In other words, the past actions of President Milanović disqualified him from becoming a Prime Minister *pro futuro*, regardless of whether he resigned or not.[80] Somewhat contradictorily[81], the Court emphasized that it did not question the will of the electorate expressed in the parliamentary elections that were held on 17 April 2024,[82] but it warned all the participants of the said elections to be fully aware that the President of the Republic cannot be in the same time entrusted with a mandate to form the Government.[83] In this sense, the Court stated that "[a]ny other interpretation undermines the democratic multiparty parliamentary constitutional order and the rule of law."[84]

The outline of the dissenting opinion, authored by the same judges who dissented in *Milanović I*, was the following: (I) there were no constitutional impediments for Zoran Milanović to become the next Prime Minister if he would resign from the position of the President of the Republic, (II) any potential violation of the Constitution by the President in the dischargement of his duties is regulated by Article 105 of the Constitution, which prescribes a detailed procedure that could result in a sanction of relieving the holder of the office of their duty (not prohibiting them from being appointed as Prime Minister!), and (III) the *Milanović II* case constituted a "threat" to the new convocation of the Parliament that was "deeply unconstitutional" because it restricted the elected representatives in their right to decide on who should (not) be the next Prime Minister.[85]

The *Milanović* cases opened a plethora of constitutional problems, which ranged from defining the general constitutional role of the President to the repeated expansion of the concept of the Court's GCC and the limits of its self-initiated jurisdiction. Both the procedural and the substantive issues of the said cases were dealt with laconically, with the Court once again bypassing important procedural limitations and safeguards.

79 *Ibid*., para. 6.

80 *Ibid*., paras. 6–8.

81 As the dissenting judges point out in para. I. See Constitutional opinion in case U-VII-1263/2024-II, 19 April 2024 (Dissenting opinion of judges Abramović, Kušan and Selanec in *Milanović II*).

82 Constitutional Court, U-VII-1263/2024-II, 19 April 2024, para. 8.

83 *Ibid*., para. 7.

84 *Ibid*.

85 The dissenting opinion of judges Abramović, Kušan and Selanec in *Milanović II*.

2.4. THE *JUDGES' MANDATES* CASE AND ITS AFTERMATH: SELF-EXTENDING THE TERMS OF OFFICE WHEN THE DYSFUNCTIONAL POLITICAL PROCESS THREATENS THE EXISTENCE OF A FUNCTIONAL CONSTITUTIONAL COURT

Finally, the Court invoked its GCC on 6 December 2024 in the highly controversial Report on the failure to elect ten judges to the Constitutional Court of the Republic of Croatia (Report), with ten out of thirteen judges of the Court deciding that the Constitution grants them the right to preserve the (endangered) functionality of the Court by continuing their mandates even after their expiry, (only) in the case that the Parliament fails to elect new judges in the constitutionally prescribed period, pending the election of new judges (*Judges' Mandates* case).[86] The majority of judges found that the exceptional circumstances of the ongoing dysfunctional political process of electing ten new judges to the Court allowed them to read into the Constitution the possibility of self-extension of their own terms of office, notwithstanding the clear text of Article 122 (1) of the Constitution which provides no such solution. Article 122 (1) of the Constitution stipulates that "the term of office of a Constitutional Court [judge] shall be eight years and shall be extended by up to six months in exceptional cases, where, upon the expiry of an incumbent's term of office, a new justice has not been elected or has not assumed office." Due to the two-thirds parliamentary majority requirement for electing judges to the Court,[87] which requires the ruling party and the opposition to reach a consensus on the candidates, the 2024 election process in the Parliament was slowed down and postponed until the very last week of the constitutionally mandated period for election, opening the possibility for the entire process to be deadlocked. The failure to elect ten judges to the Court in the prescribed period would result in the functional paralysis of the Court, which would be left without the majority of its members.[88] The chain of events that followed in the week of 2 December 2024 led to one of the most curious developments in Croatian constitutional law, which deserves a more detailed examination.

On 7 June 2024, the eight-year term of office expired for ten of the thirteen judges[89] of the Court who were elected on 7 June 2016. Considering

86 Constitutional Court, Report U-X-5162/2024, 6 December 2024.

87 Article 122 of the Constitution.

88 See Constitutional Court, Report U-X-5162/2024, 6 December 2024, paras. 5 and 7 (explaining that the Court with only three judges would not be able to conduct abstract constitutional review, decide on constitutional complaints on the merits, or control the constitutionality of the (then upcoming) presidential elections).

89 The reason why ten out of thirteen judges ended their terms simultaneously traces back to the period of between 2007 and 2015 when certain vacancies on the Court

that the Parliament did not issue a public call for election of new judges in time, the terms of office of the ten expiring judges were extended (up to six months) according to Article 122 (1) of the Constitution, with the final date for electing new judges being 7 December 2024.[90] On 4 December, in a session of the Committee on the Constitution, Standing Orders and Political System, the parliamentary majority and the opposition reached a consensus on the final list of candidates to be elected, scheduling the final vote for 6 December. However, the opposition simultaneously filed a motion of censure against the Government, and when it became clear that the vote of confidence would take place on the same day as the vote for electing members to the Court, the opposition refused to participate in the latter vote, causing further postponement of election for 7 December. The prevailing view of the public (and the majority of the Court)[91] was that the terms of office of ten judges who had originally been elected on 7 June 2016, with a 6 months extension, would expire by the end of 6 December, making 7 December at 00:00 the moment when the Court would be left without the majority necessary for performing most of its functions.[92] After it had become clear that the Parliament would not vote on the election of new judges on 6 December, the Court held a session on the same day, resulting in the infamous Report concluding that Parliamentary failure to elect new judges in time resulted in "exceptional circumstances, factual impossibility for the Constitutional Court to function, i.e., [in] severe impairment of the highest values of the constitutional order – democracy based on the rule of law and human rights protection" which required the majority of the Court's judges to decide that the Court would continue to function in its current composition up until the election of new judges.[93] The Court also

had not been filled in due time, which led the Court to function without the full number of its members, and at one point the number of judges had dropped to ten sitting judges. See Antić, T., 2015, Postupak i uvjeti za izbor sudaca Ustavnog suda Republike Hrvatske, *Pravni vjesnik*, Vol. 31, No. 1, p. 49.

90 There are conflicting interpretations as to whether the last day of office for the ten judges whose terms were expiring was 6 or 7 of December, considering that the ten judges had been elected on 7 June 2016. The majority of judges understood that the terms were to expire at 00:00 on 7 December, while the dissenting judges Abramović, Kušan and Selanec claimed that the terms of office would expire at the end of 7 December. See Written response of judges Abramović, Kušan and Selanec in relation to Constitutional Court, Report U-X-5162/2024, 13 December 2024 (Dissenting opinion of judges Abramović, Kušan and Selanec in U-X-5162/2024), pp. 17–18.

91 See Constitutional Court, Report U-X-5162/2024, 6 December 2024.

92 *Ibid*., paras. 5 and 7.

93 *Ibid*., paras. 7–8. The Court also invoked the Opinion on certain questions relating to the functioning of the Constitutional Court of Bosnia and Herzegovina, adopted by the Venice Commission at its 138th Plenary Session (Venice, 15–16 March 2024), Opinion CDL-AD(2024)002-e, Venice, 18 March 2024, about the competences of the

emphasized that it would refrain from ruling on substantive cases until 11 December and called upon the Parliament to elect new judges promptly.[94] Moreover, it decided that the Report would not be made public or delivered to the Parliament if the new judges were elected on the session scheduled for 7 December.[95] In the end, new judges were elected to the Court on 7 December.

The legal existence of the "Schrodinger's"[96] report was therefore unaddressed until the Court, in its new composition, later held that it is legally void.[97] However, it is fair to say that the unprecedented nature of the Report, which self-extended the terms of office for ten out of thirteen judges, cannot be overstated because it overstretched the methods of constitutional interpretation beyond its (textual) limits and further shook the (already) fragile public image of the Court.

Regarding the question of powers, which is the focus of this article, the Court stated that the legal bases for issuing the Report are Article 125.5 of the Constitution (the Court "shall monitor compliance with the Constitution and laws and shall report to the Croatian Parliament on detected violations thereof") and Article 104 (1) CACC ("The Constitutional Court shall monitor the execution of constitutionality and legality and report to the Croatian Parliament about any kind of unconstitutionality and illegality it has observed").[98] Furthermore, the Court invoked Article 2 (1) CACC and repeated its established formula, holding that "it imposes a positive obligation [for the Court] to conduct [GCC] in case when it judges that the commitment to democracy embodied in the Constitution is at stake, i.e., when fundamental values of a democratic state, based on the rule of law and human rights protection, are endangered."[99] The Court

---

Constitutional court of Bosnia and Herzegovina. The dissenting judges offered argumentation on why this Opinion was inapplicable in the Croatian situation. See the dissenting opinion of judges Abramović, Kušan and Selanec, in Constitutional Court, U-X-5162/2024, 13 December 2024, pp. 13–15.

94 Constitutional Court, Report U-X-5162/2024, 6 December 2024, para. 9.

95 *Ibid*., para. 10. Article 104 (3) CACC clearly emphasizes that the report "shall be delivered in written form to the Speaker of the Croatian Parliament, who shall so inform the Croatian Parliament".

96 See Constitutional Court, U-II-804/2025, 8 July 2025, para. 7. Put simply, Schrodinger's cat is a thought experiment in quantum physics in which a cat that is sealed in a box is simultaneously both alive and dead until observed. See Matthias, M., Schrodinger's Cat, in: *Britannica* (https://www.britannica.com/science/Schrodingers-cat, 30. 9. 2025).

97 Constitutional Court, U-II-804/2025, 8 July 2025, para. 7.

98 The introductory part of Constitutional Court, Report U-X-5162/2024, 6 December 2024.

99 Constitutional Court, Report U-X-5162/2024, para. 1, translated by authors.

further clarified that it may "use its [GCC] only exceptionally, when it establishes such instance that threatens to undermine the structural features of the Croatian constitutional state, its constitutional identity, including the highest values of the constitutional order of the Republic of Croatia (Articles 1 and 3 of the Constitution). The circumstances have to be exceptional, the threat real, and other means ineffective."[100] In support of the self-extension of judicial mandates, the Court also invoked Article 31 (5) CACC ("The Constitutional Court may determine the manner in which its decision, respective its ruling shall be executed.") which is inapplicable in this instance because the Report is neither a decision nor a ruling. In any event, Article 104 CACC clearly prescribes that the report on unconstitutionalities and illegalities observed by the Court are to be delivered to the Parliament, leaving aside any doubt as to which institution should exclusively act upon the Report in the present case.

In a nutshell, the "dissenting opinion" of judges Abramović, Kušan and Selanec has offered several lines of criticism of the Report, arguing that the majority does not properly understand the role of the Court in Croatian constitutional architecture[101] and that they did not grasp the *telos* of Article 122 of the Constitution, which relates to protecting the independence and impartiality of the Court.[102] In relation to the question of the (dis)proportionality[103] of the self-extension of the terms of office of the sitting judges, the dissenting judges have concluded that a situation in which the actors in the political process have failed to elect judges to the Court in due time should be resolved in the same democratic political arena, through the activation of the mechanisms of checks and balances that are built into the structure of Croatian political process.[104]

As previously mentioned, the legal epilogue of the self-extension of terms of office came in July 2025, in the *Ruling on the Report*, when the renewed composition of the Court rejected the request for review of constitutionality of the Report that had been submitted by thirty-four Members of Croatian Parliament, on the basis of lacking competence to review an act of that kind.[105] The Members of Parliament who requested the review

100 *Ibid*.

101 Written statement of judges Abramović, Kušan and Selanec in U-X-5162/2024, 13 December 2024, pp. 20–25. The dissenting judges specifically explain how the Court is not the superior guarantor of the separation of powers in Croatia but just one of the (important!) constitutional actors, fully immersed in the interplay of different mechanisms of checks and balances.

102 *Ibid*., pp. 11–13.

103 *Ibid*., p. 16 ff.

104 *Ibid*., pp. 5–6, 25.

105 Constitutional Court, U-II-804/2025, 8 July 2025.

of constitutionality claimed that several articles of the Constitution (including Article 125) and Article 3 CACC (regulating that the work of the Court shall be public) were breached by the self-extension of the terms of office for the sitting judges of the Court.[106] The case opened many intriguing questions, including whether it is possible for the Court to control the constitutionality of its own acts[107] and whether the judges who participated in the authoring of the Report should have recused themselves from deciding in the case.[108] To put it briefly, the majority opinion held that the Report cannot be understood as the "other regulation" referred to in Article 125.2 of the Constitution[109] because it does not fulfil the well-established criteria of having abstract and general qualities,[110] also mentioning that it makes no sense for the Court to control the constitutionality of its own acts.[111] Therefore, the Court now shielded itself from fully entering into the merits of the case[112] by invoking Article 125 of the Constitution,

106 *Ibid*., para. 2.

107 We agree that the Court cannot review the constitutionality of its own acts directly. Rather, the Court is fully competent to change its standing case law once future cases, which come before it in a procedurally sound manner (e.g., by way of requests for control of constitutionality of certain statutory provisions), present an opportunity to depart from past conclusions and offer different constitutional interpretations due to strong legal argumentation.

108 Seven out of thirteen judges of the current composition of the Court were sitting judges who took part in the authoring of the Report (regardless of whether they supported it or not). Judges Abramović, Kušan and Selanec recused themselves from deciding in the case, while judges Šeparović, Arlović, Šumanović and Mlinarić thought that there were no grounds for recusal. See concurring opinion of judges Šeparović, Arlović, Šumanović and Mlinarić, in Constitutional Court, U-II-804/2025, 8 July 2025. See also the dissenting opinion of judges Bezbradica Jelavić and Marochini Zrinski, in Constitutional Court, U-II-804/2025, 8 July 2025.

109 Stipulating that the Court "shall decide on the compliance of other regulations with the Constitution and laws".

110 Constitutional Court, U-II-804/2025, para. 7. The Court emphasized that the Report is an internal act of the Court, which regulates legal relations of judges of the Constitutional Court, instead of having *erga omnes* effects (as if self-extension of terms of office of judges of the Constitutional Court is an internal affair of the Court) and which, in the same time, is not legally binding because it has never been delivered to the Parliament, meaning that it is legally nonexistent. The Court thus rejected the claim of the Members of Parliament who implied that the Report has qualities of a "Schrodinger's cat" because of its uncertain legal nature (para. 7). However, the whole paragraph is contradictory because it first analyzes the legal nature of the Report to establish that it cannot be subsumed under the category of "other regulation", and eventually concluding that it is legally nonexistent.

111 Constitutional Court, U-II-804/2025, para. 7.

112 See also dissenting opinion of Judge Kostadinov, in Constitutional Court U-II-804/2025, 8 July 2025, where she emphasizes that the majority opinion did not adequately respond to the separation of powers questions, which were posed in the case, nor to the question of legal nature of the Report (para. 1).

a provision that had been so easily stretched by creative methods of interpretation in previous case law.

Leaving all miscellaneous questions aside, the most relevant part of the *Ruling on the Report* for the concept of GCC concerns the stance expressed in the majority opinion, according to which Article 2 (1) CACC represents a "defining norm that clarifies the constitutional position of the Constitutional Court posited by the Constitution."[113] The majority opinion further states that "it is accepted in legal theory that the enumeration of [the Court's] powers is exhaustive because it cannot be expanded by interpretation."[114] The constitution-maker "has opted to protect certain constitutional values by constitutional adjudication" in order to respect legal certainty, meaning that, in turn, constitutional adjudication cannot touch upon certain questions that have been left outside of the Court's jurisdiction even though it might be prudent for the Court to address them.[115] The opinion concludes that the Court has no competence to adjudicate contrary to Article 125 of the Constitution, and the power to change this regime is vested in the democratic constitution-maker, not the Court itself.[116]

This interpretation of the Court's powers may seem like a positive step forward and an indication of a principled curtailment of the use of GCC, but it effectively stays silent on the case law which developed and used this dubious concept to circumvent the limits of the constitutional text related to the Court's powers and competences. It therefore seems much more realistic to conclude that the Court again utilized the "pick and choose" approach to the theory of its own powers, which apparently depends on the instrumentalities of the moment and practical considerations. The newly presented "self-restraint" thus just adds to the confusion about the limits of the Court's powers – instead of resolving it.

3. Structural Analysis of GCC

After we previously described the factual and legal problems in the relevant case law, we will here first deal with the qualification of facts that provoked the action of the Court in cases in which it used its GCC. Then we will present the methodology according to which we will analyze the case law. Finally, applying the presented methodology, we will more thoroughly analyze the case law in order to detect the way in which the Court interpreted the meaning of the GCC.

113 Constitutional Court, U-II-804/2025, 8 July 2025, para. 8, translated by authors.

114 *Ibid*., para. 8.1.

115 *Ibid*.

116 *Ibid*., para. 8.2.

3.1. ACTIVATING GCC: THE PROBLEM OF A "SERIOUS THREAT"

The first issue we deal with relates to the qualification of the factual situations that led to the activation of the Court's GCC. It is, therefore, a matter of focusing on the events that triggered the aforementioned cases. The concrete question in this context is: are there any specific characteristics that define the cases in which the Court used its GCC?

In the *Referendum* case, the Court emphasized that it could act on its own initiative and block a referendum by using its GCC only exceptionally, "when it determines such a formal or substantial unconstitutionality of a referendum question, or such a grave procedural error which threatens to undermine the structural features of the Croatian constitutional state, its constitutional identity, including the highest values of the constitutional order of the Republic of Croatia (articles 1 and 3 of the Constitution)."[117] Apart from this general standing, the Court in this case also offered an additional and rather important explanation of its own review powers and the good they serve to protect. Referring to the opinion of the Venice Commission in the Hungarian case,[118] the Constitutional Court concluded that it could also block such referendum initiatives that lead to "the unacceptable systematic 'constitutionalisation' of legislation in a democratic society" because such an "approach of shielding ordinary law from constitutional review", if it is a systematic one, can result "in a serious and worrisome undermining of the role of the Constitutional Court as the protector of the Constitution."[119] To this, also quoting the Venice Commission's opinion, the Court added that "the reduction (...) and, in some cases, complete removal ('constitutionalised' matters) of the competence of the Constitutional Court to control ordinary legislation according to the standards of the Fundamental Law results in an infringement of democratic checks and balances and the separation of powers."[120] It concluded that its foregoing expressed standings "are general in nature and relate to all amendments to the constitution, regardless of whether they are undertaken by Parliament or by a citizens' constitutional referendum."[121]

117 Constitutional Court, SuS-1/2013, 14 November 2013, pp. 2–3.

118 Opinion on the Fourth Amendment to the Fundamental Law of Hungary, adopted by the Venice Commission at its 95th Plenary Session (Venice, 14–15 June 2013), Opinion 720/2013, CDL-AD(2013)012, Strasbourg, 17 June 2013.

119 Constitutional Court, SuS-1/2013, 14 November 2013, p. 9, citing Opinion on the Fourth Amendment to the Fundamental Law of Hungary, adopted by the Venice Commission at its 95th Plenary Session (Venice, 14–15 June 2013), Opinion 720/2013, CDL-AD(2013)012, Strasbourg, 17 June 2013.

120 *Ibid*.

121 *Ibid*.

The Court actually therefore proclaimed that it had the power to decide on the constitutionality of constitutional amendments.

In the *10 April Street* case, the Court first pointed out that Article 2 (1) CACC "imposes a positive obligation [for the Court] to conduct general constitutional control in case when it judges that the commitment to democracy embodied in the Constitution is at stake, i.e., when fundamental values of a democratic state based on the rule of law and human rights protection, are endangered."[122] In striking down the contested decision on naming the streets in a municipality, the Court, quite rightly, decided that the decision was "in direct conflict with the rule of law, in such a way that it undermines the identity of the Croatian constitutional state to a degree that cannot be tolerated."[123] Due to the very specific facts of this particular case (the issue of naming streets after certain historical events), it is also worth stressing that, in its interpretation, the Court also took into account several other relevant elements. This way, the Court referred to the European Court of Human Rights' case of *Garaudy v. France*[124] and used the notion of "well-known historical truths", further explaining that negation or revision of "clearly established historical facts, such as the Holocaust", represents an abuse of rights from Article 17 of the European Convention on Human Rights, while also leading to "negation of basic values of the constitutional order of the Republic of Croatia."[125] By analogy, the Court stated that "nothing in the constitutional order may be interpreted as implying the right of anyone to engage in any activity or perform any act aimed at the destruction of any right or freedom guaranteed by the Constitution."[126] Moreover, the Court argued that structural constitutional principles – such as the rule of law, the principles of freedom, equality, national equality, peacemaking, and respect for human rights – "determine the structure and essence of the Croatian state" and that "the Republic of Croatia can only remain what it is if none of the structural constitutional principles are repealed or amended."[127] For the Court, the contested decision on naming a street after the date related to the WWII-era fascist movement represented "the annulment of the rights and freedoms guaranteed by the Constitution within the framework of a democratic state based on the rule of law."[128]

122 Constitutional Court, U-II-6111/2013, 10 October 2017, para. 10.1, translated by authors.

123 *Ibid*., para. 21.

124 ECtHR, *Garaudy v. France*, Application No. 65831/01, Decision of 24 June 2003.

125 Constitutional Court, U-II-6111/2013, 10 October 2017, paras. 17.1–18.

126 *Ibid*., para. 20.

127 *Ibid*., para. 19.1.

128 *Ibid*., para. 20.

In the *Milanović I* case, the Court warned that the decisions of all the participants in elections must conform to the "fundamental values of the Croatian constitutional state" and pointed that candidacy of the President of the Republic in the parliamentary elections or their presentation as a candidate for the Prime Minister or any other public or professional office, is incompatible with their constitutional position and powers and represents a breach of the principle of the separation of powers.[129] In the *Milanović II* case, the Court's assessment that the President took an active part in the campaign for parliamentary elections led it to conclude that this amounted to a breach of the duty to abide by the Constitution and the law and respect for the legal order of the Republic of Croatia, as well as to a violation of the rule of law and the democratic multi-party system as the highest values of the Constitution.[130]

Finally, in the *Judges' Mandates* case, the Constitutional Court extended its marriage referendum interpretation to a more general formulation, stating that it could use its GCC only exceptionally, and not only in reference to referendums, but also when it establishes such instance that "threatens to undermine the structural features of the Croatian constitutional state, its constitutional identity, including the highest values of the constitutional order of the Republic of Croatia (Articles 1 and 3 of the Constitution)."[131] To this the Court added another general qualification, stressing that, in order to invoke its GCC, "[t]he circumstances have to be exceptional, the threat real, and other means ineffective."[132] Also in line with its general standings in this case, the Court argued that its duty to "guarantee compliance with and application of the Constitution" represented a "positive obligation [for the Court] to conduct [GCC] in case when it judges that the commitment to democracy embodied in the Constitution is at stake, i.e., when the fundamental values of a democratic state, based on the rule of law and human rights protection, are endangered."[133]

129 Constitutional Court, U-VII-1263/2024, 18 March 2024. In their interpretation, although leaving the space for some exceptions, the dissenters in this case also argued that the constitutional position of the President of the Republic, in principle, should prevent them from interfering with activities of political parties. The judges also stressed that this was their "principled position that ultimately serves to achieve and preserve the fundamental values of the constitutional order of the Republic of Croatia, such as, first and foremost, respect for human rights, freedom, equality of citizens, and multi-party democracy, but also peacemaking, social justice, and ultimately the rule of law" (p. 11).

130 Constitutional Court, U-VII-1263/2024-II, 19 April 2024.

131 Constitutional Court, Report U-X-5162/2024, 6 December 2024, para. 1, translated by authors.

132 *Ibid*.

133 *Ibid*.

Specifically, the Court found that the Parliament's failure to elect new judges in time resulted in the obstruction of the full and proper functioning of that Court, not only with regard to the forthcoming presidential elections, but also in relation to the Court's other competences.[134] In this regard, the Court determined that Parliament's failure in fact called into question "the basic functioning of a key constitutional body," which, in turn, represented a "severe impairment of the highest values of the constitutional order – democracy based on the rule of law and human rights protection."[135]

In this part, we tried to show that the common characteristic of all the analyzed cases is that the events that provoked them were interpreted by the Court as events of an extraordinary nature. More specifically, the Court defined all of these events as presenting a very serious threat to specific constitutionally protected values. From that point of view, it seems obvious that the Court needed to present such an interpretation of events, in order to justify its recourse to the exceptional powers contained in the concept of GCC.

3.2. METHODOLOGICAL APPROACH TO GCC

The problems that we address in this part relate to the Court's legal reaction to various sorts of (serious) threats it had discovered in its case law. Consequently, here we specifically try to identify the legal norms on the basis of which the Court acted in individual cases. Of course, the emphasis here is on Article 2 (1) CACC which the Court used to construct the concept of GCC. However, this was not always the only provision used by the Court in the cases under analysis. This fact complicates to a certain extent the view of the whole issue of the GCC and requires some methodological clarification.

In our analysis we offer two general interpretive approaches to Article 2 (1) CACC.[136]

134 *Ibid*., paras. 5 and 7.

135 *Ibid*., para. 7. In their response to the majority in this segment of the case, the dissenting judges argued that a blockade of the Constitutional Court due to the failure of the Parliament to elect new judges would not automatically amount to the blockade of the whole constitutional system. In their opinion, the constitutional framework contained enough elements to provide for alternatives to the Court's actions, primarily by guaranteeing various forms of control by ordinary courts. This part of the analysis goes beyond the aims of this paper, but noteworthy that the dissenters also needed to address the specific issue of a "serious threat", an element we deem extremely important for an overall analysis of the Constitutional Court's use of GCC.

136 See Gardašević, Đ., 2016, pp. 16–18.

The first approach treats Article 2 (1) as having merely an introductory and descriptive character, serving only to outline in general terms the jurisdiction and powers of the Constitutional Court. Under this view – which we call the "descriptive norm approach" – specific competences and powers of the Court are subsequently enumerated in specific provisions of the Constitution and the CACC, regulating particular cases that are within the jurisdiction of the Court. In other words, this approach means that the reliance on Article 2 (1) CACC can neither affect the procedure to be followed nor the substantive decision that the Court can impose, in a concrete case. Claims in support of this particular approach have been pursued first by some of the Court's dissenting judges, who on separate occasions either argued that Article 2 (1) CACC evidently was not an independent or separate jurisdictional norm of its own,[137] or warned that an extensive interpretation of GCC may have no limits.[138] The majority in the Court also took this interpretive approach to Article 2 (1) in the 8 July 2025 *Ruling on the Report*.[139]

The second interpretive approach to Article 2 (1), in contrast, leads to the understanding of Article 2 (1) as conferring an autonomous power to the Constitutional Court, the exercise of which is not necessarily linked to its enumerated procedural or substantive competences and powers. Under this view – which we call the "autonomous norm approach" – the Court could theoretically use Article 2 (1) CACC, either partially or even to its full extent: in the former scenario, to modify either the procedures it conducts or the substance of decisions it delivers, and in the latter scenario to possibly do both. In the following analysis we will show in greater detail the specific instances in which this particular interpretive approach to Article 2 (1) emerged.

These two possible interpretive approaches to Article 2 (1) CACC[140] form the basis of our research in this part. In other words, the basic

137 See the dissenting opinion of Judge Šumanović in the *10 April Street* case: U-II-6111/2013, 10 October 2017, para. 1.

138 Written statement of judges Abramović, Kušan and Selanec, in Constitutional Court, U-X-5162/2024, 13 December 2024, p. 12. See also Gardašević, Đ., 2016, pp. 16–18.

139 Constitutional Court, U-II-804/2025, 8 July 2025, para. 8.1. This fact alone could lead to the conclusion that the whole story on the Court's GCC is thus closed. However, we believe that there are enough reasons to think otherwise, as we will show below.

140 Compare to the US Supreme Court's approach in *District of Columbia v. Heller*. In that case, the majority opinion analyzed the text of the 2nd Amendment to the US Constitution, concluding that it consists of two distinct clauses: a prefatory clause (with an introductory purpose) and an operative clause, which is decisive for ascertaining the meaning of the whole provision. Furthermore, while the prefatory clause

question that we delve into is whether the Court used the descriptive norm approach or the autonomous norm approach in its case law. For the purposes of our analysis, we will call this issue the "basic issue".

In order to verify which of the two approaches the Court actually took, we will first look into the technicalities: we will first examine what specific procedural constitutional grounds the Court formally invoked in the introductory (formal) part of its acts, when dealing with a concrete case. This second issue we will call the "technical issue."

However, since this information may be misleading if read alone and without the whole context, in the following examination we will go into more detail. In that sense, what interests us here are two additional issues.

On the one hand, we will explore whether the Court, in its case law involving the use of GCC, somehow affected the procedure it was conducting. This means that we will look into whether the Court modified the procedure it was supposed to formally follow (because such a procedure stems from the formal grounds that the Court invoked in launching the procedure) or it in fact introduced some new procedure to solve a particular case. This third issue that we explore in this analysis we will call the "procedural issue".

On the other hand, we will try to detect whether the Court, in its case law involving the use of GCC, imposed a measure it was entitled to impose (because the measure is the prescribed result of the procedure that the Court formally initiated when taking on a particular case), or it invented an entirely new type of a measure. This fourth issue, which relates to the substantive outcome of a particular case, we will call the "substantive issue".

We suggest that these two additional questions may significantly contribute to the understanding of how the Court applied its GCC in specific cases. This way, it seems evident that if the Court uses the descriptive norm approach, then it should conduct only the procedures and impose the measures that are clearly and explicitly foreseen in those provisions of the Constitution and the CACC – different from Article 2 (1) – that define precisely those procedures and those measures. In other words, in this case the Court is not using its GCC as an autonomous source of competence and power, but is rather relying on its enumerated competences and powers to conduct specifically defined procedures and to impose specifically defined measures.

---

does not "limit [the operative clause] grammatically", it does "[announce] a purpose" of the operative clause, which also has interpretive relevance (*District of Columbia v. Heller*, 554 U.S. 570 (2008), p. 577).

However, if the Court somehow modifies or changes its procedures and its measures, then it is actually using the autonomous norm approach. Such a conclusion also seems evident: the Court cannot change its procedures and its measures if it is relying on its specifically enumerated powers, precisely because the exact definitions of the procedures and of the measures bind the Court to follow specifically those procedures and to impose those measures.

Finally, as we will demonstrate, extensive interpretations of Article 2 (1) can have significant practical impacts on both the way in which the Constitutional Court operates (procedural issue) and the substance of the decisions it delivers (substantive issue). At the same time, such extensive interpretations may mean that the Court is expanding its own competences and powers, as well as that it is expanding them at the detriment of the exclusive competences and powers of other constitutional actors[141], namely: the Parliament, the President of the Republic, the courts, and other relevant subjects (applicants).[142] This fact triggers the fifth issue that we will explore in our analysis: is there concern for real spillovers of power in the observed patterns of the Constitutional Court's interpretations of its GCC? This fifth question we will call the "spillover issue".

We believe that the structure of the analysis used here may help the better understanding of the true nature of the Constitutional Court's use of GCC and the true strength of Article 2 (1). We also suggest that the true strength of Article 2 (1) depends precisely on real consequences that its application produces. These consequences should clearly be visible from the answers to the questions we are posing: is Article 2 (1) used as an autonomous or as a descriptive norm; is it used as a norm that affects the Court's enumerated procedures and measures; and is it used in a way that leads to the spillover of power?

In order to find the answers to these questions, we will revisit the relevant case law.

---

141 See, e.g., Chemerinsky, E., 1987, A Paradox Without a Principle: A Comment on the Burger Court's Jurisprudence in Separation of Powers Cases, *Southern California Law Review*, Vol. 60, No. 1, pp. 110–111.

142 The Croatian Constitutional Court introduced the concept of exclusive competences – notably of certain bodies of representative democracy – in its previous case law related to referendums, arguing, specifically, that there exist exclusive competences of the Government to propose the state budget and annual accounts, and the exclusive competence of the Parliament to pass the state budget. Most importantly for the purposes in question, from a purely interpretive point of view, the Court established that such exclusive competences may be defined either expressly or they may derive from the Constitution as a whole (Constitutional Court, U-VIIR-1159/2015, 8 April 2015).

3.3. ANALYSIS OF THE CASE LAW

Having in mind the analytical questions that we defined in the previous section, we now proceed to verify how the Court reacted to them in its case law.

3.3.1. The *Referendum* Case

In the *Referendum* case the Court did not formally specify the legal grounds for issuing its 2013 Statement (technical issue). By saying that the Court did not specify the legal grounds for issuing the said Statement we refer to the fact that such specification was not included into the introductory part of the Statement, which is a necessary part of the composition of the Court's decisions and rulings;[143] indeed, the Statement did not belong to either of those two categories. However, in order to clarify its authority to issue the Statement, the Court should have nevertheless specified under which constitutional provision it was acting, because it is primarily with this information that a proper conclusion could be made on what grounds the Court actually produced the Statement. In fact, the Court formally may issue special acts in order to interpret specific constitutional issues, but when it does so, the Court typically invokes the provisions that empower it to "monitor compliance with the Constitution and laws" and to "report to the Croatian Parliament about any kind of unconstitutionality and illegality it has observed."[144] Thus, the fact that the Court did not formally specify exactly those or any other provisions as the grounds for its action means that the action was substantively based on the Court's GCC. Such a baseline conclusion on the technical issue, however, is not enough to provide conclusive understanding of what really happened in this case and our analysis continues with the remaining four issues that we formulated above.

The "procedural issue" in this case may be observed from three perspectives. First, if we plausibly assume that the Court acted under its enumerated competence to "monitor compliance with the Constitution and laws", then the formal outcome of the Statement (substantive issue) should have been the Court's "report to the Croatian Parliament about any kind of unconstitutionality and illegality it has observed." This, however, was not the case, because the Statement itself resulted in more farfetched consequences. With this we pass on the second perspective of the "procedural issue".

143 Article 28 CACC.

144 Article 125.5 of the Constitution and Article 104 CACC.

Second, in the Statement the Court clearly stressed that it possessed the special power to initiate a review of constitutionality of referendums and it determined that this power emerged precisely from its GCC. This in fact means that the Court supplemented the review procedure in a way that indeed did not block the Parliament from initiating such proceedings on its own. However, by construing its own power to initiate a review – even without the proper motion by the Parliament to that end – the Court actually did make the power to initiate a constitutional review of a referendum question a nonexclusive power of the Parliament. And these facts clearly show not only that the Court, in its Statement, modified the procedure of review of constitutionality of referendums (procedural issue) but also that a spillover of power occurred – this time at the detriment of the Parliament (spillover issue).[145] Furthermore, it is worth reiterating that in this case the Court actually did carry out a review of the "Marriage Referendum" question, although it did so only de facto.

The third perspective of the "procedural issue" requires us to understand that the Court invented an entirely new procedure in its 2013 Statement on the Marriage Referendum, with no prior explicit counterpart in the text of the Constitution, i.e., the procedure for reviewing the constitutionality of constitutional amendments. With this, the Court also invented an entirely new power for itself: the power to annul unconstitutional constitutional amendments.[146] It seems obvious that by doing this the Court carried out three important things: it introduced a new procedure (procedural issue), it introduced a new measure (substantive issue), and it significantly affected the way that constitution-makers (the people

145 It is worth pointing out here that Article 95 (1) CACC seems to very precisely command that the power to initiate the said review is vested in the Parliament alone. In that sense, Article 95 (1) states: "At the request of the Croatian Parliament, the Constitutional Court shall, in the case when ten percent of the total number of voters in the Republic of Croatia request calling a referendum, establish whether the question of the referendum is in accordance with the Constitution and whether the requirements in Article 86, paragraphs 1–3, of the Constitution of the Republic of Croatia for calling a referendum have been met."

146 It should be noted that there are two possible interpretations of Article 95 (1) CACC. In the first version, Article 95 (1) allows, already on the level of textual interpretation, for a review of constitutional amendments but is limited to instances of citizen-initiated constitutional referendums. In the second version, the possibility of a review of constitutional amendments also exists but only upon its inclusion into the reading of Article 95 (1) through structural interpretation, as we have presented above. Depending on which of these two interpretive routes is taken, there emerge two possible answers to the question of whether, in this case, the Court modified the procedure and the measure to be imposed: under the first route, the procedure is merely supplemented and there is no new measure, while under the second, both the new procedure and the new measure are invented.

through referendums or the Parliament) may define what the constitution is (spillover issue).

Finally, bearing in mind everything stated in the context of the *Referendum* case, the conclusion is that all the described actions of the Court were based on its GCC and without an explicit reference to its other enumerated powers. This means that in this case the Court actually used the autonomous norm approach to its GCC (basic issue).[147]

3.3.2. The *10 April Street* Case

In the *April 10 Street* case the Court formally stated, even more explicitly than in the *Referendum* case, that it was conducting the proceedings based on its GCC alone (technical issue). This fact leads to the conclusion that the Court had adopted the autonomous norm approach (basic issue) in this case. The same conclusion stems from the procedural aspect of the case.

With respect to procedure, the Court exceptionally assumed jurisdiction over a matter that otherwise falls under the competence of the HAC. Moreover, in justifying this procedural switch, the Court emphasized that it did this precisely based on its GCC and argued that this was necessary because the case opened an issue "important for the identity of the Croatian constitutional state."[148] From this perspective it also follows that the GCC indeed was used as an autonomous norm that created a type of an exceptional procedure. In short, this means that the Court significantly altered the mode of proceedings (procedural issue) precisely based on the GCC. At the same time, this resulted in a transfer of authority in favor of the Constitutional Court, to the detriment of the HAC (spillover issue).

147 It is worth mentioning that the *Referendum* case raises an additional important issue. In fact, the basic logic of the *Referendum* case (structurally) is the following: the review of constitutionality of referendums is initiated by the Parliament whereas the rest of the procedure is conducted by the Court; however, in exceptional circumstances, the Court may entirely take over the proceedings, conferring on itself the power to initiate them as well; consequently, this implies that the Court is the sole master of the whole procedure (both in its initiation and conducting). Therefore, the question emerges: could such a structural interpretation, by analogy, be applied to other types of cases in which formally the Court decides, but does not have the power to initiate the proceeding, e.g., the procedure of impeachment of the President of the Republic (Article 105 of the Constitution and Article 83 CACC); control of constitutionality of political parties (Articles 6 and 125.8 of the Constitution and Articles 85–86 CACC); and resolution of conflicts of competence between the legislative, executive and judicial branches (Article 125.6 of the Constitution and Articles 81–82 CACC). We believe that such a structural interpretation is unacceptable. See also Gardašević, Đ., 2016, p. 17.

148 Constitutional Court, U-II-6111/2013, 10 October 2017, para. 11.

The measure imposed by the Constitutional Court in this case consisted of the annulment of the decision of the local body, regarding the naming of streets. From a technical standpoint, in doing so the Constitutional Court did not substantively modify existing measures or define a new measure that it ordinarily lacks the power to impose (substantive issue), but it nevertheless extended the imposition of such a measure to matters beyond its specific jurisdiction.[149]

3.3.3. The *Milanović II* Case

In the *Milanović II* case,[150] the Court formally acted under its authority to review the constitutionality and legality of elections, which does belong to its enumerated competences.[151] In addition, this time the Court also expressly invoked its authority to act under the GCC (technical issue). This combination of the GCC and other constitutional and legal grounds for the Court to act may, but only at first glance, lead to conclusion that in this case the Court chose the descriptive norm approach (basic issue). However, it is necessary to also examine other aspects of the case in order to reach a proper conclusion on this issue.

The fact that in this case the Court formally invoked the procedure for reviewing the constitutionality and legality of elections means that it was required to follow exactly the procedural steps (procedural issue) and to impose the measures (substantive issue) that were explicitly defined in the specific provisions of the CACC regulating such reviews, and not in the general formulation of the GCC.

From the procedural point of view, this means that the Court could act only upon receiving a formal request from the explicitly defined applicants who were formally authorized to submit such a request to the Court.[152] Nevertheless, in this case the Court acted entirely on its own

149 In other words, despite claiming that its annulment of the contested decision by the local unit was based on the Court's express power to annul regulations (Article 55 (3) CACC), the fact is that this particular decision was not among the type of regulations that the Constitutional Court had a power to annul, as we explained previously in the description of the case.

150 We disregard the *Milanović I* case here because in it the Constitutional Court did not expressly invoke Article 2 (1) CACC as the ground for its action.

151 Article 125.9 of the Constitution, Article 87 (1) CACC, and Article 96 (1) of the Law on the Election of Members of the Croatian Parliament, *Official Gazette of the Republic of Croatia*, Nos. 116/99, 109/00, 53/03, 69/03, 44/06, 19/07, 20/09, 145/10, 24/11, 93/11, 120/11, 19/15, 104/15, 98/19 (Law on the Election of Members of the Croatian Parliament).

152 According to Article 88 CACC, the specified applicants in such cases are "political parties, candidates, not less than 100 voters or not less than 5 percent of voters of the constituency in which the elections are held".

initiative, meaning not only that the Court modified the procedure (procedural issue), but also that the initiative to launch the proceedings was no longer the exclusive power of the authorized applicants, leading to the first spillover of powers in this case (spillover issue). In addition, the fact that the Court acted entirely on its own initiative means that it acted contrary to the specifications contained in the provisions defining the list of applicants,[153] as well as that it could "justify" such a course of action only on the basis of a norm separate from those provisions. Since the only separate norm that the Court invoked in this case was precisely the one mentioning its GCC, it follows that the Court took the autonomous norm approach.

In order to properly clarify the substantive outcome of the case (substantive issue), one should bear in mind three important aspects of this case.

First, the Court determined that by his active involvement in the election campaign and by not previously resigning from his actual post, the President of the Republic "put himself in the position of a participant in the parliamentary elections in the sense of Article 89 CACC."[154]

Second, based on its combined competence to review the constitutionality and legality of elections and its GCC[155], the Court determined that "by his statements and conduct, and without having previously resigned from the office of President of the Republic in accordance with the Warning of 18 March 2024, the President of the Republic has placed himself in a position where he can neither be designated as Prime Minister-designate for the formation of the future Government nor serve as Prime Minister."[156]

Third, the Court clearly emphasized that "regardless of the constitutionally and legally unacceptable conduct of the President of the Republic and his failure to comply with the Warning of 18 March 2024" the Court itself would not call into question "the will of the voters expressed" in the parliamentary elections "held on 17 April 2024".[157]

153 See Article 88 CACC.

154 Constitutional Court, U-VII-1263/2024-II, 19 April 2024, para. 6, translated by authors.

155 Interestingly, it is precisely in this section of its Communication and Warning in the *Milanović II* case that the Court insisted that it acted on its combined authority to review the constitutionality and legality of elections, on the one hand, and on its GCC, on the other. This could lead to the wrong conclusion that the Court thus took the descriptive norm approach, however, as we show further, the Court's imposition of an entirely new sanction (ban) leads to the conclusion that the GCC was used as an autonomous norm.

156 Constitutional Court, U-VII-1263/2024-II, 19 April 2024, para. 7, translated by authors. The Warning of 18 March 2024 refers to the Court's warning in the *Milanović I* case.

157 Constitutional Court, U-VII-1263/2024-II, 19 April 2024, para. 8, translated by authors.

Considering these three important aspects, it is possible to draw a precise conclusion regarding the substantive outcome of the *Milanović II* case.

The outright conclusion is that in this case the Court issued a specific ban, which it had no power to impose whatsoever; specifically, the imposed ban consisted of a prohibition for the President of the Republic to be appointed Prime Minister-designate by the parliamentary majority, formed upon the will of voters (which the Constitutional Court in no way disputed), even if he were to decide to resign from his current post of the President of the Republic prior to that potential appointment. All the sanctioning powers that the Court had at its disposal were explicitly prescribed in the CACC and the stated ban was clearly not one of them: the appointment of the Prime Minister-designate clearly falls outside of the legal definition of "electoral activities and decisions", which the Court can annul because it is per se a post-election procedure contingent on the results of the elections.[158]

Consequently, it is clear that from the substantive perspective the use of the GCC in this case resulted in the creation of an entirely new sanction that is not prescribed in the Croatian Constitution (substantive issue), that the creation of this sanction followed from the treatment of GCC as an autonomous norm (basic issue), and that eventually all this led to the second spillover in this case – because the Court unduly interfered with the Parliament's power to designate the future Prime Minister (spillover issue).

3.3.4. The *Judges' Mandates* Case

In the *Judges' Mandates* case, the Court formally stated in the introductory part of its Report that it acted based on its enumerated competence to "monitor compliance with the Constitution" and to "report to the Croatian Parliament on detected violations thereof".[159] At the same time, the Court's argumentation in the Report issued in this case also contains a

158 In this sense, Article 89 CACC prescribes: "When the Constitutional Court ascertains that the participants in the elections act contrary to the Constitution and the law, it shall inform the public over the media, if needed warn the competent bodies, and in case of violation which influenced or might have influenced the results of the elections, shall annul all or separate electoral activities and decisions, which preceded such violation." Furthermore, the Court's determination that, by his active participation in the election campaign and by not resigning in time, the President of the Republic "put himself in the position of a participant in the parliamentary elections in the sense of Article 89 CACC" (para. 6) was formally wrong: following the Court's Warning issued in the *Milanović I* case, the President was actually never listed as one of the candidates in the parliamentary elections.

159 Article 125.5 of the Constitution; Article 104 (1) CACC.

reference to the GCC, whereas in the part of the Report where the Court formally imposed its "measures", it also invoked a separate provision of the CACC, which empowers it to "determine the manner in which its decision, respective its ruling shall be executed".[160] Those facts require two clarifications.

First, the Court's intention to "monitor compliance with the Constitution and laws" and to "report to the Croatian Parliament on detected violations thereof" may have been justified as the proper course of action only in this aspect of the case where the Court detected the problem and required the Parliament "to fulfill without delay its constitutional obligation to elect ten judges of the Constitutional Court".[161] Had an additional recourse to the GCC been made only in reference to this aspect of the case, there would have been no real issue at stake, because the Court would have used its GCC only to supplement its specific power to "monitor and report". At the same time, that would also mean that the Court took the descriptive norm approach. However, considering both the procedure that the Court conducted and the real outcome of the case (the extension of the judges' mandates) it is clear that something else was on the table.

Second, the Court's invocation of its power to "determine the manner in which its decision, respective its ruling shall be executed" evidently leads to nowhere, since this is just one of procedural powers which, standing alone, cannot lead to the extension of the judges' mandates. In addition, as we have stated above, the Report is neither a decision nor a ruling, and Article 125.5 of the Constitution and Article 104 CACC clearly designate the Parliament as the institution with the power to act upon it. However, in that specific final part of the Report, where the Court imposed its "measures" (including the one to extend the judges' mandates), it explicitly invoked both the said power to "determine the manner in which its decision, respective its ruling shall be executed" (Article 31 (5) CACC) and its GCC, arguing, literally, that the extension of the judges' mandates was necessary because it was an essential precondition for the Court to perform its "basic purpose", i.e., to "guarantee the compliance with and application of the Constitution in all proceedings within its jurisdiction".[162]

160 Article 31 (5) CACC.

161 Constitutional Court, Report U-X-5162/2024, 6 December 2024, para. 8. Technically, in addition to extending the judges' mandates and calling on the Parliament to elect new judges without delay, in this case the Court also determined that it would "refrain from adopting substantive decisions and rulings within its jurisdiction until 11 December 2024". Report U-X-5162/2024, 6 December 2024, para. 9.

162 Constitutional Court, Report U-X-5162/2024, 6 December 2024, para. 8.

Therefore, from this point of view it is evident that, in "determining" that the judges' mandates are extended, the Court substantively relied only on its GCC and not on Article 31 (5) CACC. In other words, the invocation of the GCC was used by the Court as the proper ground for extending the judges' mandates. This leads to the conclusion that the Court took the autonomous norm approach (basic issue).

Since we believe that these clarifications properly solve the baseline technical issue, it remains to verify whether the Court in this case somehow altered the procedure (procedural issue) or came to produce an outcome it should not have produced (substantive issue).

According to the existing constitutional regulation, the only extension that is possible in the event that the Parliament does not elect new judges in time is the automatic extension of mandates of incumbent judges for a period of a maximum of six months.[163] In addition, the power to elect judges to the Court is vested exclusively in the Parliament.[164] This means that the only procedural solution to the situation in which new judges are not elected, even upon the expiry of an additional period of six months, is to wait until the Parliament performs its constitutional duty. Thus, from the procedural point of view, the decisive element in this scenario is the failure of the Parliament to perform its duty to elect new judges. Therefore, when the Court decided to extend the judges' mandates on its own, and when it did so on the basis of its GCC, the Court practically introduced an entirely new procedure that is initiated in the event the Parliament fails to elect new judges to the Court in time (procedural issue).

From the substantive point of view, the Court in this case actually extended the mandates of the incumbent judges beyond the maximum term of their office, which is strictly eight years and six months.[165] This means that the Court itself created a new constitutional norm which allows for additional extension of judges' mandates without any basis in the text of the Constitution (substantive issue).

Consequently, all of the above also means that in both the context of the procedure and in the context of the measure, the Court acted at the detriment of the Parliament's competences and powers (spillover issue). By doing all that based on its GCC, the Court evidently took the autonomous norm approach (basic issue).[166]

163 Article 122 of the Constitution.

164 *Ibid*.

165 *Ibid*.

166 The conclusion that Article 2 (1) CACC was used in this case as an autonomous norm is quite evident, even notwithstanding the fact that in its argumentation the Court twice stressed that securing the "compliance with and application of the

4. Conclusion

In this paper we have given a critical assessment of the Constitutional Court's employment of Article 2 (1) CACC as a tool for expanding its jurisdiction far beyond the textual and purposive limits of the Constitution and the CACC. In order to demonstrate the dangers of using Article 2 (1) CACC as a basis for inherent powers of the Court, we developed and applied the methodology for analyzing relevant case law, focusing on the underlying basic issue of whether the Court has understood Article 2 (1) CACC as a descriptive or as an autonomous norm in its case law. Taking into account other parameters needed to answer this question (the technical issue, the procedural issue, the substantive issue, and the spillover issue), we have concluded that the Court has relied on Article 2 (1) CACC as an autonomous source of independent GCC, in all of the considered cases. The results of the analysis are summarized in the table below.

Table 1

	Referendum Case	*10 April Street* Case	*Milanović II* Case	*Judges' Mandates* Case
BASIC ISSUE	Autonomous	Autonomous (except for the substantive issue)	Autonomous	Autonomous
TECHNICAL ISSUE	Legal basis not explicitly specified	Explicit reliance on GCC	GCC combined with control of elections	GCC combined with reporting on unconstitutionality

Constitution of the Republic of Croatia", which is the express wording of Article 2 (1) (GCC), was necessary precisely because of the Court's duty to conduct "all proceedings within its jurisdiction" in general. Constitutional Court, Report U-X-5162/2024, 6 December 2024, para. 8.

An alternative reading might lead to the conclusion that in this case the Court actually established a decisive link between Article 2 (1) and its other enumerated competences to conduct specific proceedings within its jurisdiction. This, in other words, would mean that Article 2 (1) has no autonomous meaning and that it merely serves as an introductory and descriptive norm for the Court's other competences or, at the most, as a complementary norm to justify the Court's procedural and substantive decisions in this case.

However, this alternative conclusion fails when one takes into account both the procedural and substantive outcomes of the case. In this sense, since the extension of the judges' mandates evidently cannot derive from the Court's other specific competences and since based on those specific competences the Court cannot change a constitutional norm defining the maximum term of office judges, Article 2 (1) remains the only candidate for the Court's approach. This means that in reality the Court in fact took the autonomous norm approach.

	Referendum Case	*10 April Street* Case	*Milanović II* Case	*Judges' Mandates* Case
PROCEDURAL ISSUE	1. Procedure modified (Article 95 (1) supplemented) 2. New procedure introduced (unconstitutional constitutional amendments)	New procedure introduced	Procedure modified	New procedure introduced
SUBSTANTIVE ISSUE	New measure introduced (unconstitutional constitutional amendments)	No new measure introduced (the imposition of a measure in matters outside the Court's jurisdiction)	New measure introduced	New measure introduced
SPILLOVER ISSUE	Occurred at the detriment of the Parliament	Occurred at the detriment of the HAC	1.) Occurred at the detriment of designated applicants 2.) Occurred at the detriment of the Parliament	Occurred at the detriment of the Parliament

It follows that the Court's use of its GCC seriously threatens the balance of powers in Croatia because of its spillover effects – the expansion of the Court's own zone of authority minimizes the constitutionally defined role of other constitutional actors, most notably the Parliament. Both the procedural and the substantive aspects of the Court's use of its GCC reveal a dangerous inclination of an "almighty Court" to undermine the role of other constitutional actors in the Croatian judicial and political processes, resulting in the dismantling of the checks and balances established by the Constitution. Furthermore, the Court's extra-procedural hyper-involvement[167] in politically hyper-sensitive cases, which results in poorly argued substantive outcomes that are not envisaged by the Constitution and the CACC[168], might seriously weaken its already fragile public image. The Court should base its proceedings as well as their substantive outcomes on clearly defined legal bases, having due regard to its own legal limitations, and grounding its own holdings in strong arguments. The Court should

167 Compare with Beširević, V., 2014, "Governing *without* judges": The politics of the Constitutional Court in Serbia, *International Journal of Constitutional Law*, Vol. 12, No. 4, pp. 954–979.

168 Legal interpretation should not go *contra legem*. Lenaerts, K., Gutiérrez-Fons, J. A., 2014, To Say What the Law of the EU Is: Methods of Interpretation and the European Court of Justice, *Columbia Journal of European Law*, Vol. 20, No. 2, p. 20.

also tame its overly grandiose self-perception and respect the positions of its constitutional interlocutors as a way of impeding the excessive concentration of power in one institution.[169]

As indicated above, in the *Ruling on the Report* case the majority of judges reversed the position on the nature of the Court's powers and emphasized the exhaustive nature of the Court's enumerated powers, signalizing a departure from the expansive reading of Article 2 (1) CACC.[170] However, one should not be too optimistic about this most recent development – it still remains to be seen whether the described case law on the use of GCC will remain as a dormant option to be reactivated in another "exceptional situation". We strongly urge against this prospective reactivation.

Bibliography

1. Antić, T., 2015, Postupak i uvjeti za izbor sudaca Ustavnog suda Republike Hrvatske, *Pravni vjesnik*, Vol. 31, No. 1, pp. 47–83.
2. Barić, S., 2016, The Transformative Role of the Constitutional Court of the Republic of Croatia: From the ex-Yu to the EU, *Analitika – Center for Social Research*, Working Paper 6/2016.
3. Beširević, V., 2014, "Governing *without* judges": The politics of the Constitutional Court in Serbia, *International Journal of Constitutional Law*, Vol. 12, No. 4, pp. 954–979.
4. Casey, C., 2017, Under-explored Corners: Inherent Executive Power in the Irish Constitutional Order, *Dublin University Law Journal*, Vol. 40, No. 1, pp. 1–36.
5. Chemerinsky, E., 1987, A Paradox Without a Principle: A Comment on the Burger Court's Jurisprudence in Separation of Powers Cases, *Southern California Law Review*, Vol. 60, No. 1, pp. 1083–1111.
6. Chemerinsky, E., 1983, Controlling Inherent Presidential Power: Providing a Framework for Judicial Review, *Southern California Law Review*, Vol. 56, No. 1, pp. 863–911.
7. Cohn, M., 2015, Non-Statutory Executive Powers: Assessing Global Constitutionalism in a Structural-Institutional Context, *The International and Comparative Law Quarterly*, Vol. 64, No. 1, pp. 65–102.
8. Fisher, L., 2007, Invoking Inherent Powers: A Primer, *Presidential Studies Quarterly*, Vol. 37, No. 1, pp. 1–22.
9. Fisher, L., 2010, The Unitary Executive and Inherent Executive Power, *University of Pennsylvania Journal of Constitutional Law*, Vol. 12, No. 2, pp. 569–591.

169 As the Constitutional Court itself had said, "the principle of the separation of powers is one of the elements of the rule of law because it prevents the possibility of a concentration of powers and of political power in (only) one body". Constitutional Court, U-I-659/1994, 15 March 2000, para. 12, translated by authors.

170 Constitutional Court, U-II-804/2025, 8 July 2025, paras. 8–8.1.

10. Gardašević, Đ., 2016, Constitutional Interpretations of Direct Democracy in Croatia, *Iustinianus Primus Law Review*, Vol. 7, No. 1, pp. 1–36.
11. Gardašević, Đ., Dioba vlasti u Ustavu Sjedinjenih Američkih Država, in: Kostadinov, B., (ed.), 2022, *Poredbeno ustavno pravo – dioba vlasti*, Zagreb, Pravni fakultet Sveučilišta u Zagrebu, pp. 11–74.
12. Ginsburg, T., Elkins, Z., 2009, Ancillary Powers of Constitutional Courts, *Texas Law Review*, Vol. 87, No. 7, pp. 1431–1462.
13. Horvat Vuković, A., Referendum narodne inicijative 2013. – Ustavni identitet kao osnova ustavnosudskog aktivizma, in: Podolnjak, R., Smerdel, B., (eds.), 2014, *Referendum narodne inicijative u Hrvatskoj i Sloveniji: Ustavnopravno uređenje, iskustva i perspektive*, Zagreb, Hrvatska udruga za ustavno pravo, pp. 149–177.
14. Horvat Vuković, A., 2016, Ustavni sud Republike Hrvatske i referendumi narodne inicijative 2013. – 2015.: Analiza i prijedlozi, *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, Vol. 37, No. 2, pp. 805–835.
15. Kelsen, H., Who Ought to Be the Guardian of the Constitution?, in: Vinx, L., (ed. and trans.), 2015, *The Guardian of the Constitution: Hans Kelsen and Carl Schmitt on the Limits of Constitutional Law*, Cambridge, Cambridge University Press, pp. 174–221.
16. Kelsen, H., 1942, Judicial Review of Legislation: A Comparative Study of the Austrian and the American Constitution, *The Journal of Politics*, Vol. 4, No. 2, pp. 183–200.
17. Kinkopf, N., 2007, Inherent Presidential Power and Constitutional Structure, *Presidential Studies Quarterly*, Vol. 37, No. 1, pp. 37–48.
18. Kostadinov, B., Ustavni identitet, in: Bačić, A., (ed.), 2011, *Dvadeseta obljetnica Ustava Republike Hrvatske*, Zagreb, Hrvatska akademija znanosti i umjetnosti, pp. 305–337.
19. Lenaerts, K., Gutiérrez-Fons, J. A., 2014, To Say What the Law of the EU Is: Methods of Interpretation and the European Court of Justice, *Columbia Journal of European Law*, Vol. 20, No. 2, pp. 3–61.
20. Martinez, J. S., 2006, Inherent Executive Power: A Comparative Perspective, *The Yale Law Journal*, Vol. 115, No. 9, pp. 2480–2511.
21. Omejec, J., Banić, S., 2012, Diferencijacija propisa i općih akata u budućoj praksi Ustavnog suda i Upravnog suda u povodu Zakona o upravnim sporovima (2010), *Zbornik radova Pravnog fakulteta u Splitu*, Vol. 49, No. 2, pp. 309–324.

Legislative Sources

1. Opinion on the Fourth Amendment to the Fundamental Law of Hungary, adopted by the Venice Commission at its 95th Plenary Session (Venice, 14–15 June 2013), Opinion 720/2013, CDL-AD(2013)012, Strasbourg, 17 June 2013.
2. Opinion on certain questions relating to the functioning of the Constitutional Court of Bosnia and Herzegovina, adopted by the Venice Commission at its 138th Plenary Session (Venice, 15–16 March 2024), Opinion CDL-AD(2024)002-e, Venice, 18 March 2024.

3. The Administrative Dispute Resolution Act, *Official Gazette of the Republic of Croatia*, No. 20/10.
4. The consolidated text of the Constitution of the Republic of Croatia, *Official Gazette of the Republic of Croatia*, Nos. 56/90, 135/97, 113/00, 28/01, 76/10 and 5/14, edited and translated by the Constitutional Court, (https://www.usud.hr/en/the-constitution, 30. 9. 2025).
5. The consolidated text of the Constitutional Act on the Constitutional Court of the Republic of Croatia, *Official Gazette of the Republic of Croatia*, No. 49/02 of 3 May 2002, (https://www.usud.hr/en/constitutional-act, 30. 9. 2025).
6. The Law on the Election of Members of the Croatian Parliament, *Official Gazette of the Republic of Croatia*, Nos. 116/99, 109/00, 53/03, 69/03, 44/06, 19/07, 20/09, 145/10, 24/11, 93/11, 120/11, 19/15, 104/15, 98/19.

Case Law (Croatian Constitutional Court)

1. SuS-1/2013, 14 November 2013.
2. U-I-659/1994, 15 March 2000.
3. U-I-745/1999, 8 November 2000.
4. U-I-3597/2010, U-I-3847/2010, U-I-692/2011, U-I-898/2011, and U-I-994/2011, 29 July 2011.
5. U-II-5157/2005, 5 March 2012.
6. U-VIIR-164/2014, 13 January 2014.
7. U-VIIR-4640/2014, 12 August 2014.
8. U-VIIR-7346/2014, 10 December 2014.
9. U-VIIR-1158/2015, 21 April 2015.
10. U-VIIR-1159/2015, 8 April 2015.
11. U-II-6111/2013, 10 October 2017.
12. U-VIIR-343/2020, 19 May 2020
13. U-VIIR-2180/2022, 16 May 2022.
14. U-VIIR-2181/2022, 16 May 2022.
15. U-VII-1263/2024, 18 March 2024.
16. U-VII-1263/2024-II, 19 April 2024.
17. U-X-5162/2024, 6 December 2024.
18. U-II-804/2025, 8 July 2025.

Case Law (Other Courts)

1. ECtHR, *Garaudy v. France*, Application No. 65831/01, Decision of 24 June 2003.
2. US Supreme Court, *District of Columbia v. Heller*, 554 U.S. 570 (2008).
3. US Supreme Court, *McCulloh v. Maryland*, 17 U.S. 316 (1819).

Internet Sources

1. Constitution Annotated, *ArtI.S1.3.3 Enumerated, Implied, Resulting, and Inherent Powers*, (https://constitution.congress.gov/browse/essay/artI-S1-3-3/ALDE_00013292/, 30. 9. 2025).
2. Constitution of the Republic of Montenegro (https://www.constituteproject.org/constitution/Montenegro_2013, 4. 11. 2025).
3. Law No. 47/1992 – On the Organisation and Operation of the Constitutional Court that regulates the Constitutional Court of Romania (https://www.ccr.ro/en/legal-basis/, 4. 11. 2025).
4. Law of 24 October 2018 on the Constitutional Court of the Slovak Republic (https://codices.coe.int/codices/documents/law/C3723E53-4F16-4D4D-848B-08DC0D38DFC5, 4. 11. 2025).
5. Matthias, M., Schrodinger's Cat, in: *Britannica* (https://www.britannica.com/science/Schrodingers-cat, 30. 9. 2025).
6. Slovenia, Constitutional Court Act (https://www.us-rs.si/en/legal-basis/statutes, 4. 11. 2025).
7. The Fundamental Law of Hungary (https://www.constituteproject.org/constitution/Hungary_2016, 4. 11. 2025).

USTAVNI SUD REPUBLIKE HRVATSKE I KONCEPT INHERENTNIH OVLASTI

Đorđe Gardašević

Niko Jarak

APSTRAKT

U ovome članku istražujemo kako Ustavni sud Republike Hrvatske tumači postojanje vlastitih „inherentnih" ovlasti te njihov odnos prema ovlastima koje su mu enumerirane Ustavom. U tom smislu, relevantnu praksu Ustavnoga suda analiziramo kroz nekoliko bitnih pitanja: primjenjuje li Sud svoje „inherentne" ovlasti kroz koncept deskriptivne ili autonomne norme, dolazi li pritom do bitnih promjena u načinu postupanja Suda, primjenjuje li pritom Sud mjere predviđene Ustavom te dolazi li na taj način do bitnih poremećaja u ustavnoj podjeli nadležnosti i ovlasti. Rezultati istraživanja pokazuju da Sud primjenjuje koncept autonomne norme, čime bitno mijenja svoj način postupanja, kao i mjere koje je ovlašten izricati. Zaključujemo da takav pristup Suda bitno narušava načelo ravnoteže vlasti predviđeno Ustavom.

Ključne riječi: Ustavni sud Republike Hrvatske, ustavno sudovanje, tumačenje Ustava, inherentne ovlasti, enumerirane ovlasti, dioba vlasti.

Article History:

Received: 10 October 2025

Accepted: 1 December 2025