

CONSTITUTIONAL REASONING AND CONSTITUTIONAL INTERPRETATION. ANALYSIS OF CERTAIN CENTRAL EUROPEAN COUNTRIES

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Zoltán J. Tóth (ed.). 2021. *Constitutional Reasoning and Constitutional Interpretation. Analysis of Certain Central European Countries*. Budapest: Ferenc Mádl Institute of Comparative Law and Central European Academic Publishing.

A new addition to the Studies of the Central European Professors' Network book series, the book consists of a collection of academic articles, relying on a common methodology, discussing the interpretation of fundamental rights in the Czech Republic, Hungary, Poland, Serbia, Slovenia, and Slovakia. Academically cogent and intellectually stimulating, the book makes a meaningful contribution to the study of how fundamental rights are understood and dealt with in key countries from Central and Eastern Europe.

In his introduction, Prof. Zoltán J. Tóth provides an adequate overview of the book, discussing the conceptual framework on which the book relies, such as the distinction between the concepts of legal interpretation and legal argumentation (or reasoning). According to him, "*legal interpretation is the exploration of the meaning and/or the reason of a legal norm in a specific case*", while legal argumentation refers to "*a subsequent attempt to justify the application of the norm (in a given way and with a given meaning)*". Consequently, the role of arguments, in his view, is to legitimize and acceptance as appropriate and fair judgement by third parties.

In discussing the differences between legal interpretation and legal argumentation, Tóth considers a range of different viewpoints and approaches to constitutional interpretation and addresses several controversies and debates regarding these issues. By engaging critically with these distinct perspectives, the book constitutes a good resource for those seeking to gain a deeper understanding of the various methods and approaches that have been used to interpret constitutions, and the advantages and disadvantages of each approach. As such, Tóth's introductory piece is thought-provoking from a conceptual perspective, also being well supported by a wide range of historical, academic, and judicial sources. Tóth's grammatical and logical

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interpretation, in the latter's case finding arguments such as *minore ad maius*, *a maiore ad minus*, *a contrario*, *a simili*, *ad absurdum*.

Considering that legal norms constitute coherent systems, Tóth also provides us with domestic systemic arguments. He deals with arguments such as *lex superior derogate legi inferiori*, *lex specialis derogate legi generali*, and so on. Interestingly, we can identify arguments that lay beyond our national law and legal practice. As such, we can identify arguments grounded in international treaties and international law, considering that fundamental rights are not grounded only in national constitutional law. As such, the book considers interpretations realized according to the jurisprudence of the European Court of Human Rights and the Court of Justice of the EU.

A particular type of interpretation present in the book is the one based on the original intention of the legislator. In such cases, the interpretation seeks to infer the inner intention of the legislator based on the public reasoning given to adopt the legislation. This is the subjective theory. However, there is also an objective theory, which emphasizes that a text should be treated as such, independent of the inner intentions of the author.

Importantly, Tóth provides a summary of the classification of methods regarding argumentation, as follows: (i) grammatical (textual) interpretation; (ii) logical (linguistic-logical) arguments; (iii) domestic systemic arguments (systemic or harmonizing arguments); (iv) external systemic and comparative law arguments; (v) teleological/objective teleological interpretation (based on the objective and social purpose of the legislation); (vi) historical/subjective teleological interpretation (based on the intent of the legislator); (vii) interpretation based on jurisprudence (references to scholarly works); (viii) interpretation in light of general legal principles (not expressed in statutes) and (ix) substantive interpretation referring directly to generally accepted non-legal values.

The introduction is followed by six articles using Tóth's methodology for six countries: Slovenia, written by Benjamin Flander; Hungary, written by Adél Köblös; the Czech Republic, written by David Sehnálek; Slovakia, written by Katarína Šmigová; Serbia, written by Slobodan Orlović; and Poland, written by Piotr Mostowik. The authors of these six case studies start by presenting the national legal and constitutional framework, subsequently proceeding to analyse selected decisions of their national Constitutional Courts. They conclude with persuasive analyses regarding the argumentation method employed by each constitutional court and the ECHR and CJEU, respectively on the issues they investigate.

To conclude, *Constitutional Reasoning and Constitutional Interpretation. Analysis of Certain Central European Countries* is a highly informative book that provides a valuable contribution to the field of constitutional law, particularly in the Central European countries. It is well-written and well-researched. It also provides a nuanced and balanced analysis of the complex and often contentious issues surrounding constitutional interpretation. The book should be considered a must-read for legal

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scholar, student of constitutional law, who is interested in understanding how constitutions work and are interpreted in Central European countries.