

## GENERAL THEORY OF LAW

### The Rather Ambiguous Notion Of Justice Utilised By The European States

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#### Abstract

*Jus est ars boni et aequi. When one thinks about the social phenomenon we now call the justice system, one will probably remember instantaneously this phrase. However, the concept has known hundreds of interpretations, bases on a proportionally larger number of values. These values have varied from society to society, from one age to another. If one expects that such notions are constantly evolving, while preserving a rather solid core, than, in this day and age, one would expect to receive a clearer definition for the idea of justice, at least from the study of the modern schools of legal thought.*

*The aim of this paper is to find the possible meanings that justice receives in today's European legal systems. It has been structured in three parts, meant to highlight and than harmonise the main plans of this research. The first section is dedicated to finding the main understandings of the notion of justice, as they are presented in the manuals of legal doctrine. The second section seeks the meanings of the same concept in the constitutional documents of 48 countries, pointing out the emerging patterns. The third and last section analysis the possible meanings of the notion if justice in the findings of the first two sections.*

**Keywords:** *justice, legal doctrine, constitutional law, legal philosophy.*

#### Introduction

Contemporary European States have legal systems which are being guided, at least in theory, by a conglomerate of values. These fundamental ideas find their origins in all the major areas of the social, economic, political, religious and cultural life of specific communities. For this reason, one could easily argue that they are not the exclusive product of the legal system, of a moral code or of a religious faith. Justice, like charity, prudence, fraternity, dignity, honor and dozens of other similar concepts, are the ever-changing result of centuries of crossings from the realm of legal theory into the domains of morality and/or the grounds of religion.

To properly explore each and everyone of those notions within the spatial limits of a single paper is an impossible task. In fact, entire academic lives could be dedicated to the subject. However, it is entirely workable to try and find the current definition and applications of one single such value, namely justice, in today's Europe.

In order to do so, one would have to ask three questions. Firstly, is the notion of justice defined in the legal literature? In the first section of this paper, as well as in its corresponding two subsections, we will analyse some of the most recent definitions utilised by authors formally trained in European law. Secondly, how is the idea of justice used in the fundamental legal texts of the European countries? In the second section of the paper, we will analyse the constitutions of the States which culturally and geographically form the continent. Such an exercise will allow us to discern the patterns which should mark the usage of the idea of justice in the European legal systems. It should be mentioned that the results of the analysis can only hint to what a more detailed study might uncover. Even though the constitutional texts of a state represent the basis of its legal system, they are usually very general. The nuances of their provisions are usually better understood when considering the legal system in its entirety. However, for the purposes of this paper, the comparison of these 48 constitutions will suffice to draw a few preliminary conclusions concerning the meanings of the word „justice”, even if only in reference to the most used ones in the European legal systems. It should not be forgotten that a constitutional text may be regarded as representative for the state of the collective consciousness of a democratic society<sup>1</sup>, thus synthetising and centralising its most important coordinates.

Regarding the second part of the paper, it should be noted that all the legal texts were consulted in English. This technical choice is supported by three arguments. Firstly, the author does not have the linguistic knowledge necessary to consult all of them in their original language. Secondly, even if the author would have been able to understand those originally written in French, Italian and Romanian, consulting the documents in four different languages would have opened the door to making errors while translating the results of the analysis. Thirdly, using only the English versions allows one to use one single source for all the constitutions, which made the whole process of finding, comparing and reviewing the documents a lot easier, repeatable and reliable. Nevertheless, if one is to compare only a handful of pieces of legislation, one should consider using directly the original versions, if possible.

Going back to the structure of the paper, the last question raised by this paper is what are the possible effects of the meanings highlighted in the second section. This third section is meant to find the strenghts and weaknesses of the approaches adopted by the European states. The aim is to discover if there are any areas where improvement is due and, if such areas are present, to propose a few possible solutions.

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<sup>1</sup> Dan Claudiu Dănișor et al., *Teoria generală a dreptului*, C.H. Beck, București, 2006, p. 118-119.

### The notion of justice according in the legal doctrine

It is entirely possible that, in the long history of Europe, the idea of justice has been analysed and defined well over one thousand times. Each one of those authors constructed or utilised a definition which seemed appropriate in light of his or her epoch. As Hegel argues, as the perspective of mankind changes, the legal values and norms also have to change<sup>2</sup>. As the aim of these paper is to make sense of the applications of the notions of justice in today's legal systems, it would be certainly interesting, but ultimately futile to try and review all these doctrinal works. Accepting this leads to a second question: how to choose how far behind should one look? In our opinion, in order to avoid the arbitrary, one could simply choose the date when the oldest analysed constitution in effect was adopted. For the purpose of this paper, it has to be the year 1814, when both the Netherlands and Norway adopted their constitutions. Thus, one could consider various definitions proposed in the last two hundred years.

Hans Kelsen, one of the most influential jurists of the recent past, would certainly argue in favor of a notion of justice which observes his Normativist Theory. If the legal system is a well established hierarchy of legal norms, purged of any foreign influences, the justice may only be the correct application of those legal norms<sup>3</sup>. Justice, as a complex of public authorities, has to function only in accordance with the legal provisions. Even if such a system is more of a thought experiment than a material possibility, Kelsen's theory emphasizes the fact that by justice one could simply understand the pure, even mathematical application of the legal norm, without giving any consideration to other types of norms.

A more practical approach may be found in the writings of the american Supreme Court justice Oliver Wendell Holmes Jr. Considering the state of the United States judiciary in his time, he notices that the act of justice is not only the product of a "pure legal reasoning", but also that of the judges intuitions and interpretations<sup>4</sup>. He is also analysing the idea of justice by mainly referring to the judicial authorities, but he acknowledges that the act of justice is usually more than a simple implementation of a legal norm. Since a human being, the judge, is behind a judgement, considerations of a non-legal nature can and will most certainly influence the decision.

In another authors opinion (Giorgio del Vecchio), one could not examine a set of legal rules without considering the principle of justice which governs their activity. At the very least, this principle dictates that a person should not be deprived of his or her freedom<sup>5</sup>. Also, the legal phenomenon should not be

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<sup>2</sup> Simona Cristea, *Doctrina Juridice*, VII, C.H. Beck, Bucharest, 2017, p. 79.

<sup>3</sup> Simona Cristea, *op.cit.*, p. 88 - 89.

<sup>4</sup> *Idem*, p. 102 - 103.

<sup>5</sup> *Idem*, p. 108.

confounded with the moral one. In his opinion, the former always implies a bilateral relation (both with the state and with the legal subject), while the latter usually refers to a unilateral action (only by reference to the subject)<sup>6</sup>. Thus, the act of justice is achieved by the application of the law, but with respect for a series of values extrinsic to the law.

Del Vecchio is not the only author who believes that a performant justice system relies on non-legal values and principles. Leo Strauss and, by extension, the German School of Law of his epoch, supports the idea that there are principles which are far stronger and more important than any legal norm<sup>7</sup>. The ideatic origin of those guidelines may be found in the fundamental human rights. As a result, the law has to be created and implemented with the observance of these principles.

At this juncture, one could easily discern the two main usages of the notion of justice. As expected, the first one refers to the institutionalised act of justice, more specifically to the judiciary, its structure and its activity. Authors like Hans Kelsen, H.L.A. Hart and Neil MacCormick<sup>8</sup> would probably insist that this is the most important aspect. Consequently or not, each one of the 48 states mentioned in the following sections has a justice system composed of various public authorities and institutions, all regulated by legal norms.

At the same time, justice can be understood as a reference to a group of legal and non-legal values which serve as general principles for the legal system. In this sense, justice can only be understood through the lenses of morality, culture, religion, economics, politics and other such divisions of the social domains. There are authors who would argue that this values have to be dictated by a national set of characteristics, like Carl von Savigny, but this opinion is heavily challenged by other authors, like Hegel, who argue that the rational state of the individual dictates a certain degree of universality<sup>9</sup>.

If these are the two main meanings of the notion of justice according to some of the most appreciated legal authors of the last two centuries, is it safe to assume that they are currently in use in the European legal systems?

### **The notion of justice according to the in effect European constitutional documents**

The idea that everyone has a right to justice appears for the first time in a constitutional act in Magna Charta Libertatum, where it is stated in Section XXIX that "*we (the Monarch) will sell to no man, we will not deny or defer to any man either*

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<sup>6</sup> *Idem*, p. 109.

<sup>7</sup> *Idem*, p. 117-119.

<sup>8</sup> *Idem*, p. 126 - 133.

<sup>9</sup> Nicolae Popa et al., *Filosofia dreptului. Marile curente*, II, C.H. Beck, Bucharest, 2007, p. 288 - 291.

*Justice or Right*"<sup>10</sup>. One can easily notice that in this phrase, justice is regarded as both a value and an act which can be provided by a public authority. This duality of notion has been inherited and developed by almost all the other constitutional systems of today's Europe. As we have mentioned in the previous section, it can be argued that justice as a value underlines the fact that modern legal systems do not function in a vacuum of norms, but in a constant collaboration with morality and its generally accepted rules<sup>11</sup>.

In the preamble of the Albanian Constitution is mentioned that justice, alongside peace, harmony and cooperation among nations, is one the highest values of humanity<sup>12</sup>. Bulgaria uses a similar language in its 1991 Constitution, mentioning justice as a universal human value<sup>13</sup>. Germany develops in art. 1 of its 1949 Constitution a direct link between human rights, human dignity and peace and justice as fundamental values for the entire world<sup>14</sup>. In a similar manner, Ireland states in the preamble of its 1937 Constitution that *prudence, justice and charity* have to be observed if the State is to achieve its goals<sup>15</sup>.

The preamble of the Moldovan Constitution of 1994 mentions that justice, alongside other seven other notions, represents one of the supreme values of its legal system. The idea is reiterated in art. 1.3<sup>16</sup>. Justice is also one of the supreme values according to art. 1.3 of the Romanian Constitution of 1991<sup>17</sup>. Likewise, in the preamble of the Andorran Constitution is mentioned that the State is eager to promote the fundamental values of its society, among which justice may be found<sup>18</sup>. Also, according to art. 1.2., the principle of justice is one of the main legal principles of the Andorran legal system. Even if it does not define the concept, art. 4 states that it is not possible in the absence of "inviolable and

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<sup>10</sup> United Kingdom's Constitution of 1215 with Amendments through 2013", consulted on the 27<sup>th</sup> of September 2020, [https://www.constituteproject.org/constitution/United\\_Kingdom\\_2013.pdf?lang=en](https://www.constituteproject.org/constitution/United_Kingdom_2013.pdf?lang=en).

<sup>11</sup> Lidia Barac, *Elemente de Teoria Dreptului*, All Beck, București, 2001, p. 14 - 15.

<sup>12</sup> Albania's Constitution of 1998 with Amendments through 2016, consulted on the 28<sup>th</sup> of September 2020, [https://www.constituteproject.org/constitution/Albania\\_2016.pdf?lang=en](https://www.constituteproject.org/constitution/Albania_2016.pdf?lang=en).

<sup>13</sup> Bulgaria's Constitution of 1991 with Amendments through 2015, consulted on the 28<sup>th</sup> of September 2020, [https://www.constituteproject.org/constitution/Bulgaria\\_2015.pdf?lang=en](https://www.constituteproject.org/constitution/Bulgaria_2015.pdf?lang=en).

<sup>14</sup> „Germany's Constitution of 1949 with Amendments through 2014, consulted on the 28<sup>th</sup> of September 2020, [https://www.constituteproject.org/constitution/German\\_Federal\\_Republic\\_2014.pdf?lang=en](https://www.constituteproject.org/constitution/German_Federal_Republic_2014.pdf?lang=en).

<sup>15</sup> Ireland's Constitution of 1937 with Amendments through 2019, consulted on the 29<sup>th</sup> of September 2020, [https://www.constituteproject.org/constitution/Ireland\\_2019.pdf?lang=en](https://www.constituteproject.org/constitution/Ireland_2019.pdf?lang=en).

<sup>16</sup> Moldova (Republic of)'s Constitution of 1994 with Amendments through 2016, consulted on the 29<sup>th</sup> of September 2020, [https://www.constituteproject.org/constitution/Moldova\\_2016.pdf?lang=en](https://www.constituteproject.org/constitution/Moldova_2016.pdf?lang=en).

<sup>17</sup> Romania's Constitution of 1991 with Amendments through 2003, consulted on the 29<sup>th</sup> of September 2020, [https://www.constituteproject.org/constitution/Romania\\_2003.pdf?lang=en](https://www.constituteproject.org/constitution/Romania_2003.pdf?lang=en).

<sup>18</sup> Andorra's Constitution of 1993, consulted on the 28<sup>th</sup> of September 2020, [https://www.constituteproject.org/constitution/Andorra\\_1993.pdf?lang=en](https://www.constituteproject.org/constitution/Andorra_1993.pdf?lang=en).

imprescriptible rights of the individual”<sup>19</sup>. The same approach may be observed in the 1995 Constitution of Azerbaijan. In its preamble is mentioned that the objectives of this state can only be achieved if “justice, freedom, security, and being aware of their responsibility before past, present, and future generations” are respected<sup>20</sup>.

The idea that the State is tasked with promoting justice in society may also be found in the Spanish Constitution of 1978<sup>21</sup> and in the Finnish Constitution of 1999<sup>22</sup>. Concerning the latter, it might be just a linguistic peculiarity, however it is interesting to note that, according to the dispositions of Section 1 of the same act, the Finnish Republic *guarantees* “the inviolability of human dignity and the freedom and rights of the individual” and *promotes* justice. In this authors opinion, one should not read too much into this difference, as the terminology is not meant to underline a diminished importance of the notion of justice in the Finnish constitutional order.

All the previous examples serve, *inter alia*, the purpose of proving that there are multiple ways of phrasing the inclusion of justice as a value, as a principle, in the constitutional order of a state. A more direct statement may be found in the preamble of the 1997 Polish Constitution, where it is explicitly written that the basic law of the State is based on the respect for justice<sup>23</sup>. This kind of approach would certainly fit the idea of democracy promoted by Alexis de Tocqueville, as it is more often than not viewed as a precondition for the respect of fundamental human rights and liberties<sup>24</sup>.

At this point, it should be underlined the fact that all the cases mentioned in the previous paragraphs are relevant for both the internal and external policies of the State. The fact that justice is revered by a society as a universal value has to be analysed in the context of a modern, globalised and internationally dynamic world. Greece, for example, elected to emphasize this in art. 2.2 of its 1975 Constitution by declaring that “adhering to the generally recognised rules of international law, pursues the strengthening of peace and of justice, and the fostering of friendly relations between peoples and States”<sup>25</sup>. In a comparable manner, art. 29.1 of the Irish Constitution of 1937 affirms the devotion of the

<sup>19</sup> *Ibidem*.

<sup>20</sup> Azerbaijan’s Constitution of 1995 with Amendments through 2016, consulted on the 28<sup>th</sup> of September 2020, [https://www.constituteproject.org/constitution/Azerbaijan\\_2016.pdf?lang=en](https://www.constituteproject.org/constitution/Azerbaijan_2016.pdf?lang=en).

<sup>21</sup> Spain’s Constitution of 1978 with Amendments through 2011, consulted on the 30<sup>th</sup> of September 2020, [https://www.constituteproject.org/constitution/Spain\\_2011.pdf?lang=en](https://www.constituteproject.org/constitution/Spain_2011.pdf?lang=en).

<sup>22</sup> Finland’s Constitution of 1999 with Amendments through 2011, consulted on the 28<sup>th</sup> of September 2020, [https://www.constituteproject.org/constitution/Finland\\_2011.pdf?lang=en](https://www.constituteproject.org/constitution/Finland_2011.pdf?lang=en).

<sup>23</sup> Poland’s Constitution of 1997 with Amendments through 2009, consulted on the 29<sup>th</sup> of September 2020, [https://www.constituteproject.org/constitution/Poland\\_2009.pdf?lang=en](https://www.constituteproject.org/constitution/Poland_2009.pdf?lang=en).

<sup>24</sup> N. Popa et al., *op.cit.*, p. 459 – 464.

<sup>25</sup> Greece’s Constitution of 1975 with Amendments through 2008, consulted on the 27<sup>th</sup> of September 2020, [https://www.constituteproject.org/constitution/Greece\\_2008.pdf?lang=en](https://www.constituteproject.org/constitution/Greece_2008.pdf?lang=en).

country "to the ideal of peace and friendly co-operation amongst nations founded on international justice and morality"<sup>26</sup>. On a similar note, according to art. 135 of its 1992 Constitution, Lithuania "shall contribute to the creation of the international order based on law and justice"<sup>27</sup>. Art. 7 of the Portuguese Constitution of 1976 contains provisions resembling those already mentioned<sup>28</sup>.

In all the aforementioned examples it could be argued that justice is regarded as part of the general principles of those legal systems. In turn, this would mean that the notion is transformed. It is no longer only a vague, morally validated idea, but it becomes a guiding factor for the entire legal system. In one author's opinion, a legal principle is a rule of the positive law, often expressed in writing, always in jurisprudence, having a degree of generality<sup>29</sup>. In another author's idea, a legal principle is a central idea which serves as a basis for the related legal norms<sup>30</sup>. What these definitions actually show is that justice as a legal principle is actually used in practice. They are invoked in the courts, in dealings with the public administration, in international relations etc. Moreover, justice as a value is usually proclaimed together with human rights, rule of law, democracy, peace and security. These Constitutions acknowledge that these notions are autonomous, that they can and should coexist because they are in a relation of interdependency. Most of them are almost never defined, but, at least, they are not confounded.

These relations of interdependency is indicated, for example, by the 2007 Constitution of Montenegro. According to the provisions of art. 88, the Protector of Human Rights and Liberties of Montenegro has to respect the principles of justice and fairness in order to achieve its objectives<sup>31</sup>.

However, one could also draw another conclusion from the analysis of the cited provisions. The idea of justice as a value or as principle is not clearly defined. No one could contradict the fact that it has a relative meaning, dependent on the significations given to the other values and principles, like dignity or human rights<sup>32</sup>. However, as we have seen, there is no shortage of interpretations, both in the legal doctrine and in the legal systems. Under these conditions, if justice is relatively defined at best, how can a general principle of justice actually influence clear, predictable legal effects.

All these being said, one could certainly believe that the 48 examined

<sup>26</sup> Ireland's Constitution of 1937 with Amendments through 2019. *op.cit.*

<sup>27</sup> Lithuania's Constitution of 1992 with Amendments through 2019, consulted on the 28<sup>th</sup> of September 2020, [https://www.constituteproject.org/constitution/Lithuania\\_2019.pdf?lang=en](https://www.constituteproject.org/constitution/Lithuania_2019.pdf?lang=en).

<sup>28</sup> Portugal's Constitution of 1976 with Amendments through 2005, consulted on the 29<sup>th</sup> of September 2020, [https://www.constituteproject.org/constitution/Portugal\\_2005.pdf?lang=en](https://www.constituteproject.org/constitution/Portugal_2005.pdf?lang=en).

<sup>29</sup> L. Barac, *op.cit.*, p. 253..

<sup>30</sup> Simona Cristea, *Teoria Generală a Dreptului*, 3, C.H. Beck, București, 2019, p. 12..

<sup>31</sup> „Montenegro's Constitution of 2007 with Amendments through 2013”, [https://www.constituteproject.org/constitution/Montenegro\\_2013.pdf?lang=en](https://www.constituteproject.org/constitution/Montenegro_2013.pdf?lang=en).

<sup>32</sup> Dan Claudiu Dănișor et al., *Teoria generală a dreptului*, C.H. Beck, București, 2006, p. 100.

constitutions prove that the idea of justice is universally acknowledged in a general sense, without being influenced by what Carl von Savigny would call *Volksgeist*. In the following paragraphs, the contrary will be demonstrated.

Estonia affirms in its 1992 Constitution that the country is founded on "liberty, justice and rule of law"<sup>33</sup>, with the observance of the the ideals proclaimed by the Estonian people on the 24<sup>th</sup> of February 1918 and the fundamental norms created in 1992. Sharing a similar historical background due to of communism, Hungary also embraces the idea of justice as a common goal of all its citizens, according to the preamble of its 2011 Constitution<sup>34</sup>. In art. 1.3 of its Constitution from 1991, Romania links the idea of justice as a supreme value to the realities of the Revolution of December 1989, which marked the fall of the Communist Regime<sup>35</sup>. In a similar manner, in the preamble to its Constitution of 1993, the Russian Federation pays an homage to the "*ancestors who have passed on to us their love for the Fatherland and faith in good and justice*"<sup>36</sup>, thus invoking the legacy of the Second World War.

It is worth mentioning that out of all the States with a Christian majority, only Poland creates a direct link between justice as a fundamental value and a religious faith. It is mentioned in the preamble of its 1997 Constitution that „(...) *both those who believe in God as the source of truth, justice, good and beauty, as well as those not sharing such faith but respecting those universal values as arising from other sources (...)*"<sup>37</sup>. Therefore, an interesting concept is being promoted by the Polish legal system. Justice becomes a legal notion, standardised in the legal system, but this does not mean that it is not linked or that it does not respect the various religious, cultural and/or moral standards imposed by the different perspectives on life in existence in the Polish society.

On the same note, it is interesting to discover that, according to art. 130 of the Afghan Constitution, the applicability of the State law and/or of the religious law has to be set in a manner which „attains justice in the best manner"<sup>38</sup>. In this particular case, the notion of justice, even if undefined, seems to be viewed as a common denominator between the two mains types of norms.

In light of the previous paragraphs, it might come as a surprise that there are some states which have elected to include in their constitutions a provision

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<sup>33</sup> „Estonia’s Constitution of 1992 with Amendments through 2015”, [https://www.constituteproject.org/constitution/Estonia\\_2015.pdf?lang=en](https://www.constituteproject.org/constitution/Estonia_2015.pdf?lang=en).

<sup>34</sup> „Hungary’s Constitution of 2011 with Amendments through 2016”, [https://www.constituteproject.org/constitution/Hungary\\_2016.pdf?lang=en](https://www.constituteproject.org/constitution/Hungary_2016.pdf?lang=en).

<sup>35</sup> „Romania’s Constitution of 1991 with Amendments through 2003”.

<sup>36</sup> „Russian Federation’s Constitution of 1993 with Amendments through 2014”, [https://www.constituteproject.org/constitution/Russia\\_2014.pdf?lang=en](https://www.constituteproject.org/constitution/Russia_2014.pdf?lang=en).

<sup>37</sup> „Poland’s Constitution of 1997 with Amendments through 2009”.

<sup>38</sup> „Afghanistan’s Constitution of 2004”, [https://www.constituteproject.org/constitution/Afghanistan\\_2004.pdf?lang=en](https://www.constituteproject.org/constitution/Afghanistan_2004.pdf?lang=en).

regarding the fact that justice can *only* be administered by the judiciary. Such is the case for Andorra (art. 85.1<sup>39</sup>). Likewise, the 1995 Constitution of Azerbaijan states that justice is administered before the law and the court (art. 127 par. IV)<sup>40</sup>. Belarus inserted a similar provision in art. 112 of its 1994 Constitution<sup>41</sup>. Estonia has the same provision in art. 146 of its 1992 Constitution<sup>42</sup>, while Lithuania included it in art. 109 of its 1992 Constitution, Moldova in art. 114 of its 1994 Constitution, the Russian Federation in art. 118 of its 1993 Constitution and there is also art. 124 of the Ukrainian Constitution of 1996.

If one was to examine these dispositions in light of the legal philosophy of Kelsen, Hart and MacCormick, the spirit of these norms would actually fall in line with their ideas about how a legal system should work. It could also be argued that such a narrow usage of the notion of justice actually prevents any confusions regarding its meaning. Despite all these, from a practical standpoint, we have to criticize such a solution. We have showed that the legal norms do not function in a vacuum. This is why, no matter what a legislator or even a constituent assembly inserts in a legal text, many citizens will continue to view the idea of justice through the lenses of their moral, religious or cultural norms. This is especially true if the legal system in itself also acknowledges the notion of justice as a general principle of the law, thus opening the door for influences from non-legal realms. Under these conditions, such an option, which has the apparent advantage of simplicity, presents the the main disadvantage of creating an artificial, even conflictual, medium for the notion of justice by preventing its complete acceptance by the civil society. As it was already mentioned in two Romanian Constitutional Court Justices<sup>43</sup>, a legal system which ignores the generally accepted moral norms is built on shifting sands. In the same spirit, a legal system which chooses to use the notion of justice only in reference to its judiciary, ignoring the fact that the society utilises it in a much broader sense, is condemned to be, at least partially and/or temporarily, artificial.

In a more cautious manner, one should note that there are states which opted for the same usage of the word, but without mentioning that justice may be served *only* by a group of authorized bodies. In such cases, one could argue that the constitutional approach may be applied without undue friction between the possible meanings of the concept. For example, in the 1960 Constitution of Cyprus the notion of justice appears 10 times, only in relation to the judiciary or

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<sup>39</sup> „Andorra’s Constitution of 1993”.

<sup>40</sup> „Azerbaijan’s Constitution of 1995 with Amendments through 2016”.

<sup>41</sup> „Belarus’s Constitution of 1994 with Amendments through 2004”, [https://www.constituteproject.org/constitution/Belarus\\_2004.pdf?lang=en](https://www.constituteproject.org/constitution/Belarus_2004.pdf?lang=en).

<sup>42</sup> „Estonia’s Constitution of 1992 with Amendments through 2015”.

<sup>43</sup> Ioan Muraru, Elena Simina Tănăsescu, *Drept constituțional și instituții politice*, 13, C.H. Beck, București, 2008, p. 7 - 8.

its activity<sup>44</sup>. Other examples are Section 99 of the 1999 Finnish Constitution, art. 59.3 of the Georgian Constitution of 1995, art. 87.1 of the 1975 Greek Constitution, art. 25 of the Hungarian Constitution of 2011, art. 34.1 of the 1937 Irish Constitution, art. 101 of the 1947 Italian Constitution, art. 112 of the Dutch Constitution of 1814<sup>45</sup>, art. 175 of 1997 Constitution of Poland, art. 202 of the Portuguese Constitution of 1976, art. 124 and 126 of the 1991 Romanian Constitution, art. 141 of the Slovak Constitution of 1992<sup>46</sup> and art. 8 of the 1974 Constitution of Sweden<sup>47</sup>.

There are also Constitutions which use the notion of justice especially in relation to the activity of judiciary body, but omit any kind of reference to justice as a fundamental value or as a base for statehood. It is surely interesting or even intriguing that such a country is Belarus, known these days as the last European dictatorship. However, this absence should not be viewed as indicative of a certain political orientation. Belgium has a similar Constitution and it employs the notion of justice only in relation to the activity of its judiciary organs<sup>48</sup>. Cyprus made the same choice in 1960, Slovakia in 1992 and the Czech Republic in 1993<sup>49</sup>.

The case of the Slovenian Constitution of 1991 is interesting enough to be mentioned separately. The idea of justice is mentioned only once, in art. 137, where it is stated that "attorneyship is an independent service within the system of justice"<sup>50</sup>. This single remark would support the idea that Slovenia, like the other countries mentioned in the previous two paragraphs, prefers to use the word as a reference to its judiciary system, not as an independent value. However, without a more detailed study, one could only chancily reach such a conclusion.

In all the aforementioned cases, one constant remains true. If a legal system chooses to use the idea of justice only or predominantly in connection with an ensemble of public authorities, this will also shape the notions of just and unjust(ice). As it was previously noticed in the legal literature<sup>51</sup> with respect to a more general context, just shall have the meaning of legal (in accordance with the

<sup>44</sup> „Cyprus’s Constitution of 1960 with Amendments through 2013”, [https://www.constituteproject.org/constitution/Cyprus\\_2013.pdf?lang=en](https://www.constituteproject.org/constitution/Cyprus_2013.pdf?lang=en).

<sup>45</sup> „Netherlands’s Constitution of 1814 with Amendments through 2008”, [https://www.constituteproject.org/constitution/Netherlands\\_2008.pdf?lang=en](https://www.constituteproject.org/constitution/Netherlands_2008.pdf?lang=en).

<sup>46</sup> „Slovakia’s Constitution of 1992 with Amendments through 2017”, [https://www.constituteproject.org/constitution/Slovakia\\_2017.pdf?lang=en](https://www.constituteproject.org/constitution/Slovakia_2017.pdf?lang=en).

<sup>47</sup> „Sweden’s Constitution of 1974 with Amendments through 2012”, [https://www.constituteproject.org/constitution/Sweden\\_2012.pdf?lang=en](https://www.constituteproject.org/constitution/Sweden_2012.pdf?lang=en).

<sup>48</sup> „Belgium’s Constitution of 1831 with Amendments through 2014”, [https://www.constituteproject.org/constitution/Belgium\\_2014.pdf?lang=en](https://www.constituteproject.org/constitution/Belgium_2014.pdf?lang=en).

<sup>49</sup> „Czech Republic’s Constitution of 1993 with Amendments through 2013”, [https://www.constituteproject.org/constitution/Czech\\_Republic\\_2013.pdf?lang=en](https://www.constituteproject.org/constitution/Czech_Republic_2013.pdf?lang=en).

<sup>50</sup> „Slovenia’s Constitution of 1991 with Amendments through 2016”, [https://www.constituteproject.org/constitution/Slovenia\\_2016.pdf?lang=en](https://www.constituteproject.org/constitution/Slovenia_2016.pdf?lang=en).

<sup>51</sup> Lidia Barac, *Elemente de Teoria Dreptului*, p. 15..

law), while unjust shall be read more often than not as illegal or illicit. However, this remark is only applicable to the legal discourse, which represents only a very small part of the public discourse. In Romanian, for example, it is believed that the legal vocabulary has about 10.000 words, many of them shared with the common vocabulary<sup>52</sup>.

In this point, it could be mentioned that the notion of constitutional justice, in this context only achievable through the activity of the Constitutional Court, may be found in only one of the studied documents, more precisely in the Armenian Constitution of 1995 (art. 167).

So far, this paper has presented the two main meanings of the concept in the legal theory of the last two hundred years and it demonstrated that these two directions have been embraced and adapted by the majority the European States. Given what has been already said, one could safely proceed to examine how the notion has been adapted in order to answer the specific needs of some of these countries.

For example, the relation between the notion of justice and the legislative authority or authorities is certainly a broad and important topic for any society which hopes to become a constitutional democracy. Despite this simple, rather obvious fact, only a few of the consulted constitutional documents actually include explicit provisions on the subject. For example, Section 29 of the Finnish Constitution of 1999 states that a member of the parliament (a representative) "is obliged to follow justice and truth in his or her office"<sup>53</sup>.

These being said, one should notice that the provisions mentioned in the previous paragraph are meant to guide, to hint. They are principles, but their only effects depend on the will of the elected officials of Finland. If broken, one could ask if the at fault MP may be held accountable for the breach of a legal norm, not simply from political point of view. In truth, one might argue that such norms do not limit the power of anyone. Would it be possible to have a stronger disposition? Yes, of course, but for that one would have to make transition from the rights and responsibilities of a representative to the actual limits which govern the exercise of the public power. In this sense, the idea that justice is a principle strong enough to limit the sovereignty of a State is acknowledged by only one single country, Italy. In art. 11 of its 1947 Constitution, "agrees, on conditions of equality with other States, to the limitations of sovereignty that may be necessary to a world order ensuring peace and justice among the Nations"<sup>54</sup>. The provision may be regarded as flexible from an optimistical point of view or, if a more realistic approach is preferred, as vague. Justice among

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<sup>52</sup> Simona Cristea, *Teoria Generală a Dreptului*, 3, C.H. Beck, București, 2019, p. 74.

<sup>53</sup> Finland's Constitution of 1999 with Amendments through 2011, *op.cit.*

<sup>54</sup> Italy's Constitution of 1947 with Amendments through 2012, consulted on the 28<sup>th</sup> of September 2020, [https://www.constituteproject.org/constitution/Italy\\_2012.pdf?lang=en](https://www.constituteproject.org/constitution/Italy_2012.pdf?lang=en).

nations might mean only international justice, a human rights culture, the recognition of the right to self-determination or an indefinite number of various other things.

A slightly different perspective may be found in the German Constitution of 1949, art. 20 stating that "the legislature shall be bound by the constitutional order, the executive and the judiciary by law and justice"<sup>55</sup>. One could legitimately wonder why the principle of justice is applicable to the executive power, but not to the legislative one.

If one considers the legal philosophy of the last two millennia, the idea that the notion of justice can and should be analysed in relation to various domains reserved at an institutional level for the executive and legislative branches of state seems clear. However, only a few European Constitutions seem to be interested in regulating these crucial points of contact. For example, art. 267 of the Portuguese Constitution of 1976 stipulates that administrative bodies and agents have to carry out their task "with respect for the principles of equality, proportionality, justice, impartiality and good faith"<sup>56</sup>. In another example, the Austrian Constitution is an exception, as it does state that "democracy, humanity, solidarity, peace and justice as well as openness and tolerance towards people are the elementary values of the school"<sup>57</sup> (art. 14.5a). The latter example is also interesting because, in comparison with other constitutions, the Austrian one is rather silent when it comes to promoting justice as a fundamental value.

The same may be said for the role of justice in directing the policies of the state regarding the preservation of the natural resources and/or environment for the future generations.

Art. 20a of the German Constitution seems to be the only constitutional norm dedicated *expressis verbis* to this subject and even in this case, it only states that such policies have to be "in accordance with law and justice"<sup>58</sup>.

A similar discussion could be made in relation to the monarchies, principalities and similar European countries. One could start with the example of the 1953 Danish Constitution. Denmark is one of the countries which chose to use the idea of justice only in relation to its judiciary bodies. However, Denmark is a monarchy, which brings up the question of the relation between the monarch and his or her right to rule on one hand, and the right of State to administer justice. Alas, the letter of the norm offers little help and the Constitution is rather silent on the subject. With the exception of Part I.3., where it is stated that the

<sup>55</sup> Germany's Constitution of 1949 with Amendments through 2014, *op.cit.*

<sup>56</sup> Portugal's Constitution of 1976 with Amendments through 2005, *op.cit.*

<sup>57</sup> Austria's Constitution of 1920, Reinstated in 1945, with Amendments through 2013, consulted on the 17<sup>th</sup> of September 2020, [https://www.constituteproject.org/constitution/Austria\\_2013.pdf?lang=en](https://www.constituteproject.org/constitution/Austria_2013.pdf?lang=en).

<sup>58</sup> Germany's Constitution of 1949 with Amendments through 2014. *op.cit.*

judicial power shall be vested only in the courts of justice<sup>59</sup>. A more classical approach may be found in art. 49 of the 1868 Constitution of Luxembourg, which affirms that justice is served in the name of the Grand Duke<sup>60</sup>. Similarly, in art. 95.1 of the 1921 Constitution of Lichtenstein, where it is stated that „the whole administration of justice shall be carried out in the name of the Prince Regnant and the People by responsible judges appointed by the Prince Regnant”<sup>61</sup>. It should be noted that the powers of the Prince Regnant of Liechtenstein have been increased recently, following a referendum organised in 2003. However, these changes have not affected neither the idea of justice, nor the independence of the judicial system. According to art. 63 of the same document, the Parliament has the right of control over the administration of justice.

The wording chose for art. 88 of the 1964 Constitution of Monaco is even clearer. One should remember that Monaco is a Western European Micro-State, situated in the South of France. Like Liechtenstein, Belgium and Luxembourg, it is not a simple republic. Monaco is a Principality and, in the tradition of such countries, the “judicial power vests in the Prince, who delegates its full exercise to the courts and tribunals”<sup>62</sup>. A similar modern adaptation of the medieval principle may be found in the in effect Spanish Constitution. According to section 117.1, “justice emanates from the people and is administered on behalf of the King by judges and magistrates members of the Judicial Power who shall be independent (...)”<sup>63</sup>.

All the constitutional documents mentioned so far prefer to explicitly use the notion of justice in reference to the judiciary and/or constitutional courts of the respective State. At the other end of this spectrum is the 1995 Constitution of Bosnia and Herzegovina. This fundamental document only mentions the word once, in its preamble, stating that “the constitutional effort is animated by a sense of dedication to peace, justice, tolerance and reconciliation”<sup>64</sup>. In the same sense, the Latvian Constitution of 1922 only uses the notion of justice in its preamble, where it stated that a cohesive society may only exist if its citizens value loyalty towards justice<sup>65</sup>. In a similar manner, the 2007 Constitution of Montenegro does

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<sup>59</sup> Denmark’s Constitution of 1953”, consulted on the 28<sup>th</sup> of September 2020, [https://www.constituteproject.org/constitution/Denmark\\_1953.pdf?lang=en](https://www.constituteproject.org/constitution/Denmark_1953.pdf?lang=en).

<sup>60</sup> Luxembourg’s Constitution of 1868 with Amendments through 2009, consulted on the 29<sup>th</sup> of September 2020, [https://www.constituteproject.org/constitution/Luxembourg\\_2009.pdf?lang=en](https://www.constituteproject.org/constitution/Luxembourg_2009.pdf?lang=en).

<sup>61</sup> Liechtenstein’s Constitution of 1921 with Amendments through 2011, consulted on the 29<sup>th</sup> of September 2020, [https://www.constituteproject.org/constitution/Liechtenstein\\_2011.pdf?lang=en](https://www.constituteproject.org/constitution/Liechtenstein_2011.pdf?lang=en).

<sup>62</sup> Monaco’s Constitution of 1962 with Amendments through 2002”, consulted on the 30<sup>th</sup> of September 2020, [https://www.constituteproject.org/constitution/Monaco\\_2002.pdf?lang=en](https://www.constituteproject.org/constitution/Monaco_2002.pdf?lang=en).

<sup>63</sup> Spain’s Constitution of 1978 with Amendments through 2011, *op.cit.*

<sup>64</sup> Bosnia and Herzegovina’s Constitution of 1995 with Amendments through 2009, consulted on the 27<sup>th</sup> of September 2020, [https://www.constituteproject.org/constitution/Bosnia\\_Herzegovina\\_2009.pdf?lang=en](https://www.constituteproject.org/constitution/Bosnia_Herzegovina_2009.pdf?lang=en).

<sup>65</sup> Latvia’s Constitution of 1922, Reinstated in 1991, with Amendments through 2016, consulted on the 29<sup>th</sup> of September 2020, [https://www.constituteproject.org/constitution/Latvia\\_2016.pdf?lang=en](https://www.constituteproject.org/constitution/Latvia_2016.pdf?lang=en).

not utilise the notion of justice in order to describe the mandate of the judiciary, but only as a principle which has to be always observed by the State<sup>66</sup>. In our opinion, this choice is more technical in nature and it should not be interpreted as significative from a substantial point of view. All these countries have a judiciary system tasked with the administration of justice, even if this aspect is not mentioned *expressis verbis* in their constitutional documents.

Last, but not least, there is the possibility of having a Constitution which does not use the word "justice" even once. Such is the case of the 1944 Constitution of Iceland. According to art. 2, judges exercise judicial power, while according to art. 61 they are guided solely by the law<sup>67</sup>. For the purpose of this article, the English version of the Icelandic Constitution was used, so the possibility remains that a synonym of the word justice may be found in the original text. In fact, as Iceland has a Ministry of Justice<sup>68</sup>, it would be an exaggeration to read too much into this exception. However, the fact that this small, insular state does not presume, at least not explicitly, to equate the concept of justice as a general principle of the law with the administration justice through its judges is surely an interesting exception.

So far, the notion of justice has been analysed through the lenses of the Constitutions of states which embrace the current, modern, European idea of a democracy, at least when it comes to declarations. The large majority of the countries cited in this paper promote a culture of human rights in accordance with the European Convention of Human Rights and the principle of rule of law. Consequently, one would naturally draw the conclusion that the idea of justice can only exist in such a political context. Nothing could be further from the truth. The notions of democracy, human rights, rule of law, justice and many more are autonomous. One can simply open a historical treaty to find many examples of societies where one or more of these concepts can exist without the other. The fact that we are now regarding these ideas as intertwined does not mean one is unable to exist, evolve and be defined separately from the others. In this sense, Turkey is the perfect example, as it is a State which openly opposes the ECHR, which promotes nationalism and values the importance of religion in the political and legal systems. For example, according to art. 2 of its 1982 Constitution, this is "*a democratic, secular and social state governed by rule of law, within the notions of public peace, national solidarity and justice, respecting human rights, loyal to the nationalism of Atatürk (...)*"<sup>69</sup>. As we

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<sup>66</sup> Montenegro's Constitution of 2007 with Amendments through 2013".

<sup>67</sup> Iceland's Constitution of 1944 with Amendments through 2013, consulted on the 29<sup>th</sup> of September 2020, [https://www.constituteproject.org/constitution/Iceland\\_2013.pdf?lang=en](https://www.constituteproject.org/constitution/Iceland_2013.pdf?lang=en).

<sup>68</sup> <https://www.government.is/ministries/ministry-of-justice/>, consulted on the 30<sup>th</sup> of September 2020.

<sup>69</sup> Turkey's Constitution of 1982 with Amendments through 2017, consulted on the 30<sup>th</sup> of September 2020, [https://www.constituteproject.org/constitution/Turkey\\_2017.pdf?lang=en](https://www.constituteproject.org/constitution/Turkey_2017.pdf?lang=en).

have previously seen in the cases of Poland and Azerbaijan, an undefined idea of justice may be easily understood in the key of different sets of values. When cultures clash because they have fundamental values which are different enough, their definitions of justice may also become antagonistic.

Even so, the lack of a legal definition for the notion of justice in the in the light of a specific set of norms might not be as troubling if the notion would simply refer to a certain number of public authorities and their attributions. However, the issue is not as simple as that. For example, the Estonian Constitution of 1992 indicates in art. 45 that both the freedom of the press and the freedom of expression may be restricted in the interests of justice<sup>70</sup>. The 1996 Constitution of Ukraine includes in art. 34 similar provisions concerning the freedoms of opinion, of the press and of expression<sup>71</sup>. If justice as a value or as a constitutional principle is not defined, than the notion of interests of justice can only mean one thing: the interests of a certain number public authorities. If those authorities are properly regulated, this is not a problem. Nonetheless, if their legal mandate, especially their objectives, are similarly vague, the lack of a properly defined right to censorship based on an elusive ideal of justice may quickly become an issue. One should remember that both Oliver Wendell Holmes Jr. and H.L.A. Hart forewarned that when a norm is unclear in relation to a certain circumstance, the public authority asked to apply that norm gains an unexpected degree of power, more often than not uncontrollable *post factum*.

According to art. 14 of the Georgian Constitution of 1995, freedom of movement may be restricted for the protection of the administration of justice, insofar as is necessary in a democratic society<sup>72</sup>. The same provision may be found in art. 32 of the Lithuanian Constitution of 1992<sup>73</sup>. This might be perceived as a second example, a strengthening argument for the idea analysed in the previous paragraph. It is not. Quite the opposite, in fact. The Georgian norm is much clearer than the Estonian one because the former is clearly referring to an ensemble of preventive measures which may be imposed within the limits of a judicial procedure, especially in criminal procedures. In a similar manner, art. 31.3 of the 2008 Kosovar Constitution allows the judicial courts to limit the right to a public trial in the interest of justice<sup>74</sup>. In this case, one could refer to the protection of the superior interest of a minor or to the protection of other values,

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<sup>70</sup> Estonia's Constitution of 1992 with Amendments through 2015. *op.cit.*

<sup>71</sup> Ukraine's Constitution of 1996 with Amendments through 2016, consulted on the 30<sup>th</sup> of September 2020, [https://www.constituteproject.org/constitution/Ukraine\\_2016.pdf?lang=en](https://www.constituteproject.org/constitution/Ukraine_2016.pdf?lang=en).

<sup>72</sup> Georgia's Constitution of 1995 with Amendments through 2018, consulted on the 27<sup>th</sup> of September 2020, [https://www.constituteproject.org/constitution/Georgia\\_2018.pdf?lang=en](https://www.constituteproject.org/constitution/Georgia_2018.pdf?lang=en).

<sup>73</sup> Lithuania's Constitution of 1992 with Amendments through 2019, *op.cit.*

<sup>74</sup> Kosovo's Constitution of 2008 with Amendments through 2016, consulted on the 30<sup>th</sup> of September 2020, [https://www.constituteproject.org/constitution/Kosovo\\_2016.pdf?lang=en](https://www.constituteproject.org/constitution/Kosovo_2016.pdf?lang=en).

like the life of a threatened witness or the dignity of a victim of domestic violence. A comparable set of provisions may be found in art. 39 of the 1964 Maltese Constitution<sup>75</sup>. The recognition and limitations of the right to a free council may also be determined according to the interests of justice, at least under the provisions of art. 33 of the 2006 Serbian Constitution<sup>76</sup>.

The Irish Constitution of 1937 provides us with another example of such ambiguous utilisation of an undefined notion of justice. According to art. 34.5, in a few very specific cases, the competence of the Irish Supreme Court depends on what is understood by the expression of „interests of justice”<sup>77</sup>. This provision is interesting especially because it does not refer to a possible infringement on a particular right or freedom, but it creates a very maleable way of allowing a public authority to influence the legal effects of socially important situations. As it was previously stated, such ambiguous norms are useful to a certain extent, as they provide flexibility to a rather rigid and heavily regulated system. However, it is important to note that these kinds of usages of an undefined concept of justice justify the need for clear counterbalancing norms, even if of inferior legal power.

In light of what has been said so far, one could safely assume that the possible applications of our subject have been mainly exhausted, but it would only be half true. There are two more meanings which have to be examined, as they are utilised by some of the constitutional texts under consideration for this paper. The ideas of social justice and injustice will be briefly addressed in the following two subsections.

### Social justice according to European Constitutions

According to the Oxford Dictionary of Environment and Conservation, by social justice one could understand “the objective of creating a fair and equal society in which each individual matters, their rights are recognized and protected, and decisions are made in ways that are fair and honest”<sup>78</sup>. This would seem a clear enough definition on its own, if one were to forget that, in reality, there are dozens of possible meanings. Unfortunately, in one author's words, it “is an idea without a precise referent”, more properly defined as a “way of pointing to a family of ideas”<sup>79</sup>. It is clearly linked to economic fairness and to the

<sup>75</sup> Malta's Constitution of 1964 with Amendments through 2016, consulted on the 29<sup>th</sup> of September 2020, [https://www.constituteproject.org/constitution/Malta\\_2016.pdf?lang=en](https://www.constituteproject.org/constitution/Malta_2016.pdf?lang=en).

<sup>76</sup> Serbia's Constitution of 2006, consulted on the 30<sup>th</sup> of September 2020, [https://www.constituteproject.org/constitution/Serbia\\_2006.pdf?lang=en](https://www.constituteproject.org/constitution/Serbia_2006.pdf?lang=en).

<sup>77</sup> Ireland's Constitution of 1937 with Amendments through 2019, *op.cit.*

<sup>78</sup> <https://www.oxfordreference.com/view/10.1093/oi/authority.20110803100515279>, consulted on the 30<sup>th</sup> of September 2020.

<sup>79</sup> Kenneth Minogue, *Social justice in theory and practice*, in David Boucher, Paul Kelly, *Social Justice. From Hume to Walzer.*, Routledge, London and New York, 1998, p. 255.

right to equality of opportunity, but it may also be used in relation to the division of labor in a company, in a public sector or even in a household. It may or it may not signify that a State offers different incentives to different minorities of vulnerable groups. Actually, the possible understandings are so diverse, that it may be used in relation to virtually any western system of social security.

Nevertheless, given the importance of the subject and the socialist past of many Eastern European countries, one may expect to encounter the concept of social justice in the constitutional documents under analysis in this paper. Indeed, the notion of social justice is utilized in the preamble of the Afghan Constitution of 2004. According to this document, creating a society which is based on social justice is one of the reasons for writing the document<sup>80</sup>. The notion is linked to the ideas of human dignity (art. 6) and also to tax law (art. 42).

The Turkish Constitution of 1982, in its preamble, affirms that the individual rights and freedoms should be exercised, *inter alia*, "in conformity with the requirements of equality and social justice"<sup>81</sup>. In paralel, in conformity with the provision of art. 5, the State has a fundamental duty "to strive for the removal of political, economic, and social obstacles which restrict the fundamental rights and freedoms of the individual in a manner incompatible with the principles of justice and of the social state governed by rule of law"<sup>82</sup>.

In a similar manner, the Armenian Constitution of 1995 stipulates in art. 11 that the economic order of the state is ensured by a State policy "aimed at general economic well-being and social justice"<sup>83</sup>. Also in the Caucasus region, Georgia recognizes the constitutional nature of the principle of social justice, as well as of the principles of social equality and social solidarity<sup>84</sup>. In another example, according to the preamble of the 1991 Constitution of the Republic of North Macedonia, the fundamental set of norms was drafted with the intention of providing "social justice, economic well being and prosperity in the life of the individual and the community"<sup>85</sup>. Humanism, social justice and solidarity are then restated as fundamental values of the Macedonian constitutional order in art. 8. In art. 3 of the Albanian Constitution of 1998 is stipulated that social justice is one of the bases of the state<sup>86</sup>. Likewise, art. 2 of the 1997 Constitution of

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<sup>80</sup> Afghanistan's Constitution of 2004, *op.cit.*

<sup>81</sup> Turkey's Constitution of 1982 with Amendments through 2017, *op.cit.*

<sup>82</sup> Turkey's Constitution of 1982 with Amendments through 2017, *op.cit.*

<sup>83</sup> Armenia's Constitution of 1995 with Amendments through 2015, consulted on the 27<sup>th</sup> of September 2020, [https://www.constituteproject.org/constitution/Armenia\\_2015.pdf?lang=en](https://www.constituteproject.org/constitution/Armenia_2015.pdf?lang=en).

<sup>84</sup> Georgia's Constitution of 1995 with Amendments through 2018, *op.cit.*

<sup>85</sup> North Macedonia (Republic of)'s Constitution of 1991 with Amendments through 2011, consulted on the 29<sup>th</sup> of September 2020, [https://www.constituteproject.org/constitution/Macedonia\\_2011.pdf?lang=en](https://www.constituteproject.org/constitution/Macedonia_2011.pdf?lang=en).

<sup>86</sup> Albania's Constitution of 1998 with Amendments through 2016, *op.cit.*

Poland affirms that the country is "a democratic State ruled by law and implementing the principles of social justice"<sup>87</sup>. Serbia included a similar provision in art. 1 of its 2006 Constitution<sup>88</sup>. Likewise, for Kosovo, one of the younger European States, social justice is one of the twelve fundamental principles which serve as a basis for the constitutional order, according to art. 7.1 of its 2008 Constitution<sup>89</sup>.

A more concrete approach to social justice may be found in the 1995 Azerbaijan Constitution. Art. 30 par. VI states that land ownership rights can be restricted for social justice-related considerations<sup>90</sup>. According to art. 35 of the 2001 Constitution of North Macedonia, the principle of social justice governs the provision of social protection and social security<sup>91</sup>. It should also be mentioned that this ideal is still important enough, given that it was restated in the fourth constitutional amendment. In 2006, Serbia also included in its Constitution a provision regarding the right to social protection and its correlation with the principle of social justice (art. 69)<sup>92</sup>.

Croatia is another country which elected to link the notion of social justice to the idea of constitutional order in an *expressis verbis* manner. Art. 3 of the 1991 Constitution enumerates social justice alongside other ten values recognized and protected by this instrument<sup>93</sup>. It should be noted that this document does not promote justice as one of the most important principles, but social justice. The notion of justice, in a non-economic context, is employed only in relation to the Croatian judiciary.

In another example, Estonia acknowledges that it has to observe the constitutional principle of social justice in order to balance the fundamental rights included in its 1992 Constitution with other individual rights, guaranteed by other normative acts<sup>94</sup>.

The Irish Constitution of 1937 is a bit more specific. In accordance with art. 43.2, the right to private property has to be regulated by the principle of social justice<sup>95</sup>. However, in a more general manner, the legislative activity of the Oireachtas has "to promote the welfare of the whole people by securing and protecting as effectively as it may a social order in which justice and charity shall

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<sup>87</sup> Poland's Constitution of 1997 with Amendments through 2009, *op.cit.*

<sup>88</sup> Serbia's Constitution of 2006, *op.cit.*

<sup>89</sup> Kosovo's Constitution of 2008 with Amendments through 2016, *op.cit.*

<sup>90</sup> Azerbaijan's Constitution of 1995 with Amendments through 2016, *op.cit.*

<sup>91</sup> North Macedonia (Republic of)'s Constitution of 1991 with Amendments through 2011, *op.cit.*

<sup>92</sup> Serbia's Constitution of 2006, *op.cit.*

<sup>93</sup> Croatia's Constitution of 1991 with Amendments through 2013, *op.cit.*, [https://www.constituteproject.org/constitution/Croatia\\_2013.pdf?lang=en](https://www.constituteproject.org/constitution/Croatia_2013.pdf?lang=en).

<sup>94</sup> Estonia's Constitution of 1992 with Amendments through 2015, *op.cit.*

<sup>95</sup> Ireland's Constitution of 1937 with Amendments through 2019, *op.cit.*

inform all the institutions of the national life"<sup>96</sup>. Thus, a direct link between the activity of the legislative authorities and social justice is formally created by a constitutional norm.

The preamble of the 2007 Constitution of Montenegro introduces the idea that social justice is only one key element of social growth, alongside the protection of the environment and sustainable, balanced development of all the regions of a country<sup>97</sup>. Moreover, art. 1 affirms that the country is "a civil, democratic, ecological and the state of social justice, based on the rule of law"<sup>98</sup>.

For Portugal, the promotion of social justice is one of the primary duties of the state. According to art. 81 of its Constitution from 1976, public authorities have to "ensure equal opportunity and carry out the necessary corrections to inequalities in the distribution of wealth and income, particularly by means of the fiscal policy"<sup>99</sup>. Even more specific, according to art. 104, consumer taxation has to be adapted in order to respect the principle of social justice (by increasing the increasing to cost of luxury items)<sup>100</sup>.

In light of all the cited examples, one could easily notice the fact the concept of social justice has crossed the realm of philosophical texts and it is now a real, political and legal institution. Unfortunately, the European constituent assemblies who elected to use the notion did not feel the need to to define it. Consequently, both the ideas of justice and social justice may only be understood through the key of painstakingly analysing the legal system as a whole. In this manner, one could establish the main understandings, but this does not remediate the main issue created by this oversight. We will analyse these aspects in the third section of the paper.

Before ending this section, it would also be interesting to consider that the notion of justice may be utilised in a national legislation in connection to social areas without being transformed into social justice. Art. 25.2 of the 1975 Greek Constitution is a perfect example, as it affirms that social progress *in freedom and justice* relies on the observance of human rights by the State<sup>101</sup>. Spain adopts a similar technique by affirming in section 1 of its 1978 Constitution that it is a "social and democratic State, subject to the rule of law, which advocates freedom, justice (...)"<sup>102</sup>.

## Injustice as a source of law

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<sup>96</sup> *Ibidem*.

<sup>97</sup> Montenegro's Constitution of 2007 with Amendments through 2013, *op.cit.*.

<sup>98</sup> *Ibidem*.

<sup>99</sup> Portugal's Constitution of 1976 with Amendments through 2005, *op.cit.*

<sup>100</sup> *Ibidem*.

<sup>101</sup> Greece's Constitution of 1975 with Amendments through 2008, *op.cit.*

<sup>102</sup> Spain's Constitution of 1978 with Amendments through 2011, *op.cit.*

One should also observe the fact that the idea of justice may be employed in another way. The European history is filled with bloody conflicts, innumerable abuses and a rather strained relationships between the State and the citizen. In this context, it should not come a surprise that there are states which actually prefer to use the notion of injustice in order to regulate the fundamental social relations.

As an example, it is stated in the preamble of the Afghan Constitution of 2004 that there is a need for such a set of norms, as one has to acknowledge "the previous injustices, miseries and innumerable disasters which have befallen" on the country<sup>103</sup>.

It was mentioned in a previous section that Hungary, like many other Eastern European countries, had to endure the political oppression of a communist regime. It is interesting to note that this genuine *Volksgeist* changed the perspective of its legal system regarding the notion of justice. Art. U of its 2011 Constitution introduces the idea that "a sense of justice" may only be achieved by the Hungarian society by confronting the abuses committed in the past<sup>104</sup>.

Finally, it is interesting to note that even in the absence of a totalitarian or conflictual past, injustice may be a source of legal obligations for the State. In this context, by injustice we understand an act which violates the rights and/or liberties of the individual. For example, if an injustice has occurred, according to art. 40.3 of the Irish Constitution of 1937, the competent public authorities are obligated to "*vindicate the life, person, goodname, and property rights of every citizen*"<sup>105</sup>. Also, the Constitution of Portugal from 1976 affirms the role of the Ombudsman in protecting the citizens against injustice (art. 23)<sup>106</sup>.

The 1814 Constitution of Norway is an interesting example as it references the idea of justice only twice. Once it's in correlation with the judiciary, which is rather normal by comparison with the rest of the European legal systems. However, the second time, in art. 75, it mentions the obligation of the State to make sure that no injustice is done against the individual citizen<sup>107</sup>. Thus, the notion of injustice is used in a context where the idea of justice as an ideal, as a principle or as a virtue is not defined, not even used. However, one could argue that it can certainly be found in the subtext, even if it has only a relative, contextually based meaning.

<sup>103</sup> Afghanistan's Constitution of 2004, *op.cit.*

<sup>104</sup> Hungary's Constitution of 2011 with Amendments through 2016, *op.cit.*

<sup>105</sup> Ireland's Constitution of 1937 with Amendments through 2019, *op.cit.*

<sup>106</sup> Portugal's Constitution of 1976 with Amendments through 2005, *op.cit.*

<sup>107</sup> „Norway's Constitution of 1814 with Amendments through 2016, consulted on the 29<sup>th</sup> of September 2020, [https://www.constituteproject.org/constitution/Norway\\_2016.pdf?lang=en](https://www.constituteproject.org/constitution/Norway_2016.pdf?lang=en).

### Final analysis and Conclusions

The notion of justice as a value or as a general principle, is mentioned, but it is not defined in the Constitutions and/or constitutional documents of Afghanistan, Albania, Andorra, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Georgia, Germany, Ireland, Italy, Kosovo, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Montenegro, North Macedonia, Norway, Poland, Portugal, Romania, the Russian Federation, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine and the United Kingdom. This means that 44 out of the 48 constitutional texts examined use an undefined concept in order to affirm one of the most important marks of a modern democratical state.

The notion of injustice is used, but it is not defined in the Constitutions of Afghanistan, Hungary, Norway and Portugal. This means that the idea of injustice, be it historical or present, collective or individual, may be found, undefined in 4 constitutions out of 48.

The notion of social justice is mentioned, but it is not defined in the constitutions of Afghanistan, Albania, Armenia, Azerbaijan, Croatia, Estonia, Georgia, Kosovo, Montenegro, North Macedonia, Poland, Portugal, Serbia and Turkey. Thus, social justice is regarded as a constitutional value by 14 States out of 48. Like in the previous case, the concept is definable only in relation to the rest of the legal system, including here the other constitutional provisions.

The main use of the word justice seems to be in relation with the judiciary in the constitutions and/or constitutional documents of Afghanistan, Albania, Andorra, Austria, Azerbaijan, Belarus, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Ireland, Italy, Kosovo, Lithuania, Norway, Poland, Romania, the Russian Federation, Serbia, Slovenia, Turkey and United Kingdom. This translates to 28 States out of 48 which prefer to notion mostly in relation to its judiciary, even if they acknowledge it or not as a general principle. This would be a normal conclusion, as the role of a constitutional document is to establish the ground rules for a state. How a State exercises its power is the most technical, time and space consuming task a constituent assembly has to face.

Armenia is an exception, as its Constitution seems to accept that justice can be administered both by the judiciary courts and by the Constitutional Court. However, it should be mentioned that only the English version of the Armenian Constitution was consulted. As this author does not speak Armenian, he must accept that this conclusion might change in light of the words used in the original language.

There are also the cases of Belarus, Belgium, Croatia, Cyprus, France,

Liechtenstein, Luxembourg, Malta, Monaco, The Netherlands, Slovakia, Slovenia, Sweden, Switzerland<sup>108</sup> and Ukraine, which use the notion of justice only in correlation with their judiciary bodies. This means that 15 States out of 48 have adopted legal philosophy closely related to the ideas of authors like Hans Kelsen, H.L.A. Hart and Neil MacCormick. It would be safe to assume, that, from a legal point of view, in these countries, justice is served when the legal norm is applied. It is a way of cutting the Gordian knot, but as it was shown in the first section of this paper, such a solution risks the creation of an artificial notion of justice in societies where norms of other nature are highly valued by the citizens.

Iceland is the only European State which does not utilise the notion of justice in its Constitution. It is not affirmed as a value and it is not used in correlation with its judiciary or its policies.

To our mind, if a value is established through constitutional provisions, its definition, comprising at least its main meaning, should also be the object of the same texts. The understanding of a constitutional principle should not rely on the legal norms of inferior legal power, emanating from various authorities under the temporarily control of one or another politician and/or party. Such a system of defining the constitutional values of a State allows for a degree of relativity easily exploitable for the benefit of political agendas marked by corruption and/or extreme ideologies.

This does not mean that all the European constitutions should embrace a rigid, highly detailed definition of the idea of justice, or for that matter of any other value or principle. A certain degree of flexibility has to exist in order to allow the society to add nuances to the concept, while respecting its core meaning. With all this, there is a difference between flexibility and ambiguity. The fact that Turkey, Belarus and the Russian Federation use the constitutional notions of justice, injustice and/or social justice in a virtually identical manner with Sweden, Germany and Switzerland is evidence enough in this sense.

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