

Contents

Part I Courts

1 The Model of Constitutional Review in Central and Eastern Europe: An Overview	3
1.1 The Emergence of the Current Model	4
1.2 The Powers of Constitutional Courts and Initiators of the Review Process	13
1.3 The Tenure and Selection of Judges	27
1.4 Constitutional Courts' Pursuit of a Monopoly Over Constitutional Adjudication	35
1.5 Conclusions	43
2 Constitutional Courts in Search of Legitimacy	45
2.1 The Legitimacy Dilemma	46
2.2 Constitutional Courts Between the Judicial and Legislative Branch	53
2.3 Why the "Continental" Model of Review: Reasons or Rationalisations?	61
2.4 Constitutional Courts as Protectors of Minorities?	84
2.5 Conclusions	89
3 The Model of Judicial Review and Its Implications	91
3.1 Abstract Review	91
3.2 Ex-post Review	102
3.3 Final Review	110
3.4 Conclusions	117
4 Constitutional Courts and Legislation	119
4.1 The Impact of Constitutional Courts on Law-Making	119
4.2 Determinants of the "Strength" of Judicial Review	123

4.3	Constitutional Court and the Parliamentary Minority	127
4.4	The Question of Judicial Activism and Restraint	130
4.5	Conclusions	141

Part II Rights

5	Judicial Review and Protection of Constitutional Rights	145
5.1	Two Theories About Judicial Review	147
5.2	The Fact-Sensitivity of a Theory of Judicial Review	153
5.3	Rights Protection and Disagreement About Rights	158
5.4	Prudence and Judicial Review	165
5.5	Conclusions	166
6	Personal, Civil and Political Rights and Liberties	167
6.1	A Right to Life and Dignity	168
6.2	Freedom of Religion	183
6.3	The Right to Privacy	199
6.4	Freedom of Movement and the Right to Choice of Residence	206
6.5	Citizenship and Voting Rights	210
6.6	Freedom of Petition, Assembly and Association	219
6.7	Freedom of Expression	231
6.8	Conclusions	250
7	Socio-economic Rights	253
7.1	Controversy Around Socio-economic Rights	256
7.2	Constitutional Catalogues of Socio-economic Rights	261
7.3	The Status of Socio-economic Rights	264
7.4	The Drawing of Distinctions Between Different Types of Rights by the Courts: Social Security Cases	267
7.5	The Right to Work	274
7.6	Rights to Health and Education	281
7.7	Conclusions	283
8	Equality and Minority Rights	289
8.1	Equality and Constitutional Review	290
8.2	Gender and Sexual Orientation Equality	295
8.3	Special Case of Affirmative Action	302
8.4	Minority Issues in Central and Eastern Europe: An Overview	304
8.5	Constitutional Design of Minority Rights: Group or Individual Rights?	308
8.6	Linguistic Rights	315
8.7	The Special Case of Minority Representation in Public Authorities	323
8.8	Conclusions	328

9	“Decommunisation”, “Lustration”, and Constitutional Continuity	329
9.1	Main Dilemmas Raised by Decommunisation and Lustration Laws	331
9.2	Lustration and Decommunisation in Central and Eastern Europe	343
9.2.1	The Radical Model: The Czech Republic	344
9.2.2	The Intermediate Model: Albania and the Baltic States	350
9.2.3	The Lenient Model: Poland, Hungary, Bulgaria and Macedonia	352
9.3	Retroactive Extensions of Statutes of Limitation	366
9.4	Conclusions: Transitional Justice and Constitutional Continuity	377
10	Restrictions of Rights	383
10.1	Constitutional Design of Limits on Rights	383
10.2	Constitutional Review of Statutory Limits on Rights: Proportionality Scrutiny	387
10.3	Other Standards of Rights Restrictions	401
10.4	Concluding Remarks on Rights Limitations	408
10.5	Postscript on Rights and Duties	411
	Conclusions	417
	General Literature	431
	Index	445

Rights Before Courts

A Study of Constitutional Courts in Postcommunist
States of Central and Eastern Europe

Sadurski, W.

2014, XX, 455 p., Hardcover

ISBN: 978-94-017-8934-9