Contents

Ackn	owledgements	V
Table	e of Cases	xiii
Table	e of European Treaties and European Legal Instruments	xxxvii
	e of Statutes	xxxix
		1
	oduction	1
Intro	ductory Definitions: Constitutional Interpretation and Constitutional Review ground: The Need for a Perspective Combining National and European	2
	Constitutional Law	3
,	ctives	5 6
Meth		9
	ninology	9
Struc	cture	
Chap	pter 1 Role of Non-Judicial Actors in Upholding the Constitution	11
28	Introduction	11
I. II.	1 0 1 1 0 1	12
11.	A. Councils of State	13
		14
	 i. Dutch Council of State (Raad van State) ii. Belgian Council of State (Conseil d'État / Raad van State) iii. The Dual Mandate of Councils of State in the light of the 	16
	European Convention on Human Rights	18
	B. Chancellors of Justice	20
III.	Parliament and its Committees	23
111.		23
	A. Opportunities for Parliament to Uphold the Constitution B. Parliament, its Chambers and its Committees	25
	i. Finland: Perustuslakivaliokunta	26
	ii. United Kingdom: House of Lords Constitution Committee	29
	C. Influence of the Presence of Other Actors in the Constitutional System	32
IV.	Heads of State	35
V.	The People	43
VI.	Concluding Remarks	50
Cha	pter 2	
The	Rise of Constitutional Adjudication	53
I.	Introduction	53
II.	The Notion of 'Constitutional Jurisdiction'	54
III.	Exploring the Reasons behind the Rise of Constitutional Adjudication	55

	A	. Avoiding Competence Collisions between State Bodies	55
		i. Belgium: From Cour d'arbitrage to Cour constitutionnelle	56
		ii. France: Conseil constitutionnel	57
	В	Guaranteeing Observance of the Rule of Law and Affording Protection to	
		Fundamental Rights	61
		i. Germany: Bundesverfassungsgericht	63
		ii. Italy: Corte costituzionaleiii. Spain: Tribunal Constitucional	65
		iv. Czech Republic: Ústavní Soud	67 69
		v. Poland: Trybunał Konstytucyjny	71
		vi. Hungary: Alkotmánybíróság	73
	C.	The Impact of the ECHR and of EU Membership	75
		i. Finland	76
IV.	Ви	acking the Trend? A Closer Look at the Approaches of the Netherlands and	
	th	e United Kingdom	79
	A.	The Netherlands	79
	В.	United Kingdom	83
V.	Co	oncluding Remarks and Some Brief Reflections on the Two European Courts	86
Cha	nter	• 3	
		es of Constitutional Adjudication and Access to Constitutional Courts	93
I.		troduction	93
II.	Th	ne Institutional Design of Constitutional Adjudication	94
III.	Fo	ur Purposes that May be Served by Constitutional Adjudication	97
	A.	Ensuring that the Legislature Does Not Overstep Constitutional Boundaries	99
		i. Abstract Constitutionality Challenges	99
		ii. Preliminary References	132
		iii. Abstract Interpretation of the Constitution	140
	В.	Protecting the Fundamental Rights of Individuals in Specific Cases	142
		i. Germany	143
		ii. Czech Republic	145
		iii. Spain iv. Hungary	146
		v. Poland	148
		vi. Comparative Remarks	150 151
	C.	Resolving Institutional Disputes	155
		: Enfancing d. M. d. I.D. I.	156
		ii Enfancing the II : . I D 1	163
	D.	Engine the Later in CD 111 1 0 00	168
		Hagging Flore 1 Diversity	169
		ii. Adjudicating Presidential Impeachment	172
		iii. Proscribing Political Parties	176
		iv. Examining the Regularity and Constitutionality of Referendums	191

	Final Comparative Remarks and Reflections on the Court of Justice	185
IV.	Final Comparative Remarks and Reflections on the Comments	185
	A. National Comparative Analysis: Some General Comments B. The Court of Justice in Comparative Perspective	189
	B. The Court of Justice in Comparative Tests of the Boundaries i. Ensuring that the Legislature Does Not Overstep its Boundaries i. Specific Cases	190
	. I Employed Rights of Matviauas in Specific Succession	193
	Horizontal Institutional Disputes	196
	- Integrate of Political Office and Related 1 10003503	201
	Oil Non Constitutional Functions Performed by the Court of	201
	Justice	201
	Justice	
Cha	pter 4	205
The	Constitutional Bench	205
I.	Introduction Procedures	206
II.	Selection and Appointment Procedures	210
III.	Number of Judges and Eligibility Criteria	210
	A. Number of Judges A. Number of Judges A. Number of Judges A. Number of Judges	211
	B. Qualifications that New Judges Must Possess	218
IV.		218
	A. Duration of Appointment	221
	R Removal from the Bench	223
V.	Final Comparative Remarks and Reflections on the Court of Justice	
Ch	apter 5	229
Ide	entifying the Sources of Standards for Constitutional Review	229
I.	Introduction	230
II.	Belgium: Cour constitutionnelle	235
III	Czech Republic: Ústavní Soud	239
IV	Germany: Bundesverfassungsgericht	243
V.	France: Conseil constitutionnel	249
VI	Hungary: Alkotmánybíróság	255
VI	II. Italy: Corte costituzionale	260
	III. Poland: Trybunał Konstytucyjny K. Spain: Tribunal Constitucional	262
IX X.	The Netherlands: Raad van State	264
X	flord Constitution Committee	266 268
	II. Finland: Perustuslakivaliokunta	269
X	III. European Union: Court of Justice	276
X	IV. Comparative Remarks	270
C	Chapter 6	281
T	esting and Remedying Unconstitutionality	281
I.		282
I	I. Deference Rhetoric	286
	II. Theory of the Living Law	291
T	V. Constitution-Conform Interpretation	

x CONTENTS

		292 294
	 i. Belgium: Restricting Party Financing on Fundamental Rights Grounds ii. The Czech Republic: Burden of Proof in Discrimination Cases iii. France: Security and Liberty 	294 296 297
	iv. Spain: Right to Assistance from Interpreters in Criminal CasesC. Evaluating the Technique of Constitution-Conform Interpretation	300 301
	D. The European Level: The Court of Justice	305
V.	Types of Judgment and their Effects	309
	A. Decision to Uphold the Statute B. Findings of Unconstitutionality	309 312
	i. General Features: Legal Effects, Partial Annulment and the Inclusion	
	of Legislative Guidelines ii. Timing and the Possibility of Deferring Annulment to a Later Date iii. Findings of Unconstitutionality Not Accompanied by Annulment	312 317 320
	C. The European Level: The Court of Justice	324
VI.	Concluding Remarks	327
Cha	apter 7	
Inte	erplay between Constitutional Courts and Other Actors	329
I.	Introduction	329
II.	Interactions between Constitutional Courts and (Constitutional) Legislatures	331
	A. Processes of Give-and-Take	334
	 i. Case Study: Germany and the Regulation of Abortion ii. Case Study: Hungary and Limitation Periods for Crimes Committed during Communism 	338
	B. Legislative Overrides	342
		346
	 i. United Kingdom: Section 4 of the Human Rights Act 1998 ii. Poland: Non-Finality of Judgments Handed Down by the Trybunal Konstytucyjny before 1997 	348
	C. Constitutional Overrides	353
	i. France	356
	ii. Italy	357 360
	iii. Germany	363
	iv. Hungary	364
	v. European Union	367
	vi. General Observations	369
	D. Legislative Inertia following a Constitutional Decision	373
III.	Interactions between Constitutional Courts and the Ordinary Courts	377
	A. Constitution-Conform Interpretation and the Demarcation of	
	Constitutional and Ordinary Jurisdiction B. The Appellate Dimension of the Constitutional Complaint Mechanism	378 385
		-00

IV.	Interactions among European Constitutional Courts	392
1 .	 A. Conference of European Constitutional Courts B. Venice Commission and World Conference on Constitutional Justice C. Appraising the Move to Cross-Border Judicial Gatherings 	393 396 399
V.	Interactions between Constitutional Courts and the Court of Justice	403
	A. Avenues for Interaction between Constitutional Courts and the Court of	403
	B. Topics on which Constitutional Courts and the Court of Justice InteractC. The Impact of the Court of Justice's Case Law on the Position of	408
	Constitutional Courts within the Domestic Legal Order	418
VI.	Interactions between National Highest and Constitutional Courts and the European Court of Human Rights	427
	A. Communication through Case Law B. Personal Encounters	428 436
VII.	1 11 - D	438
Rihla	iography	44]
Bibliography Index		477