The Kingdom of Belgium, the Kingdom of the Netherlands, and the Grand Duchy of Luxembourg have historically had many close political, economic and cultural ties. In 1958, a political and economic union of these countries was formed under the name «Benelux». Although countries are close to each other in geographical location, the form of government, and form a joint Benelux union, constitutional control in these countries differs somewhat. Peculiarities of constitutional control in each of these countries, we will explore in this paper.

Regarding the form of constitutional control in these countries, I agree with the following opinion: Belgium and Luxembourg, due to the fact that they have separate specialized bodies (Constitutional Court) for exercising constitutional control, have an Austrian (centralized) model of control. As for the Netherlands, V.F. Comella writes that «...The two remaining countries, the Netherlands and the United Kingdom, are exceptional in that they have no system of constitutional review of legislation. The Constitution of the Netherlands explicitly prohibits judges from setting aside legislation on constitutional grounds...» [1, p.462].

The Belgian Constitutional Court originates from the Court of Arbitration, which was constitutionally introduced in Belgium in 1980, with the task of delimiting the jurisdiction of each authority. The competence of the Arbitration Court was gradually extended (for example, by the Constitutional Amendment of 15 July 1988 or the Special Act of 9 March 2003) until it received its «own section» in the Belgian Constitution (Article 142). On 7 May 2007, the name of the Court of Arbitration was changed to «Constitutional Court».

Analysing of Article 142 of the Constitution of Belgium «...There is for all Belgium a Constitutional Court...», we can say that the legislator has constitutionally enshrined not only the establishment of the Constitutional Court but also its territorial jurisdiction.

The main subject of consideration of the Constitutional Court is conflicts between laws («statutes» in Special act of 6 January 1989 on the Constitutional Court), federal laws («decrees» in Special act of 6 January 1989), and rules referred to in Article 134 of the Constitution of Belgium, as well as between the federal laws themselves and between...
the rules referred to in Article 134 themselves. The Court also monitors the non-violation by the above-mentioned legislative acts of Articles 10 (absence of class differences, equality of Belgians before the law, and equality of men and women), 11 (exercise of rights without discrimination), and 24 (freedom in the field of education) of the Constitution. For some reason, the legislator pays detailed attention to the control over violations of these 3 articles [2].

Still, Article 1 of the Special Act of 6 January 1989 on the Constitutional Court extends the Court’s jurisdiction: the Court’s frame of reference for direct review of the constitutionality of legislation is now not just Articles 10, 11 and 24 of the Constitution, but the whole of Title II (Articles 8 to 32) and Articles 171 (the requirement of lawfulness regarding taxation), 172 (the principle of equality in tax matters) and 191. The constitutional amendment of 6 January 2014 extended the jurisdiction of the Court to an a priori review of regional referendums (Article 39bis) and the review of decisions of the House of Representatives or its bodies concerning the election expenditure for the election of that legislative assembly.

Interesting is judgment № 62/2016 (about Treaty on stability; demand for annulment; admissibility; primacy of EU Law; national identity). Several citizens and non-profit organizations asserted that the strict budgetary objectives established in the Fiscal Compact would lead to the authorities no longer being able to fulfill their constitutional obligations in terms of fundamental social rights (Article 23 of the Constitution). In the Court’s view, having an interest as a citizen or a person who has the right to vote is likewise not sufficient, because the challenged acts have no direct effect on the right to vote. Nonetheless, the Court considered whether the challenged acts interfered with any other aspect of the democratic rule of law which would be so essential that its protection is in the interest of a democratic rule of law. This combination accounts for the fact that the Fiscal Compact would lead to the authorities no longer being able to fulfill their constitutional obligations in terms of fundamental social rights. The Court, in its Opinion «…The French idea of lawfulness…». But this problem is somewhat alleviated by Article 94 of the Constitution of the Netherlands, which establishes a monistic system through which Dutch courts will not apply national law when it is contrary to international law, in particular, the European Convention on Human Rights.

This paradox of combining «constitutional prohibition of constitutional control by courts» with an «introduction of important changes through court’s decisions», at the level of decisions of other constitutional courts» is explained by Jannke Gerards: «…The explanation for this paradox can be found in… traditional openness to international law. It often has been said that this openness is due to the small size of the Netherlands, its closeness to the sea, and its history of international trading. This for a strong orientation to foreign countries as well as a great interest in international regulation of trade matters and peaceful international relations. The Netherlands see a strong role for themselves in international law, and supporting the development of the international legal order forms an important part of its foreign policy. This orientation even finds its expression in the Constitution, which explicitly states that the Dutch Government «shall promote the international legal order» [7, p. 216].

The only Constitutional Court in the Kingdom of the Netherlands is the Constitutional Court of Sint Maarten, according to Articles 127, 128 of the Constitution of Sint Maarten (on October 10, 2010, became a self-governing state with significant autonomy (status aparte) within the Kingdom of the Netherlands).

Returning a little to the function of the Advisory Division of the Council of State, it should be noted that its function is not inherently similar to that would be performed by the Constitutional Court. Jurgen C.A. de Poorter writes that «…The Council of State only gives advice and thus does not issue binding judgments. The Government is not bound to adhere to the advice of the Council of State and has only the obligation to justify any deviations from the advice in a report. This means that the context in which the Council of State conducts its constitutional review is fundamentally different from that in which a constitutional court would operate. The advice from the Council of State plays a role in the political, not legal, domain…» [8, p. 92].

Constitutional review in the Grand Duchy of Luxembourg is based on Article 93ter of the Luxembourg Constitution: «…The Constitutional Court decides, by means of opinion… on the conformity for the first time for the case law of the Constitution…». But this provision is limited to Article 2 of the Law of 27 July 1997 on the organization of the Constitutional Court: «…The Constitutional Court decides, according to the procedures determined by this law, on the conformity of laws with the Constitution, with the exception of those which carry the approval of treaties…» [9]. Jean Thill and Jörg Gerkrath write that the peculiarity of the Constitutional Court of Luxembourg is also that judges «…are selected from the judges of ordinary and administrative courts and continue to serve as ordinary judges…», and therefore in fact «…they sit as «part time» constitutional judges…» [10, p. 1139].

Here is an example from the case law of the Court. Theoretically, the Constitutional Court answers only the question
of the conformity of laws with the Constitution and is therefore not called upon to refer a preliminary question to the Court of Justice of the European Union. However, in one case (Decision No. 119 of 16 June 2017 in the case of emission quotas) the Constitutional Court was forced to first apply to the Court of Justice of the European Union with a view to setting the framework for compliance with the law under reference with European legislation before analysing its compliance with the Constitution.

The process of constitutional reform is currently underway in Luxembourg, which also affects Chapter VI of the Luxembourg Constitution. It is proposed to supplement Article 95 of the Constitution with the following sentences?: «…(3) The Constitutional Court shall settle conflicts of attribution in the manner determined by law…(4) The powers of the Constitutional Court may be extended by a law adopted by a qualified majority, which collects at least two-thirds of the votes of the members of the Chamber of Deputies, and votes by power of attorney are not allowed…(8) The provisions of laws declared unconstitutional by a decision of the Constitutional Court shall lose their legal force on the day following the publication of this decision in the forms prescribed by law, unless the Constitutional Court orders another postponement by the Constitutional Court…» [11].

Conclusions. Thus, despite some proximity and similarity of countries in the form of government, constitutional control in each of the Benelux countries has its own characteristics. Thus, the Constitutional Court of Belgium has only recently received a new name, and also considers the constitutionality of laws only concerning a specific list of articles of the Constitution; the Kingdom of the Netherlands does not have its own Constitutional Court, but only in one of its autonomous; The Constitutional Court of Luxembourg does not review the constitutionality of laws approving treaties and is also affected by major constitutional reform.

However, it should be noted that despite such features of constitutional control in the above-mentioned countries, these states use different ways to overcome the defects of their systems of constitutional control (constitutional reforms, expansion of legislative restrictions, or monism etc.). Benelux countries are still considered states with a high level of democracy and the rule of law.

REFERENCES


