Constitutional Review in Central and Eastern Europe

Judicial-Legislative Relations in Comparative Perspective

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Chapter 1

Constitutional review and judicial-legislative relations in new democracies

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1 Constitutional review and judicial-legislative relations in new democracies

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1.1 Introduction: taking courts seriously

The least dangerous branch. No purse, no sword. According to the classical and well-known narratives of the two Alexanders, Hamilton in *The Federalist* No. 78 and, following in his footsteps, Bickel (1962), the judiciary is definitely a harmless institution, which might have authority (*auctoritas*) but whose power (*potestas*) depends on the other two branches of government, which possess the purse and the sword. Consequently, Hamilton argued, no one should fear the judicial power; it should be rather considered "as the bulwark of a limited Constitution against legislative encroachments".

Judicial supremacy, *rule of judges*, and *juristocracy*. Over the past four decades, these terms, referring to recently emerging phenomena, have been used either simply analytically or critically by several authors arguing against the global expansion of judicial power. The central points of criticism are the *legitimacy deficit*, the problem of the *counter-majoritarian difficulty*, and the recurring charge of *judicial activism* (to refer once again to terms widely used in legal scholarship).

While arguments against judicial review were formulated in the United States quite early, the flip side of the story was less well known in Europe for several decades. Criticism in the US and Europe had its origins in political conflicts that arose in the wake of highly contested decisions of constitutional courts, but scholarly reflections that normatively (and plausibly) argued against the expansion of judicial power were absent not only in Central and Eastern Europe (CEE) but, with the obvious exception of the United Kingdom, also in Western Europe, where constitutional courts became crucial political actors after two waves of democratization.

Constitutional courts in Western Europe, originally established either as bulwarks against the violation of fundamental rights or (more often) to settle disputes between different levels of government in federal states, have slowly but steadily moved to the centre stage of domestic politics. They faced only occasional backlashes because judges displayed passive virtues (again, explained in detail by Alexander Bickel), because no politicians dared to challenge the institutions created as bulwarks against totalitarianism or simply because they

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were sometimes regarded as useful institutions to which politicians could turn to have judges decide thorny questions with potentially disastrous political consequences for elected politicians (a special kind of blame shifting).

At first glance, the story in Central and Eastern Europe began similarly, or more precisely, even more promisingly. In contrast to Western Europe – where constitutional courts played a decisive role only in countries with an authoritarian past and the "judicialization of mega-political issues" (Hirschl 2008) was almost completely absent in the UK, the Benelux countries, and the Scandinavian countries – judicial review of legislative and executive acts was established in all countries of the CEE region without exception. Copying a template (Parau 2018) and giving judges more power seemed like a good idea, because no one really expected a rebellion against governing by the judiciary (Scheppele 2003). In fact, the first constitutional courts established their authority surprisingly quickly, and since politicians in Central and Eastern Europe were hardly aware of the potential power of judicial review, constitutional adjudication based on judicial review became a success story that is proudly referred to in legal scholarship.

However, from today's perspective and with the hindsight of new generations, one could say that the picture in the CEE region is rather mixed. While some courts in Central and Eastern Europe managed to avoid massive political interference in their work and preserved their relative independence (e.g. the Czech Constitutional Court), others faced either milder forms of pushback or serious backlashes (Madsen, Cebulak, and Wiebusch 2018) from political actors who claimed that judges (and not elected politicians) govern their country. Several political actors have argued that constitutional courts have assumed too much power and that politics has been extremely judicialized. Political actions against courts in the CEE region have ranged from verbal criticism of judicial decisions and constitutional courts in general to (un)successful attempts of court-packing and a total reshuffle of the court, showing that politicians took the courts seriously as centres of power that can significantly hinder them achieving their goals.

1.2 The research puzzle

Nevertheless, the question as to what extent this aggregation of power and authority has constrained the dominant political actors, in fact, has never been examined accurately and systematically in the literature. The twin volumes, *Constitutional Review in Central and Eastern Europe* and *Constitutional Review in Western Europe*, are trying to fill this gap in the literature and deal with the practice of constitutional adjudication in Europe, mainly focusing on the puzzling relationship between constitutional courts and legislatures.

It should be stressed, however, that these volumes do not concentrate either on the theory of judicial or legislative supremacy or on institutional design, which of course can affect both constitutional adjudication and the relationship between these institutions. Moreover, they deliberately avoid philosophical questions about the legitimacy of judicial review, and their main

approach is certainly not in line with classical works of (European) legal scholarship. They do not aim to find an answer to the question of supremacy, nor do they approach the question of the relationship between the judiciary and the legislature from a purely legalistic point of view. Instead of philosophical, theoretical, and purely legal questions, we have chosen to explore empirically and systematically the practice of constitutional adjudication in Europe, with particular attention to the diversity of judicial decisions and the strength of the constraint they exert on legislatures. Thus, this work is more in the realm of empirical legal research, which has a rich tradition in American legal research but is relatively unknown in the European context.[1]

1.3 The research questions

Both volumes, *Constitutional Review in Central and Eastern Europe* and *Constitutional Review in Western Europe*, are products of the JUDICON-EU research project.[2] The project formulated two aims: first, we developed a new methodology to capture diversity and measure the strength of judicial decisions. Second, based on this coherent methodology and the database created by the project, we studied the diversity and strength of judicial decisions of the European constitutional courts. Based on these objectives, we formulated two research questions concerning the *diversity* and *strength* of judicial decisions: (1) how differentiated are the decisions of European constitutional courts?; and (2) to what extent have these differentiated decisions of European constitutional courts constrained the legislature's room for manoeuvre?

Based on the analysis of the practice of the Hungarian Constitutional Court, we assumed that other European constitutional courts also elaborated (or adopted from the practice of their counterparts) a variety of ruling types and declared legislative omissions or procedural unconstitutionality, complete or partial, *ex tunc* or *pro futuro* annulments, determined constitutional requirements or prescriptions how to remedy the unconstitutionality. Mapping this diversity of judicial decisions is one of the main aims of both volumes.

Although in legal terminology the strength of a judicial decision seems to be a concept rather difficult to interpret, *strength* as used in this research

1 It should be stressed, however, that most recently several initiatives have been launched which indicate that the field of empirical legal studies is getting more and more popular even in Europe. The first and the second Conference on Empirical Legal Studies in Europe held in Amsterdam (2016) and in Leuven (2018), as well as the activity of Law and Court Standing Group of the European Consortium of Political Research (ECPR), along with several research projects at various European Universities like JUSTIN (Masaryk University Brno), ICOURTS (University of Copenhagen), or PLURICOURTS (University of Oslo) are excellent examples which demonstrate that various methods of empirical legal studies are nowadays more widespread in the European research community than a few years ago.

2 The JUDICON-EU research project (2020–2022) has been funded by the Ludovika University of Public Service. For more details: https://judiconeu.uni-nke.hu/. We are indebted to all interns of the project and especially to Adrienn Vajda, who helped us in editing all figures and tables of the volume.

project shows the extent to which constitutional courts constrain the room for manoeuvre of another constitutional organ (in this research project, the legislatures). While all decisions of a constitutional court have the same legal binding force, they may reduce the scope of legislative activities to varying degrees. For example, in cases described as *procedural unconstitutionality*, legislatures made "only" a procedural mistake in the adaptation of the bill. After having corrected this procedural flaw of the legislative process, they might adopt the same law, often even with the same content. On the other hand, in cases of substantive unconstitutionality, the regulation should be changed substantively, i.e. its content should be transformed to meet the constitutionality criteria. In the second case, constitutional courts significantly narrow down the scope of legislative activities, since the court has found the content, rather than the way the bill was adopted, unconstitutional. Consequently, a decision based on substantive unconstitutionality is stronger than one based on procedural unconstitutionality because it might limit the legislature's room for manoeuvre more heavily.

It is important to note that by measuring the strength of judicial decisions, on no account do we want to measure the *impact* of judicial decisions. The term *strength* as used in our research might be best described with a boxing metaphor: measuring strength is measuring the power of a punch, and by no means the kind of impact this punch had on the other boxer. It is not considered whether this opponent could have side-stepped or is only slightly shaken, although it was a very strong punch. To put it briefly, strength is not measured by the intensity of the impact of a decision.

In what follows, we first briefly give an overview on the existing literature on constitutional review in Central and Eastern Europe, focusing on judicial-legislative relations (Section 1.4). Second, we summarize the methodology of the JUDICON-EU research project, which is essential for understanding the country studies included in both volumes (Section 1.5). Third, we clarify the structure of the country studies since we asked the authors to follow the same coherent structure in writing the chapters (Section 1.6). In addition to the coherent methodology of the research project, the semi-structured chapters based on predefined questions facilitate the comparison of the performance of European constitutional courts with regard the question of their constraint on the legislature. Nonetheless, we have also included a special comparative chapter at the end of both volumes that attempts to provide a first (and rather preliminary) answer to the question of whether institutional design, political context, or event-related variables influence the strength of court decisions or dissenting opinions.

1.4 Literature overview

1.4.1 Institutional design

There is an extensive literature on the development and origins of the *institutional design* of European constitutional review, with a significant body of research on Central and Eastern European countries' constitutional design,

including comparative analysis of institutional patterns, origins, and evolution of constitutional courts in post-communist countries established during the democratic transition (Brunner 1992; Utter and Lundsgaard 1993; Magalhães 1999; Smithey and Ishiyama 2000; Procházka 2002; De Visser 2014; Ernits et al. 2022). In this context, Sadurski's work is particularly significant (Sadurski 2002, 2014). While Schwartz has also conducted extensive historical and comparative research in this field (Schwartz 1992, 1998, 2000), Parau provides a comparative analysis of the institutional pattern and the circumstances surrounding the emergence of constitutional judiciaries in CEE from a specific political science perspective, seeing the empowerment of judges as the self-empowerment of transnational elites (Parau 2018).

One prominent approach to studying the activity and functioning of constitutional courts is from the perspective of *federalism*, political centralization, or decentralization. In addition to single-country studies (Benz 2017; Dalla Pellegrina et al. 2017; Popelier and Bielen 2019), Vaubel's cross-country research, including European countries, examines how specific features of constitutional adjudication, such as the degree of independence, difficulty of amending the constitution, and length of time a constitutional court has been in existence, relate to the degree of political centralization (Vaubel 2009). Popelier et al. (2013) also analysed the effects of judicial decisions in time.

1.4.2 External factors: the political context

Some examine the functioning of constitutional justice in the light of contextual, *external factors*. For example, Hönnige argued that judges make decisions according to their political preferences and that this can be measured by party affiliation (although the investigation covered two constitutional courts from Western Europe, not from CEE) (Hönnige 2009). This somewhat nuances the picture that European constitutional jurisprudence is not (or is much less) politicized than in the US (Forejohn and Pasquino 2004). Hein and Ewert used quantitative methods to investigate the extent to which European constitutional courts may be politicized in three countries (Germany, Bulgaria, Portugal) and concluded that the type of procedure has a strong influence on the degree of politicization (the extent to which extra-legal considerations play a role in the decision). For example, abstract review is more likely to be politicized than individual constitutional complaints (Hein and Ewert 2016). Garoupa and Ginsburg have examined how judges respond to different "audiences" (e.g. the public, politicians, lawyers) in terms of reputation (Garoupa and Ginsburg 2015) and how the presence of a supreme court coexisting with a Kelsenian-style constitutional judiciary might affect the internal fragmentation of the constitutional court (Garoupa and Ginsburg 2011). Garlicki has also analysed the power dynamics and tensions between centralized constitutional courts and coexisting supreme courts from a comparative perspective (Garlicki 2007).

Vanberg classified the contextual factors of the political system that lead to the preservation of the authority of constitutional courts into two groups according to whether the court's authority benefits policy-makers

(endogenous explanation) or would only come at a too high price if it were undermined or eroded (exogenous explanation) (Vanberg 2015). Based on the German Federal Constitutional Court, Vanberg used a combination of quantitative and qualitative methods to investigate the impact of political factors such as transparency and public support on the decisions of constitutional courts. He found, for example, that low levels of transparency (e.g. lack of public attention, complexity of the case) reduce the likelihood of a law being annulled (Vanberg 2004). Bricker and Wondreys (2018) examined the relationship between public opinion and constitutional review through a quantified analysis of opposition-initiated constitutional court decisions in four countries (Germany, Poland, Slovenia, Czech Republic) and concluded that it may not be possible to see constitutional courts as exclusively countermajoritarian institutions. Indeed, their results show that constitutional courts are responsive to changes in public preferences. Public preferences can change over the course of a term, or they can support the opposition in specific policy areas, and a constitutional court can be receptive to public opinion and shape public policy accordingly (Bricker and Wondreys 2018). Garoupa argues that, overall, empirical research on constitutional review clearly points in the direction of constitutional courts being politicized in the sense that the behaviour of judges can be predicted along ideological lines, while other contextual factors can also be identified (Garoupa 2019). Herron and Randazzo (2003) conclude, in the context of post-communist constitutional courts, that the formal strength of judicial review is less, and external circumstances (e.g. economic situation) are more influential on judges' decision to overturn legislation (Herron and Randazzo 2003).

However, based on his quantitative analysis of post-communist constitutional courts, Bumin (2017) concluded that for the activism of judicial review, the institutional development of the court seems more determining than external factors, although his results also showed correlation between the activism of the constitutional court and the political system or even the economic situation. Bumin quantified the extent of judicial activism by compiling data on the constitutional court's jurisprudence in 19 post-communist countries, looking only at the "on the merits" decisions and the constitutionality-unconstitutionality dichotomy in the outcome of the decision (Bumin 2017). Taking the Bulgarian Constitutional Court as a case study, Bagashka and Tiede examined the influence that the attorney general, alongside other political actors, can have on the constitutional court's decision-making (Bagashka and Tiede 2021). External factors influencing constitutional jurisprudence can also include decisions of other countries' constitutional courts, and there is empirical research (combining qualitative and quantitative methods) in the literature on the extent to which European countries use decisions of foreign courts in their own practice (Groppi and Ponthoreau 2013).

A special aspect of research on constitutional adjudication in Central and Eastern Europe is often the role of constitutional review in the democratic transition and in strengthening and maintaining democracy (Epstein, Knight,

and Shvetsova 2001; Jovanović 2015). Although by no means exclusively in the context of the post-communist region, but from a global perspective, Daly has done extensive work exploring the role courts play in democratization, encouraging to rethink what tasks we entrust to the courts in the process of democracy building (Daly 2017). However, constitutional review is now being examined not only in the context of building, but also in the context of dismantling democracy: most recently, one can find studies on Hungary and Poland that aim to examine the role of constitutional courts in so-called illiberal political regimes, often claiming that the political branches of power are abusive towards the constitutional judiciary (Castillo-Ortiz 2019; Drinóczi and Bień-Kacała 2019; Dixon and Landau 2021; Kovalčík 2022).

1.4.3 Internal dynamics: dissents

Some studies focus on the *internal dynamics* of constitutional courts, which, due to institutional design, means examination of judicial dissents where possible. Kelemen has done extensive comparative work on the use of dissents in European constitutional review (Kelemen 2013, 2018). Hein and Ewert have used quantitative analysis based on the dissenting ratio of constitutional court decisions in order to investigate the extent to which decisions are politicized (Hein and Ewert 2016). Bricker has carried out a large-scale study combining qualitative and quantitative methods for the German and some Eastern European (Poland, Latvia, Slovenia, Czech Republic) constitutional courts. His research was twofold: on the one hand, he investigated the influence of various contextual factors on the tendency of a constitutional judge to issue a dissenting opinion, and on the other hand, he examined the impact of dissenting opinions on the quality of the resulting decision (Bricker 2017).

Related to internal dynamics, a separate empirical research area is the study of constitutional court reasoning from a comparative perspective. Jakab, Dyevre, and Itzcovich (2017) have made a serious attempt at a comprehensive comparative mapping of constitutional court reasoning, using both qualitative and quantitative methods based on "leading judgments" drawn from selected countries (Jakab, Dyevre, and Itzcovich 2017).

1.4.4 Judicial-legislative relations

By focusing more closely on the research question of the present volume, we find that a long-established type of *qualitative approach* is examining the impact of constitutional courts on the policy-making process and policy-outcome. It thus already relates to the relationship and *dynamics* of constitutional review and the legislature, although there is also research that seeks to measure specifically the impact of constitutional review on the quality of policy outcome (Feld and Voigt 2003).

In terms of the relationship between constitutional review and the legislature, earlier literature naturally focuses on Western Europe (most prominently

the work of Stone Sweet from the perspective of comparative judicial politics) (Stone Sweet 1990). Regarding the dynamics of constitutional review and legislature, he identified the constitutional judiciary as the *third legislative chamber*, with regard to both institutional design and empirical experience in specific policy areas (Shapiro and Stone 1994). Stone Sweet has concluded that the entry of constitutional review into the legislative process has caused the death of the legislative sovereignty, with governance taking place alongside or in competition with judges (Stone Sweet 2002, 2012).

Brewer-Carías also finds in his comprehensive comparative work based on national reports of European (and non-European) countries that constitutional courts have acquired a role that is most closely associated with the legislature or the constituent power (Brewer-Carías 2011). Taking the "constitutional courts as legislators" approach as a starting point, Florczak-Wątor has edited a volume of studies on the law-making activities of constitutional courts in Western European and Central and Eastern European countries (Florczak-Wątor 2020). Sadurski addressed the impact of the constitutional courts in CEE countries on the legislative process, approaching the strength of constitutional court decisions by examining the structure of the legislative process, suggesting that some features of this process (e.g. political fragmentation) are decisive for the degree of conflict between the constitutional courts and the legislature (Sadurski 2014).

The concept of a "veto player" has also emerged in the context of a game-theory-based conceptualization of the role of constitutional review in legislation. Although the term was first introduced in the context of studies on Western European courts, as a general theorization of constitutional review, it is also worth mentioning in the context of CEE countries. Volcansek proposed this approach based on the Italian Constitutional Court's jurisprudence (Volcansek 2001), later Hönnige and Brouard nuanced the picture, if not on the Italian, but on the role of the French and German constitutional courts. Using quantitative methods, they concluded that they play the role of a veto player only under certain conditions, and their role may be influenced by, for example, the legislative procedure or the ideological composition of the court (Brouard and Hönnige 2017). However, Tsebelis, for example, did not count (constitutional) judges as veto players (because they are absorbed by other political veto players) but added that they could be included in this role under certain conditions (Tsebelis 2002).

Lijphart conceptualized judicial review as part of a "consensus model of democracy" and also attempted to group 36 countries of the world (including a significant proportion of Western European countries) according to the strength of judicial review. He sets up four groups, the first group comprising those lacking judicial review. Those with judicial review are classified by Lijphart into "strong", "medium-strength", or "weak" categories based on the "degrees of activism in the assertion of this power" (Lijphart 2012). Vanberg used game-theory analysis to conceptualize the relationship between abstract judicial review and legislation, how different judicial behaviours influence the

behaviour of the legislative majority, while the latter aims to ensure that legislation passes abstract review or that the opposition does not initiate the review process. Vanberg's results show that abstract review fits Lijphart's model of consensus democracy only when the court is not overly deferential. If it is somewhat restrictive, then legislative self-limitation is directed towards avoiding nullification by the constitutional review process, but if it is very restrictive, self-limitation means taking into account the opposition's viewpoint in order to avoid them initiating the review (Vanberg 1998).

In terms of the literature of empirical research on European constitutional courts, the parallel work of legal and political science is clearly visible, which, according to Garoupa, has moved closer together than the rigid separation that existed before. Garoupa has also systematized the English-language literature using quantitative methods in research on constitutional courts, most of them of course being single-country studies (Garoupa 2020). Garoupa and Bagashka draw attention to three prominent difficulties with empirical research on constitutional courts: the first is the availability (and processing, coding) of data; the second is the openness of the constitutional law scholarly community in this direction; and the third is the fact that such empirical research is not always popular with constitutional courts (Garoupa and Bagashka 2021).

Given that existing literature has not elaborated a consistent methodology for comparing the performance of constitutional courts, the JUDICON-EU research project developed a methodological framework for measuring the strength of constitutional court decisions and for mapping the relationship between constitutional courts and the legislature. In the next section, we describe this new methodology, which served as the analytical framework for all country studies in this volume.

1.5 Research methodology

A constitutional court decision is a complex piece of judicial text which cannot be quantified unless disaggregated into smaller yet distinct and meaningful units. Neglecting the fact that one judicial decision frequently consists of several rulings might seriously distort any kind of empirical legal research since this leads to an unjustified and unacceptable aggregation of units of observations. A decision issued under a single identification number consists of one or more rulings, references to various legal documents (laws, earlier decisions issued by lower courts, etc.), and a more or less detailed justification. Within the same decision one ruling might reject a motion dealing with certain legal regulations while another ruling in the same decision might declare unconstitutional some other parts of the same (or another) legal regulation. The decision of the court might also contain a ruling that declares an *ex nunc* procedural unconstitutionality annulling a whole law, while another ruling of the same decision declares *ex tunc* substantial unconstitutionality of a paragraph of a different legislative act. Added to these, decisions might be supplemented by dissenting opinions if judges disagree with the majority of the court. Precisely

because a single decision might contain several rulings, in our research, decisions have been broken down into separate units (rulings).

Thus, in contrast to research of the judicial branch which generally considers one decision as the unit of observation, we take one ruling as our unit of observation. The following example justifies this decision. In decision 47/2009 (IV.21.) the Hungarian Constitutional Court first held that "in the application of Section 12 para. (3) of the Act XXIII of 1992 on the Legal Status of Public Servants, it is a constitutional requirement based on Article 59 and 60 of the Constitution that the deed of oath should not contain any data referring to the public servant's conviction of conscience or religion". This Ruling 1 is a constitutional requirement. As a second ruling of the same decision, the HCC rejected "the petitions aimed at establishing the unconstitutionality and the annulment of Section 12 and Section 13 para. (2) of Act XXIII of 1992 on the Legal Status of Public Servants". Consequently, Ruling 2 of this decision was a rejection. As a third ruling of that very same decision, the HCC terminated "the procedure aimed at the posterior review of the unconstitutionality of Sections 31/A–31/F of Act XXIII of 1992 on the Legal Status of Public Servants", which means that Ruling 3 of this decision was a suspension. As a fourth ruling, it refused in the same decision "the petition aimed at establishing the unconstitutionality and the annulment of Section 13 para. (1), Section 65 para. (2) item d) and Section 102 para. (8) of Act XXIII of 1992 on the Legal Status of Public Servants, and it refused other petitions as well". This means that Ruling 4 of this specific decision of the HCC was a rejection.

Certainly, constitutional courts do not always make unanimous decisions, and sometimes judges express their disagreement by formulating dissenting opinions. However, while dissenting opinions are linked to certain decisions of the court, the substantive content of dissent relates to one or more rulings of the same decisions. Consequently, not only decisions need to be broken down into rulings, but dissenting opinions can be accounted for only by disaggregating them into the same meaningful and distinct units. That is, in our research, dissenting opinions are also disaggregated into separate units referring to a specific ruling of the court decision. Disaggregating majority decisions and dissenting opinions into rulings implies that the judges' dissenting opinions can be directly linked to rulings of the majority decisions. This allows for avoiding the pitfalls of a simplified analysis that would link whole judicial decisions to dissenting opinions without taking into consideration that various rulings in dissenting opinions might refer to different parts of a majority decision. This means that dissenting opinions are analysed according to the same components and elements as the majority decisions themselves, and it becomes possible to investigate even individual judicial behaviour.

1.5.1 Components of rulings

Disaggregating decisions into rulings allows for identifying the most specific and meaningful units that describes the behaviour of the majority of the court

Table 1.1 Components and elements of rulings

I. Provision	*II. Completeness*	*III. Temporal effect*	*IV. Prescription*
(Ia) rejection or refusal	(IIa) qualitative partial annulment	(IIIa) pro futuro	(IVa) no prescription
(Ib) unconstitutionality by legislative omission			
(Ic) procedural unconstitutionality	(IIb) quantitative partial annulment	(IIIb) ex nunc	(IVb) non-binding prescription
(Id) constitutional requirement			(IVc) directive
(Ie) substantive unconstitutionality	(IIc) complete annulment	(IIIc) ex tunc	
(If) constitutional interpretation in abstracto			(IVd) binding prescription

or dissenting judges. However, as our aim is to go beyond the constitutional/unconstitutional binarity, rulings should not only be understood as the meaningful units within a decision but also as composites of various elements that account for the diversity of judicial behaviour and for the extent of the constrain imposed by the court on the legislature. Considering the complexity of judicial decisions, we aimed to elaborate a methodological framework that offers a sophisticated tool for mapping the diversity of rulings and measuring their strength. To be able to do this, one has to identify the elements in the ruling which affect the diversity and the extent of constraint (see Table 1.1). Thus, rulings are understood as consisting of four elements: a type of provision (e.g. declaring substantive unconstitutionality), a degree of completeness (e.g. partial annulment), a temporal effect (e.g. *pro futuro*), and a prescription for the legislature (e.g. binding or non-binding prescription), all of which might have different varieties that result in stronger or weaker constraint of the legislature.

The four elements – namely provision, completeness, temporal effect, and prescription – that are in the focus of our research project might be considered as options from which a judge or the constitutional court makes up a ruling. A ruling results from a mixture of the elements chosen. We have checked the presence/absence of all four elements rigorously in each relevant ruling, since even the absence of an element is an indicator of the strength or weakness of a ruling.

Obviously, the most important element of the ruling is the provision, which declares a law constitutional or unconstitutional. However, it is also important whether the court annuls only a part of the law or the whole act (or only a certain interpretation of it). This will be referred to as the completeness of a ruling. Furthermore, the temporal effect of the annulment can vary, which

also influences the diversity and strength of the ruling. These three components (provision, completeness, and temporal effect) are always located in the operative part of a judicial decision. Finally, rulings may contain a prescription, which declares how unconstitutionality might or should be corrected – it formulates guidelines or directives which legislatures should transform into a law. A prescription might be found either in the operative part or in the justification of the decision. Although the present research primarily focuses on the operative part (since this contains the directly binding elements), justifications are also considered when they contain prescriptions.

Let us describe the elements of judicial rulings in more detail:

(I) Provision

Rulings of the constitutional court always contain a provision which might differ on the grounds on which the law has been found (un)constitutional: it might declare a refusal or rejection, unconstitutionality by legislative omission, procedural unconstitutionality, interpretation in harmony with the constitution (or constitutional requirements), substantive unconstitutionality, or constitutional interpretation in abstracto.

(Ia) Refusal/Rejection (Ref/ReJ)

Motions might be rejected on the grounds that the legal regulation under review is completely in accordance with the constitution. They might be refused, however, also without substantive court investigation, due to inadmissibility or by referring to the political question doctrine. The process of the court might be suspended, which, for the sake of our research project, might be considered as equal to a refusal except when the court determines some constitutional requirements to be respected by the legislature.

(Ib) Unconstitutionality by legislative omission (Om)

Unconstitutionality might emerge not only by the proactive operation of the legislature but also by legislative omissions. Legislative omissions might be caused not only by total inactivity of legislature but also by imperfect or insufficient legislation. Declaring unconstitutionality on these grounds is, however, a mild form of provision, since the constitutional court does not annul any acts of parliament but only calls upon the legislature to regulate something which is not regulated at all or is regulated in an imperfect or insufficient manner.

(Ic) Procedural unconstitutionality (PROC)

By procedural unconstitutionality, we mean all court provisions which abrogate a law due to the failures of the legislative process. Procedural unconstitutionality refers only to the legislative process and not to the substance of legislation. In this case, it is possible for the legislature to pass the bill a second time with the same or highly similar substance. Unconstitutionality means, in this sense, the violation of procedural rules but not the violation of the formal

principles of rule of law. This category includes cases of inaccurate processes of legislation (like violation of the procedural rules of legislation, violation of the principle of the hierarchy of legal sources, omission of the prescribed consultation in the legislative process, omission of a substantive debate in the legislative process).

(Id) Constitutional requirements (CR)

While formally upholding a law, judges might have considerable room to manoeuvre in constraining the legislature by two means: first by judicial interpretation in harmony with the constitution, and second by determining constitutional requirements for either the courts or the legislature. To some extent, constitutional requirements in the operative part of a decision substantially broaden the regulation under constitutional review without the annulment of any of its parts. By giving guidance or directives for the legislature, the court is expanding the text of the law under review; consequently, it turns into a positive legislator. Constitutional requirement or interpretation in harmony with the constitution is suitable, however, for declaring both a particularly weak or a particularly strong provision which constrains the legislative branch seriously or just barely. This means that the court might be a mild or a very rigorous positive legislator.

(Ie) Substantive unconstitutionality (SUBST)

Substantive unconstitutionality constrains legislature more significantly than any previous forms of provisions since it imposes some substantive barrier on the legislature. Declaring a law unconstitutional based on its content and disharmony with some paragraphs of the constitution is a very strong provision which implies high levels of constraints on the legislature. Consequently, the legislature's room to manoeuvre will be considerably narrowed.

(If) Constitutional interpretation *in abstracto* (CIIA)

An even stronger way to constrain the legislative branch (and the constituent power) is constitutional interpretation *in abstracto*.[3] Constitutional interpretation *in abstracto* means that the court has been asked to explain and, consequently, to expand the text of the constitution in the operative part of its decision. Since the operative part of a decision usually contains only provisions

3 Beyond the German Federal Constitutional Court, no court in Western Europe has the competence to declare an abstract and binding interpretation of constitution without reviewing a law filed to the court. By contrast, this kind of constitutional adjudication is not unknown in Central Europe although even courts in CEE have rarely been asked to exercise it (for this see Hönnige (2007, 132) and Sadurski (2014, 23). Binding constitutional interpretations are not only advisory notes in the justifications of a decision but they are included into the operative part of judicial decisions, and they shouldn't be confounded with preliminary reference procedure of the ECJ. For an example see decision 21/1996 of the HCC (http://hunconcourt.hu/letoltesek/en_0021_1996.pdf).

like rejecting, refusing, suspending, or annulling, all other forms of provisions which do not rule but explain and thereby extend the text of the constitution are equal to a constitution writing process. Constitutional interpretation *in abstracto* means the expanding of the text of the constitution; therefore, the constitutional court becomes not merely a positive legislator but a constituent power (*pouvoir constituant*). The court undertakes constitution-making even if it is an implicit rather than an explicit process. Since legislative majorities are usually not equal to supermajorities, and in this case the constitutional court fulfils the role of the constituent assembly or the *pouvoir constituant*, these decisions might be regarded as meaning the strongest constraints of the legislative.[4] Constitution-making means that the legislature's room to manoeuvre is heavily limited, since amending the constitution usually requires a supermajority that only rarely coincides with the legislative majority.

(II) Completeness

Judicial decisions pertain to legal regulations or legal norms. Although it might be uncertain whether a legal norm is contained in one sentence, in an article or in several interconnected articles of a statute (or even of several statutes), we embrace the position of the legislator and assume that the legislator either included all relevant norms concerning a policy issue in a statute or that it referred to other statutes which are interconnected. By assuming this position, we argue that complete annulment means that all paragraphs of a statute have been quashed. Nevertheless, a judicial decision very rarely annuls all sections of a statute; it is more common that only certain parts of it will be quashed. Furthermore, we distinguish between qualitative and quantitative

4 At first glance it might be not obvious why we are arguing that constitutional interpretation in abstracto corresponds to constitution-making or writing. The idea (and problem) that constitutional courts might be not only positive legislators but actors of constitution writing processes have been developed in the legal scholarship in connection to the heavily discussed problem of unconstitutional constitutional amendments. Constraining the constituent power by judicial decisions means certainly that the court vindicates the right to be an integrative part of a composite body assumed as *pouvoir constituant*. Also, the concept of post-sovereign constitution-making, as presented by Andrew Arato, hints to the constitutional courts emerged as powerful actors to fill in the gaps and deficiencies of a transitory constitution. In several countries (and especially in Hungary and in South Africa), prominent actors of these post-sovereign constitution making processes were constitutional courts. Both of these directions of constitutional theories consider, however, either all forms of the activity of constitutional courts in general, or they narrow down the problem to the concept of unconstitutional constitutional amendment. In contrast to these trends, we argue that including lengthy and detailed interpretation of constitutional norms and concepts into the operative part of a judicial decision is clearly an expansion of the text of the constitution. Since the operative part of a decision is undoubtedly legally binding, while the status of justifications is contested in this regard, we argue that binding interpretation of the constitution included into the operative part is equivalent to constitution-making. To this question see: Arato (2016); Sweet (2012, 826); Vorländer (2006, 20).

partial annulment. Qualitative partial annulment of the norm might be best grasped perhaps as a negative constitutional requirement.

Determining a negative constitutional requirement, in practice, means that the court found the law (or a paragraph/section/some words of a law) unconstitutional as far as the norm (or legislative act) might have an interpretation which is unconstitutional. However, there might be some other interpretation of the same norm (or legislative act) that is in harmony with the constitution. Consequently, though the court annulled the norm (law or any part of the law), the legislature might find a solution by adopting the same law (part of the law) by explicitly excluding its unconstitutional interpretation. This is why this kind of ruling is only partial: the ruling of the court intends to exclude only some kinds of interpretation of the law (or part of the law), some part of the possible meanings of the law but no other kinds of interpretation of the law. In contrast to qualitative partial annulment, quantitative partial annulment means that not only a certain interpretation of some parts of the law but also all possible interpretations and meanings of that part of the law are unconstitutional, while the constitutional court annuls only one or some part(s) (paragraph, section, some words) of the law. In this sense, quantitative partial annulment is "more complete" than qualitative partial annulment since the law might remain in effect, given the possibility that its unconstitutional interpretation is excluded from the text of the law. Quantitative partial annulment thus means that the constitutional court annulled a part of the law – but only a part of it. Complete annulment, in turn, means that all paragraphs of the law have been annulled.

(III) Temporal effect

The temporal effect of the annulment is a further element of all judicial decisions, which affects the strength of rulings and consequently the room for manoeuvre of the legislature. Since *pro futuro* rulings may grant a transitional period, in which the goals of the legislative body might have temporarily been effectuated, this type of ruling seems to be a compromise and has a less dramatic effect on the legislature. This is not the case with *ex nunc* rulings, and even less in the most radical form of rulings (*ex tunc*). While an *ex nunc* ruling comes into effect immediately, leaving no room for the legislator, an *ex tunc* ruling annuls a law retroactively, which creates an especially strong encroachment on the legislative.

(IV) Prescription

As for the prescription determined by the courts, judges have quite a wide range of options: they can formulate recommendations, directives, or constitutional requirements, or they can even anticipate what kind of legislative acts might prove to be unconstitutional in the future. They can also prescribe detailed regulation as to how unconstitutionality might be remedied. Since

prescriptions vary according to their legal force (or binding effect), it is reasonable to discern four categories reflecting the variegation of prescriptions. Prescriptions which are placed in the operative part of a judicial decision have a clear-cut, legally binding effect (binding prescription) and are functionally equivalent to a constitutional requirement in the operative part of the decision. Both prescriptions (or directives) in the operative part and constitutional requirements expand the text of the law under review; consequently, the court becomes a positive legislator by giving a prescription or a constitutional requirement. By contrast, prescriptions in the justification (or reasoning) have a less clear-cut status concerning their legal effect (non-binding). Prescriptions in the headnotes (*Leitsatz*) of the decision have an ambiguous legal effect: they are more constraining than prescriptions in the justification but less so than prescriptions in the operative part of the decision (directive). Furthermore, several decisions contain no prescription at all (no prescription).

1.5.2 Diversity and frequency

As already noted, our research starts from the assumption that the decisions of the constitutional courts should be considered more diverse than merely declaring constitutionality or unconstitutionality. The components we identified earlier allow judges to select from a wide range of measures to constrain the legislature.

Analysing the combinations and the diversity of rulings involves a significant advance compared to the earlier dichotomous approach, which allowed only for the distinction between the constitutional/unconstitutional categories. The diversity approach sheds light on the frequency of the specific combinations of the different parts of the rulings, as well as their temporal changes. This level of the analysis involves a nominal approach, which simply determines the different ruling combinations and their frequency. Since a specific ruling consists of different parts constraining the legislative power to a different extent, it is important to differentiate between weaker and stronger combinations. Whereas specific combinations imply a stronger constraint on the legislature, other combinations consisting of weaker parts suggest that the court intended a tempered intervention in the legislature's room for manoeuvre.

As mentioned earlier, the four elements – namely provision, completeness, temporal effect, and prescription – might be considered as options from which a judge or the constitutional court makes up a ruling. Based on the methodological framework, there are 79 possible combinations of the elements (different types of provision, completeness, temporal effect, and prescription) (Table 1.2). We are, however, aware that certain combinations of these elements are not applicable at all: in the case of unconstitutionality by legislative omission (Ib), completeness (II) and temporal effect (III) are not applicable since no legal norm has been annulled, which is a precondition for referring to the completeness or temporal effect of the annulment. Also, declaring a constitutional requirement in the operative part of the decision (Id) or declaring

Table 1.2 Possible combination of the elements of judicial rulings

Provision	*Completeness*	*Temporal effect*	*Prescription*
Rejection or refusal (REJ or REF)	NA	NA	NA
Omission (OM)	NA	NA	no prescription non-binding prescription directive binding prescription
Procedural unconstitutionality (PROC)	qualitative partial annulment	*pro futuro*	no prescription
	quantitative partial annulment	*ex nunc*	non-binding prescription
	complete annulment	*ex tunc*	directive binding prescription
Constitutional requirement (CR)	NA	NA	Constitutional requirement
Substantive unconstitutionality (SUBST)	qualitative partial annulment	*pro futuro*	no prescription
	quantitative partial annulment	*ex nunc*	non-binding prescription
	complete annulment	*ex tunc*	directive binding prescription
Constitutional interpretation *in abstracto* (CIIA)	NA	NA	Constitutional requirement

NA: Combination is not possible.

a constitutional interpretation *in abstracto* (If) both imply that completeness (II) and temporal effect (III) are not applicable, since no sections of the law have been annulled. Annulment is required in order to be able to check for the completeness and temporal effect of the annulment. Constitutional requirement in the operative part of the decision (Id) and constitutional interpretation *in abstracto* (If) imply that we cannot consider prescription (IV) at all. This is because constitutional requirements are functionally equivalent to prescriptions that expand the text of the law under review – as explained previously. Constitutional interpretation *in abstracto* (If), by contrast, expands the text of the constitution; thus, we cannot consider it as a prescription. Beyond these specific cases, in the coding process all four elements of a ruling listed here were checked one by one in four steps.

1.5.3 Strength and weighting

Beyond the dimensions of diversity and frequency of certain types of rulings, the main goal of the research is to determine the strength of the decisions of constitutional courts. More specifically, the aim is to measure the extent by which a ruling of the court might constrain the legislature. Measuring

the strength of constitutional court rulings requires weighting the elements described in the previous section. Determining or predefining the relationship of the elements to each other is not unconceivable by formulating clear and plausible principles of weighting the elements (see Table 1.3). In order to determine the strength of a ruling, it is necessary to weight the elements by comparing the four criteria and ranking the decision options. The weighting assumes that the provision is the most important and decisive element of the decision, and the weight of the other elements in relation to the strength of the decision was determined in relation to this.

Two principles were used to determine the value of each element or option. According to the first principle, the weakest combination of substantive unconstitutionality (1e + 2a + 3a + 4a = 6) is always stronger than the strongest case of procedural unconstitutionality (1c + 2c + 3c + 4d = 5). According to the second principle, constitutional interpretation in abstracto (1f) is at least as strong as the strongest case of substantive unconstitutionality (1e + 2c + 3c + 4d = 10). Following these principles, the weighting of each element of the decisions has been developed, the exact values of which are shown in Table 1.3. By identifying the elements and giving them the appropriate weight, it is possible to determine the extent to which a given majority decision or dissenting opinion represents a constraint on the legislature. Furthermore, the decisional strength allows us to draw conclusions not only about the functioning of the Constitutional Court but also about the individual behaviour of judges, which will be crucial to account for dissenting opinions and their relation to majority rulings.

(I) Provision

The most important part of a judicial decision is its provision. The range of the scale extends from decisions that refuse the motion (without deciding on the merit of the case) or simply find the law constitutional, on the one end of the scale, and decisions in which the constitutional court becomes constituent power (constitutional interpretation *in abstracto*), on the other. There are different types of decisions between these two extremes. The relative weight might be determined according to the following relations.

- (Ia) Rejection does not constrain the legislature at all. [0.00]
- (Ib) Unconstitutionality by legislative omission merely declares that the legislature must adopt a new regulation but does not constrain the legislature regarding the substance of regulation. [+0.50]
- (Ic) Declaring the procedural unconstitutionality of a legal regulation implies that the regulation will be annulled but only due to some procedural mistakes in the legislative process. [+1.00]
- (Id) Constitutional requirements constrain the legislature more than the declaration of procedural unconstitutionality since the court becomes a positive legislator and the substance of the regulation will be altered while upholding the law under review. [+2.00]

Table 1.3 Weighting of the elements of rulings

I. Provision	(Ia) rejection or refusal **[0]**	(Ib) unconstitutionality by legislative omission **[0.5]**	(Ic) procedural unconstitutionality **[1]**	(Id) constitutional requirement **[2]**	(Ie) substantive unconstitutionality **[6]**	(If) constitutional interpretation *in abstracto* **[10]**
II. Completeness	(IIa) qualitative partial annulment **[0]**		(IIb) quantitative partial annulment **[0.5]**		(IIc) complete annulment **[1]**	
III. Temporal effect	(IIIa) *pro futuro* **[0]**		(IIIb) *ex nunc* **[0.5]**		(IIIc) *ex tunc* **[1]**	
IV. Prescription	(IVa) no prescription **[0]**	(IVb) non-binding prescription **[1]**		(IVc) directive **[1.5]**		(IVd) binding prescription **[2]**

- (Ie) Declaring substantive unconstitutionality implies that the substance of the legal regulation has been flawed to a degree that the court could not rectify unconstitutionality by stretching the text of the law under review (i.e. determining a constitutional requirement) but has to abrogate the legal regulation. The guiding principle is that any form of substantive unconstitutionality should be regarded as a stronger decision than any other decision based on procedural unconstitutionality or constitutional requirement. Therefore, the weakest combination of substantive unconstitutionality should always be regarded as stronger than the strongest form of procedural unconstitutionality. [+6.00]
- (If) Constitutional interpretation *in abstracto* is regarded as the strongest constraint on the legislator. This is why CIIA must be at least as strong as the strongest decision declaring substantive unconstitutionality [+10.00]. It is, however, of utmost importance to remark that CIIA does not always constrain the legislature. CIIA might sometimes rather extend the room of the national legislator to manoeuvre vis-à-vis other political actors. In this case, the constitution will be expanded in a way highly favourable for the legislature. This is why we have to make a clear difference between highly constraining CIIA, on the one hand, and highly permissive CIIA on the other. Consequently, CIIAs should also be evaluated case by case. [either +10.00 or 0.00]

(II) Completeness

The question of whether the court annulled the legal regulation totally (complete annulment), partially (quantitative partial annulment), or merely excluded some meanings of a legal term (qualitative partial annulment) is certainly not as important as the provision or a prescription. Thus, we had to add less weight for the strongest form of completeness than for the strongest form of prescription and the provision. This is how qualitative partial annulment is weighted as the weakest form [0.00], quantitative partial annulment as a middle-range [0.50], and complete annulment as the strongest form [+1.00].

(III) Temporal effect

Temporal effect should be considered as important as completeness if we compare the four elements of rulings. Temporal effect is certainly less important than the prescription and even less than the provision. Hence the weight of the three categories are as follows: *pro futuro* [0], *ex nunc* [0.50], and *ex tunc* [+1.00].

(IV) Prescription

Since courts might to some extent replace legislature by determining binding prescriptions, this fourth element (along with its functional equivalent

constitutional requirement) must be the second-most important and weightiest element of a ruling after declaring the substantive unconstitutionality of a legal regulation. Weights of prescriptions vary according to their placement in the decision: non-binding is placed in the justification, which has a rather uncertain legal effect [+1.00]; directive is placed in the headnote (if there is such a thing in the decision), the legal status of which is still uncertain but might clearly be regarded as a stronger element [+1.50] than prescriptions in the justification. The strongest prescription is placed in the operative part, which has a legal binding effect [+2.00].

1.5.4 Dissenting opinions, dissenting coalitions, and networks

Constitutional courts do not always make unanimous decisions, and judges might express their disagreement by formulating dissenting opinions. Consequently, we have examined not only majority rulings but also dissenting opinions. We have, however, neglected all concurring opinions since they do not concern the tenor, i.e. the operative part of the judicial decisions, which is in the focus of our research project. Disaggregating majority decisions and dissenting opinions into rulings implies that the judges' dissenting opinions can be directly linked to rulings of the majority decisions. This allows us to avoid the pitfalls of a simplified analysis that would link entire judicial decisions to dissenting opinions without taking into consideration the fact that various rulings in dissenting opinions might refer to different rulings of a majority decision. This means that dissenting opinions are disaggregated into rulings and analysed according to the same components and elements as the majority decisions themselves, and it becomes possible to investigate even individual judicial behaviour.

Dissenting opinions are sometimes formulated by one judge without having any other judges aligning with the dissent. Several times, however, judges make a coalition when publishing dissenting opinions. A coalition of dissenting judges means that a dissenting opinion written by a judge might also be supported and signed by further judges. A coalition might involve a single case of agreement, but in the practice of the courts some coalitions of two or more judges are lasting, extending to several cases. Dissenter coalitions are considered here in a very restrictive sense: judges form a dissenter coalition only if their dissent has the same strength value and it is an outcome of the same composition of the elements of judicial decisions. This means that they selected the same components in all four aspects of the ruling (provision, completeness, temporal effect, and prescription). The same strength of two or more dissenting opinions is not a sufficient condition for a dissenting coalition since it could be an outcome of a different composition of their dissenting opinions. Two dissenting opinions with the same value [7] are not considered as a basis of judicial coalition if they differ, for example, in their temporal effect and completeness. To put it simply: a dissenting opinion declaring substantive unconstitutionality [6], with qualitative partial annulment [0] ex tunc [1] and

without any prescription [0] is not considered as a basis of judicial coalition if another judge declared in his/her dissenting opinion a substantive unconstitutionality [6] with complete annulment [1] but *pro futuro* [0] and without any prescription [0], since they differ in temporal effect and completeness.

Dissenting opinions have been conjugated, and each interaction of judge "A" with any other judge has been counted in a matrix. Of course, there have been decisions where dissenting opinions were formulated by only one judge, without any other judges aligning with it. These cases have been neglected since we were interested in dissenting coalitions. The number of interactions between judge "A" and judge "B" shows the strength of the coalition: if the uniformity of their dissenting opinions occurred several times (even if the components of their dissenting opinion differed from time to time), it is considered a strong coalition. This framework of analysis will be applied consequently in all country studies.

Judges with identical dissenting opinions can be considered as coalitions that allow for a network analysis of the practice of the courts. Coalitions might be formed explicitly when a judge signs a dissenting opinion written by another judge, or implicitly when two or more judges form the same dissenting opinion. Identical dissents are determined by their specific composition of the elements described previously. That is, dissenting coalitions constrain the legislature not only by the same strength, but the strength of their dissent consists of the selection of the same elements (the same type of provision, completeness, temporal effect, and prescription). Coalitions were first arranged into a matrix of the pairs of dissenting judges to draw a map of the intensity of interaction between judges. The map identifies the judges' various clusters, actors in the centre or on the periphery of the network, as well as judges who act as links between separate parts of the network. On the next level of the network analysis, we intended to determine how polarized the network is. By using the edge betweenness algorithm, we managed to identify not only the groups separated within the network but also the degree of their separation, or in other words, their modularity which shows how far the clusters are from each other. Although the literature does not offer an uncontested view about a specific level of modularity to account for a significantly fragmented community, in practice, a network with modularity above 0.3 is usually considered meaningfully separated (Clauset, Newman, and Moore 2004).

1.6 Structure of the chapters

The country studies (Chapters 3 through 11) in this volume present the results of the coding process and the analysis of the data sets of the countries in question. Although the chapters are all structured in the same way, they differ slightly because we conducted a pilot project with six European countries. Consequently, the structure of the studies on the Czech Republic, Hungary, Poland, Romania, and Slovakia takes into account that the first results of the pilot project have already been published (Pócza 2019). These chapters find a

balance between giving a short summary of the previous findings and including essential new findings on the courts' performance in five Central European countries. On the other hand, the chapters on Croatia, Estonia, Latvia, Lithuania, and Slovenia (countries not included in the pilot project) follow the predetermined chapter structure used also in the pilot project.

Keeping in mind this difference between the two groups of country studies, each chapter introduces the respective constitutional court by outlining its historical origins, the court's position within the constitutional system, its main competencies, and institutional peculiarities or special processes unknown elsewhere in the region. Secondly, the chapters present a general impression of the court's activity based on the evaluation of the JUDICON-EU dataset of the respective countries and, at the same time, clarify whether there was any kind of country-specific phenomenon concerning case selection, coding process, dissenting opinions, decision-making processes of the court, or other phenomena deviating from the consistent coding rules. Thirdly, the chapters assess the trends in majority decisions: preferred or missing ruling types or trends in ruling types, and explanations of these trends. The authors also determine whether changes in ruling types and strengths are linked to changes in political circumstances or changes in the court's composition. Some chapters used statistical analysis, while others more advanced quantitative methodologies in evaluating the data and looking for explanations. Nevertheless, in some countries, trends were not discernible; consequently, we asked the authors to find an answer to the absence of any trends.

Since the courts' presidents have usually a special influence on the court's activity, where relevant, the chapters discuss the president's performance and influence on the decision-making process. Subsequently, the analysis of dissenting opinions follows. In some courts the number of dissenting opinions is rather negligible, consequently, they cannot be analysed quantitatively. In other courts, however, trends in publishing or not publishing dissenting opinions are clearly recognizable, and the authors could assess individual judges' performance concerning the frequency and strength of their dissenting opinions, as well as their relative difference from the majority decisions' strength. Since we also prepared a network analysis of dissenting opinions, the country studies touch upon the question of dissenting coalitions, i.e. identifying the judges who were willing to join each other for a dissent. A qualitative evaluation of selected cases closes the country studies with a special focus on cases of utmost importance from the perspective of the research questions or on cases challenging the quantitative methodology of the project.

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