Constitutional Review in Western Europe

Judicial-Legislative Relations in Comparative Perspective

Edited by
Kálmán Pócza

First published 2024

ISBN: 978-1-032-50662-3 (hbk)
ISBN: 978-1-032-50663-0 (pbk)
ISBN: 978-1-003-39949-0 (ebk)

Chapter 13

Western European constitutional courts in comparative perspective 1990–2020

Kálmán Pócza, Márton Csapodi, Gábor Dobos and Attila Gyulai

DOI: 10.4324/9781003399490-13

The funder of the Open Access version of this chapter is Mathias Corvinus Collegium Foundation.

Routledge
Taylor & Francis Group
LONDON AND NEW YORK

13 Western European constitutional courts in comparative perspective 1990–2020

Kálmán Pócza, Márton Csapodi, Gábor Dobos and Attila Gyulai

13.1 Introduction

What does the big picture of constitutional adjudication in Western Europe between 1990 and 2020 look like? This is certainly the question that has come to the reader's mind as he or she has begun reading this volume with the first chapter and continued with the country studies. While answering such a profound and fundamental question should certainly be the task of a comparative study, we do not think we can really live up to such expectations simply because there are so many aspects that could and should be analyzed that a concluding chapter can only select a few basic questions and make a first attempt to answer them. Consequently, we have deliberately narrowed the scope of this chapter to a few pressing questions, and, at the same time, we want to emphasize that in-depth qualitative and sophisticated quantitative analysis is needed to provide a more comprehensive picture of judicial behaviour and judicial-legislative relations in Europe.

While the JUDICON-EU research project formulated two aims, mapping the diversity and strength of judicial decisions, the results of the coding process present only one side of the story. The original data created by the project can answer the question to what extent judicial decisions constrained the room for manoeuvre of the legislation. Nevertheless, it is only one way to approach judicial-legislative relations by focusing on the constraint exerted *by* the courts *on* the legislatures. The other side of the story tells us which factors might have influenced courts and judges in taking strong or weak decisions. While there are several theoretical models which try to explain judicial behaviour and, indirectly, the strength of judicial decisions, here we will focus only on some selected models and summarize the main findings of the country studies in this respect. Keeping in mind these limitations, we will focus on three basic factors which can explain judicial behaviour and ruling strength after presenting descriptive statistics on the diversity and strength of the courts' rulings in Europe.

While *institutional design* can create a powerful court securing the potential of highly restrictive rulings vis-à-vis the legislator, sometimes these formal powers do not reflect the court's actual power. For various reasons, courts

DOI: 10.4324/9781003399490-13

simply do not want to, or are unable to exercise the powers granted to them. By contrast, other courts have not been vested with very forceful tools to control legislatures, yet they have either been able to empower themselves to exert control on elected politicians or have creatively used the formal tools available, sometimes causing serious turmoil in the political sphere. In addition to institutional design, the *political context* is usually considered a crucial factor in explaining judicial behaviour and judicial-legislative relations. In this regard, our research project also yielded mixed results. A third explanatory factor, *event-related variables* (e.g. a financial crisis), also did not prove to be crucial in all circumstances. After the financial crisis, courts chose different strategies. Some became guardians of social rights (in the context of austerity measures), while others held back and did not participate in pushing back against austerity measures of the governments.

In what follows, we first provide a comparative overview of the JUDICON-EU dataset at a very basic level (Section 13.2). The descriptive statistics presented here can serve as a starting point for formulating various hypotheses for future research. In addition, it provides an overview of how (if at all) institutional design, political context or various social/political events influenced the strength of judicial decisions and the propensity of judges to publish dissenting opinions (when they were entitled to do so). In Section 13.3 we turn to the question whether institutional design had an impact on ruling strength, while the following two sections focus on the relationship between the political context (Section 13.4) or event-related factors (Section 13.5), on the one hand, and the constraint judges exerted on the legislator, on the other. Finally, while dissenting opinions are less significant in Western Europe than in Central and Eastern Europe, in Section 13.6 we will summarize the main findings of the present volume concerning the trends in dissenting opinions.

13.2 Courts by numbers

The country experts of the JUDICON-EU project identified more than 15,000 constitutional court decisions that fall within the scope of the study (Table 13.1).[1] These decisions were broken down into nearly 25,000 rulings handed down by court majorities. In some countries, such as Ireland and Germany, courts issued fewer than 10 decisions per year. Although there are some institutional features that could explain the differences between countries (e.g. the fewest decisions per year were issued in countries with a decentralized judicial system in Cyprus and Ireland), the results are rather mixed. It

1 The descriptive statistics in this section cover all countries and are identical to Section 12.2 of the twin volume, Kálmán Pócza (ed.), *Constitutional Review in Central and Eastern Europe. Judicial-Legislative Relations in Comparative Perspective* (London/New York: Routledge, 2024).

Table 13.1 Number of decisions, rulings and dissenting opinions in JUDICON-EU countries

	Country	*No. of decisions*	*No. of rulings*	*Rulings with at least one dissenting opinion*	*No. of rulings in dissenting opinions*
Western Europe	AUS	841	956	0	0
	BEL	733	2518	0	0
	CYP	82	129	37	124
	FRA	1230	2851	0	0
	GER	254	334	21	35
	IRL	216	250	2	3
	ITA	3233	4857	0	0
	POR	234	343	166	504
	SPN	771	1128	314	754
Central and Eastern Europe	CRO	808	896	70	106
	CZH	361	437	167	478
	EST	190	207	77	297
	HUN	747	1476	449	1154
	LAT	244	337	46	81
	LIT	305	872	43	51
	POL	1337	2460	398	714
	ROM	3148	3330	219	436
	SLK	204	309	109	196
	SLN	799	1055	161	285
SUM		15737	24745	2279	5218

seems that the total number of decisions is higher in Western Europe (WE) than in Central and Eastern Europe (CEE), but it is worth noting that in most Eastern European countries constitutional courts were established only two or three years after the beginning of the period under scrutiny (i.e. 1990). With this in mind, the courts in the two groups of countries have about the same activity when looking at the sheer number of decisions (WE countries: 27.2 decisions per year; CEE countries: 29.1 decisions per year).

In terms of the average strength of rulings, courts have constrained legislatures in relatively different ways (Figure 13.1). As with the number of decisions and rulings, the East–West divide appears to have limited explanatory power, with countries from both groups at either end of the scale. Of course, it would be foolish to claim that courts with roughly the same score have the same profile. Country studies of both volumes (*Constitutional Review in Western Europe* and *Constitutional Review in Central and Eastern Europe*) also make clear that these numbers may mask different, country-specific contextual factors. For example, both Romania and Ireland are at the lower end of the scale, but for different reasons. In Romania, the institutional framework shapes the way the Romanian Constitutional Court operates: as there is no

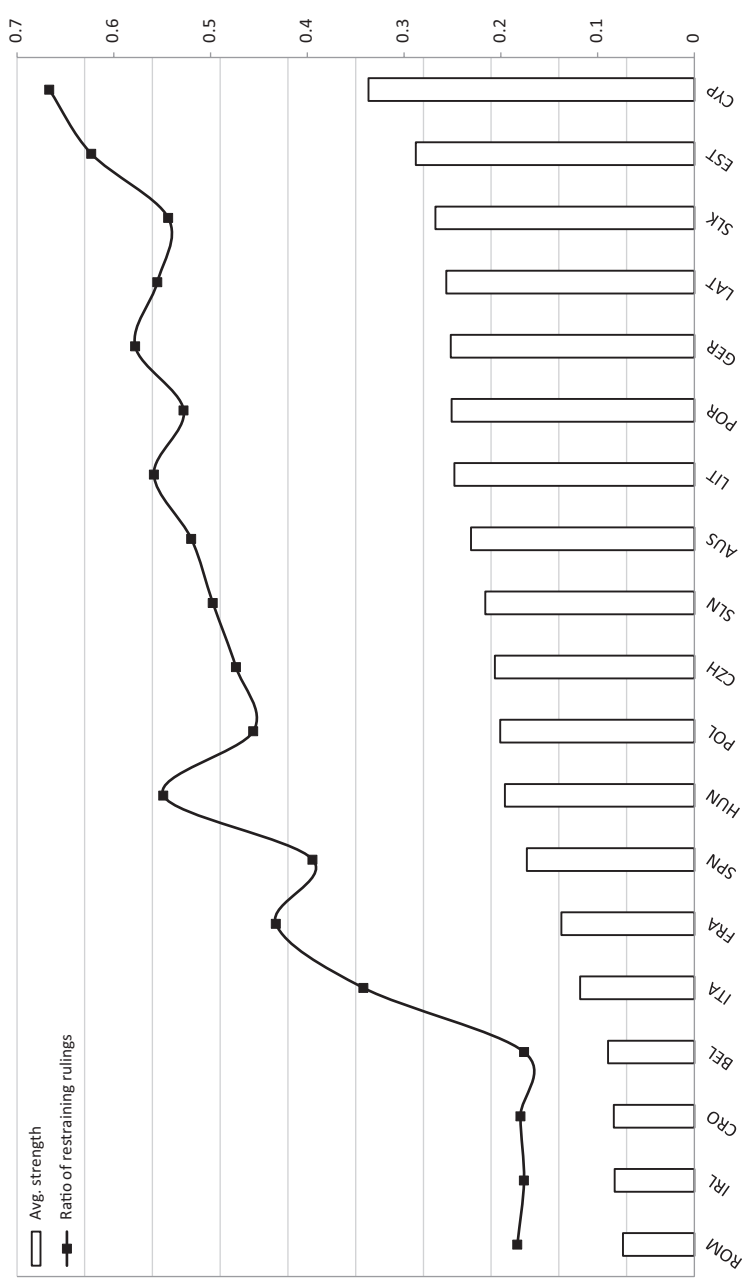

Figure 13.1 Average strength and proportion of restraining rulings

preliminary screening mechanism to filter petitions, the proportion of rejections is quite high, which gives a distorted picture of the relative power of the court (see Kuti 2024). The low strength value of Ireland, on the other hand, can be explained more by political and cultural factors. While the provisions of the Irish Constitution have an indirect (and reverse) effect on the propensity of the apex courts to strike down legislation, the Irish judiciary has also adopted a self-imposed principle of restraint and deference. Finally, Irish party politics (with two parties that do not differ heavily in their policies and with a low degree of polarization) also leads to a lack of political partisanship in judicial decision-making (Chapter 7).

At the other end of the scale, both the Cypriot and Estonian courts exert strong restraint on legislators but, once again, for different reasons. In Cyprus, many laws that the President of the Republic submits to the Supreme Court for preliminary review are completely annulled, meaning that the entire law is declared unconstitutional, not just part of it. However, a closer look at these cases reveals that these unconstitutionality decisions review laws that include only a single paragraph and they merely amend a previous law (Chapter 4). Therefore, following the methodology of the JUDICON-EU project, they were coded as complete annulments, even if the laws contained only a single paragraph. On the other hand, to understand Estonia's position on this scale, we need to consider the procedural design of the judiciary. In Estonia, there are several review mechanisms that filter cases before they reach the Constitutional Review Chamber of the Estonian Supreme Court, making judicial review of legislative acts only an "ultima ratio" instance. Moreover, norm control proceedings can only be initiated by a limited group of state institutions, which indirectly affects the number and quality of petitions: few petitioners submitting high-quality petitions often resulting in a finding of unconstitutionality by the Estonian Supreme Court (Krõõt Tupay 2024). The above examples show that the quantitative analysis of the JUDICON-EU project can rather serve as a framework for a qualitative analysis that can be used to explore the contextual differences behind the similarities.

Figure 13.1 shows that the proportion of restrictive rulings more or less follows the trend of average strength scores. Nevertheless, there are at least two outliers: both France and Hungary are above the trend line because their constitutional courts tend to use softer restrictive rulings (constitutional requirements, omissions and procedural unconstitutionalities), so while these courts are activist in the sense that they issue non-zero (i.e. restrictive) rulings quite frequently, the softer instruments they use keep the overall strength of their rulings lower. Both courts constrain the legislature relatively frequently but in a more generous way that gives the legislature more room to manoeuvre (Chapter 5; Gyulai et al. 2024).

Looking at the performance of the courts longitudinally, the annual average of ruling strength shows a clear difference between the Eastern and Western blocs (Figure 13.2). The early years of the Central and Eastern European courts can be characterized with stronger rulings, although it must be emphasized

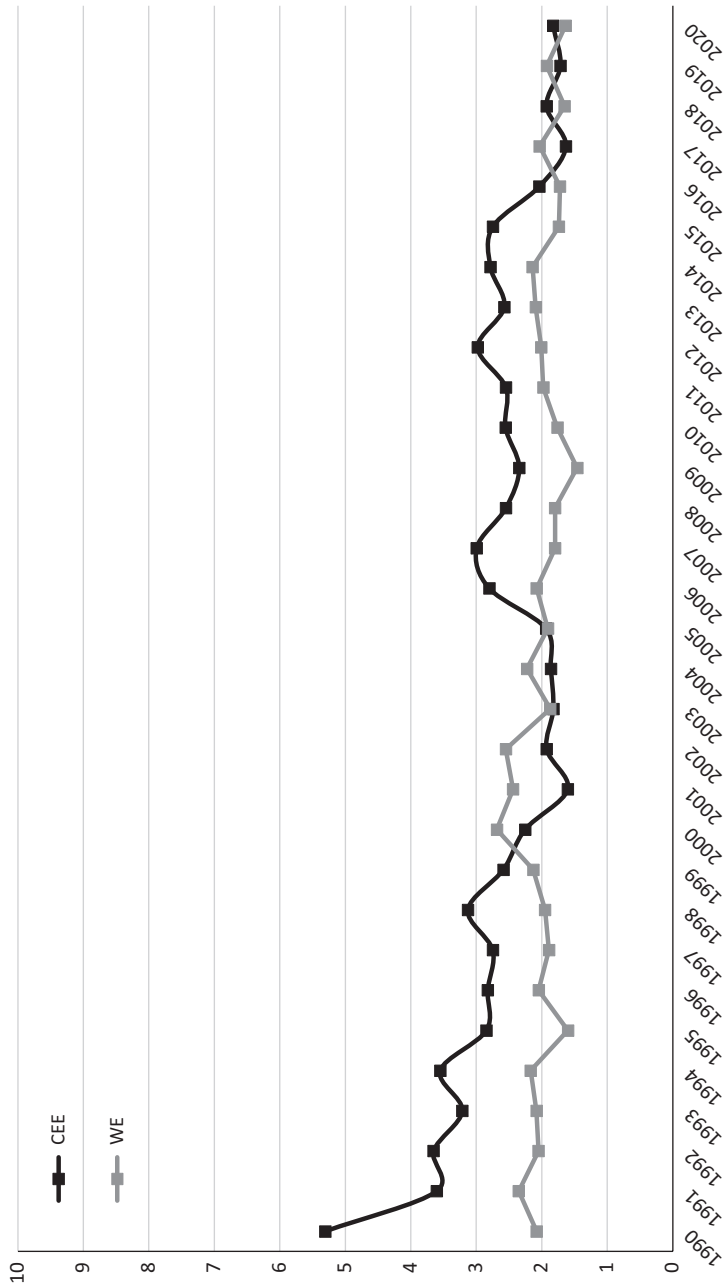

Figure 13.2 Average strength of rulings (CEE vs. WE)

that the constitutional courts were active in only two countries (Hungary and Slovenia) in 1990–1991, and the high restraint resulted from only a few rulings (Batagelj 2024; Gyulai et al. 2024). In any case, the courts of the Central and Eastern European countries tended to issue more restrictive rulings (with the exception of countries with consistently weak rulings, such as Romania) in the first decade.

Regarding the diversity of rulings, Figure 13.3 shows the aggregate proportion of the two predominant types of provisions by country – that is, substantive unconstitutionality and rejection in each country. The figure shows that the original hypothesis of the JUDICON-EU project, that constitutional adjudication in Europe is more diverse than a dichotomous striking down/upholding the reviewed laws, can only be partially confirmed. Most countries have adhered well to the dichotomous approach, i.e. almost every ruling of the courts falls into either the category of rejection or substantive unconstitutionality. Across Europe, there are only a few examples where constitutional courts use a more colourful set of tools, such as in Italy, Germany, France and Hungary. Several countries even prohibit declaring a particular type of provision, but most courts, which could theoretically choose from a wide range of provisions, tend to use only substantive unconstitutionality or rejections.

A breakdown of provision types (Figure 13.4) shows that in countries that rarely use provisions other than rejections and substantive unconstitutionalities, differences are found depending on whether the former or the latter are the predominant. In a few countries with greater diversity, constitutional courts tend to use a third type of provision in addition to the two dominant types – usually either legislative omissions (in Italy and Slovenia) or constitutional requirements (in Spain, Czechia, Austria and Latvia). The use of more than three types of provisions is characteristic of only a handful of countries (France, Germany, Hungary).

Finally, as far as dissenting opinions are concerned, there is a clear difference between Western and Eastern European countries. First of all, there are Western European countries where constitutional judges are explicitly forbidden to publish a dissenting opinion (Austria, Belgium, France, Italy), while there are no (or not any more) such restrictions in any of the Central and Eastern European countries. But even if we exclude the countries where it is not possible to express a dissenting opinion, the number of rulings with dissenting opinions seems to be much higher in the Central and Eastern European countries (Figure 13.5).

However, when numbers in Figure 13.5 are broken down by country, it becomes apparent that neither group of countries can be considered coherent (Table 13.2). Among the Western European countries, a gap can be observed between the "Mediterranean" and the "Northern" countries. The proportion of rulings with dissenting opinions is quite low in Ireland and Germany, while in the Mediterranean countries (Spain, Cyprus and Portugal) at least a quarter of rulings have dissenting opinions. The fact that Spain and Portugal perform similarly to the countries of CEE in terms of the number and proportion of

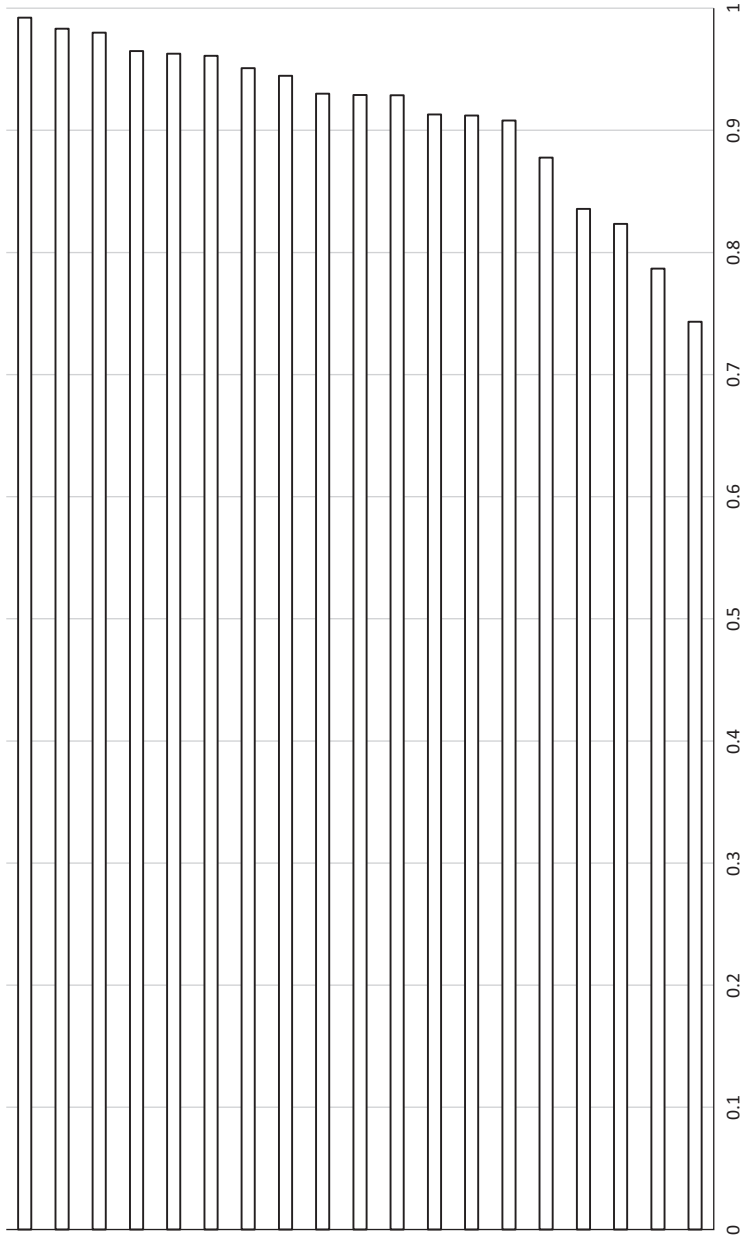

Figure 13.3 Cumulative ratio of the two most frequent provision types (REJ + SUBST)

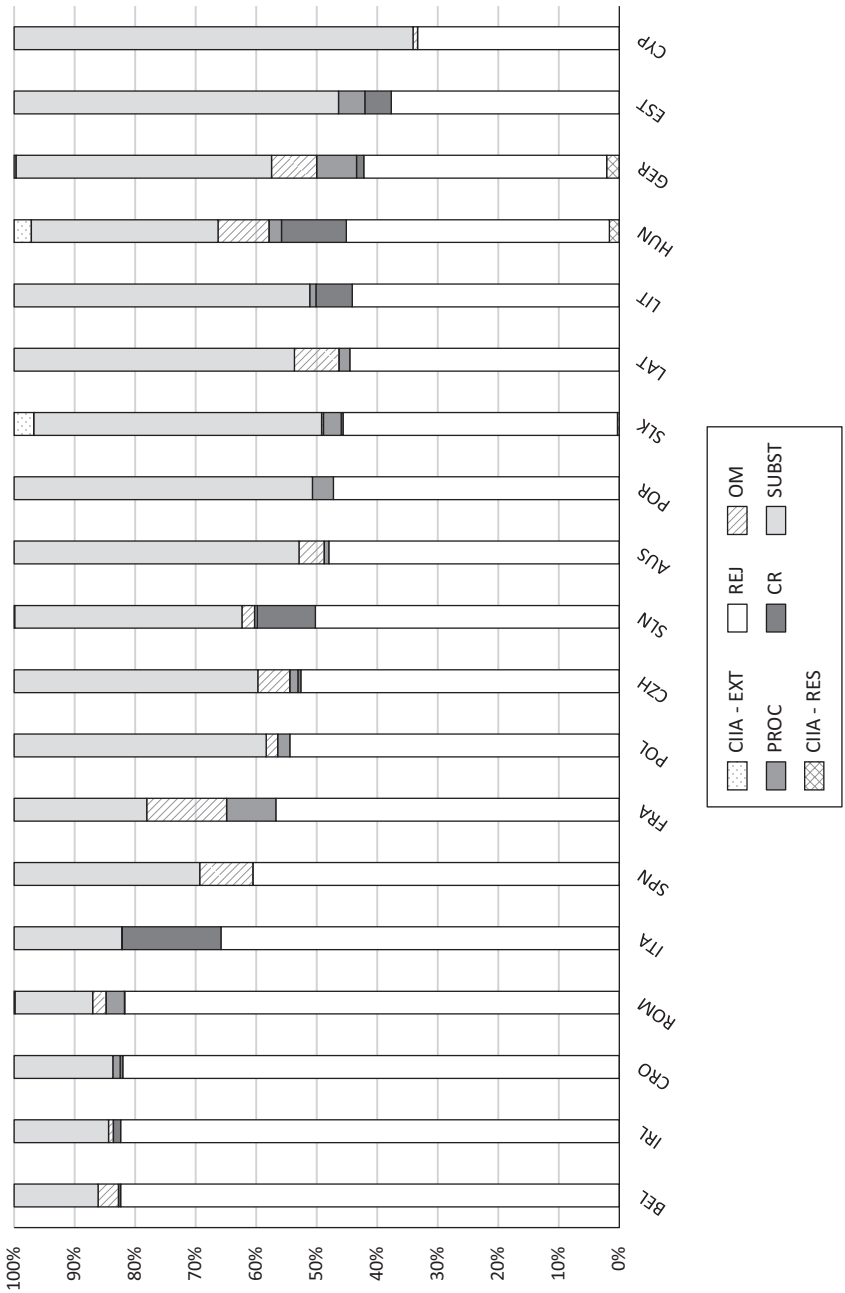

Figure 13.4 Frequency of ruling types (all countries)

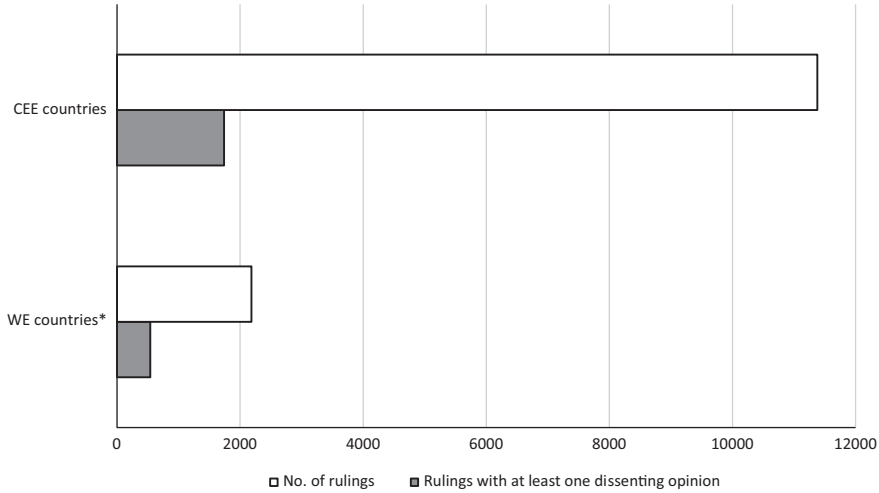

Figure 13.5 Rulings with at least one dissenting opinion (CEE vs. WE)
Note: *Countries where judicial dissent is forbidden are excluded.

Table 13.2 Proportion of rulings with at least one dissenting opinion (all countries)

	Country	*Proportion of rulings with at least one dissenting opinion (%)*
WE countries*	IRL	0.8
	GER	6.3
	SPN	27.8
	CYP	28.7
	POR	48.4
CEE countries	LIT	4.9
	ROM	6.6
	CRO	7.8
	LAT	13.6
	SLN	15.3
	POL	16.2
	HUN	30.4
	SLK	35.3
	EST	37.2
	CZH	38.2

Note: *Countries where judicial dissent is forbidden are excluded.

dissenting opinions could be partly explained by their past, as both countries experienced a democratic transition in the 1970s. The cases of Cyprus and Ireland show that the political context of the countries is sometimes more important than the institutional framework of the courts (e.g. both the Irish and Cypriot judiciaries operate under a decentralized judicial system but show very different approaches to dissent; see Chapter 4 and Chapter 7).

Among Central and Eastern European countries, the establishment of the new political systems in the 1990s clearly affected the behaviour of the courts in terms of dissents. In most countries, judges were reluctant to attach dissenting opinions to majority rulings in the early period after the democratic transition. The reason for this is probably to be found in an institutional strategy based on uniform decision-making to build and protect the reputation of the newly created institution. Moreover, attaching dissenting opinions to majority rulings was explicitly forbidden in Slovakia and Lithuania until 2000 and 2008 (respectively). As with average strength, it appears that the frequency of dissents can be explained by a variety of reasons. Based on the country studies in the twin volume *Constitutional Review in Central and Eastern Europe*, differences across countries can be attributed to factors such as institutional settings, court strategy, political context or even personal characteristics (for a more detailed analysis of the CEE region see Pócza et al. 2024).

13.3 Institutional design

Descriptive statistics hold intrinsic value in comparative research projects, as they stimulate the formulation of new research enquiries while addressing others. The data gathered in the JUDICON-EU project, for instance, has served as an inspiration for project participants, who were asked to provide initial approximations to a range of questions pertaining to judicial behaviour. As noted in the introduction, most of the authors refer to three basic explanatory models of judicial behaviour when examining the potential impact of *institutional design*, *political context* or *event-related factors* on judges, thereby shaping the degree of restrictiveness or leniency exhibited in their decisions.

Embarking on our analysis, it becomes pivotal to examine the influence of *institutional settings* on the strength of judicial decisions. Several theoretical frameworks postulate the explanatory potential of certain institutional variables in shaping judicial behaviour and the strength of court rulings (Bumin 2017; Gardbaum 2018). At first glance, overriding mechanisms might suggest that judicial decisions are more likely to be deferential. However, the country studies presented in this volume have cast doubts on these assumptions. Furthermore, if courts have the power to review constitutional amendments one might anticipate more restrictive decisions by the court. Yet again, the country studies encompassed within this volume challenge these presumptions. Nonetheless, there are other forms of institutional constraints that appear to exert a significant influence on the courts' performance.

13.3.1 Overriding mechanism

The first example, the case of overriding mechanisms – where the legislature has the ability to overrule an unconstitutionality decision – shows that a seemingly strong legislative authorization to control judicial power can have very limited influence on the strength of rulings in practice.

Overruling a constitutional court ruling by legislative means is certainly rare, and these kinds of legislative actions can be divided into two categories according to the legal framework in which it takes place. First, legislative override can be done by constitutional amendments in countries where some qualified majority in the parliament is sufficient (e.g. a two-thirds majority). A much less common occurrence in European constitutional systems is when the legislature is entitled to overrule the constitutional court without amending the constitutional text. Notably, however, the outcome of these two different institutional settings can be quite similar in practice, because if the parliament's right to overrule is subject for example to a two-thirds majority, the override is effectively the same as in the case of constitutional amendments with a two-thirds majority.

As the case of Portugal shows, even an explicit legal green light for the parliament to override the constitutional court might not have any significant effect on their relationship. If the Portuguese Constitutional Court (PCC) declares a legal provision unconstitutional, the relevant legislative assembly can reconfirm the provision by a two-thirds majority of the members present. However, this unusual authorization is fully unused and is not reflected in the strength of constitutional review – meaning that the PCC does not seem to have adopted a more restrained approach in order to avoid the deployment of the legislative override mechanism (Chapter 9).

Germany and Austria are worth mentioning primarily due to the regular presence of grand coalitions, which most of the time had the formal power to amend the constitution and, in this way, to override the courts' rulings. In Germany, there is very limited evidence to support the hypothesis that the German Federal Constitutional Court (GFCC) took stronger decisions during times of super-majorities in parliament, and the GFCC does not seem to show deference either (Chapter 6). While the German Basic Law contains an eternity clause which implicitly excludes the possibility of changing the basic features of the German state, German grand coalitions have never tried to override the decisions of the GFCC. In turn, the GFCC was neither frightened nor encouraged by the fact that judges had to face a constitutional majority. By contrast, the grand coalition in Austria, after the Austrian Constitutional Court (ACC) found some legal acts unconstitutional, re-enacted several times an ordinary legislative act as a constitutional provision to prevent review by the ACC. Consequently, it was not unusual in the Austrian context that court decisions were overridden by the legislators (i.e. grand coalition). While this practice ceased to be a dominant pattern in the last decade, there is no sign that the ACC either feared or tried to counterbalance the constitutional majority in any way, even though overriding was not unknown in the Austrian context (Chapter 2).

13.3.2 Type of the review process

In contrast to the previously mentioned institutional factor, which does not seem to influence judicial behaviour in any way, the type of the constitutional

review procedure has considerable effect on the ruling strength in some cases. For example, a clear difference can be observed between *a priori* and *a posteriori* review in France. The *a posteriori* review process was only introduced in France in 2010, by the entering into force of a constitutional amendment adopted in 2008. As results show, from the 2010s, the ruling strength of the French Constitutional Council (FCC) tends to decrease in *a priori* review procedures, while at the same time increases in *a posteriori* procedures. This increase might be explained by the constantly growing popularity of the *a posteriori* review procedure among French lawyers and the people; however, at the same time the decrease in the restraint in *a priori* review processes might be attributed to a more thorough approach adopted by the French legislators in making sure that potentially unconstitutional provisions are replaced before the draft could reach the phase of *a priori* review (Chapter 5).

Procedure types can also have more direct effects on ruling strength, for instance when the constitutional court may not be so restrictive of the legislature because of a certain legal characteristic of a given procedure. For instance, in Portugal, the differences between the legal effects of unconstitutionality rulings in abstract and concrete review procedures directly lead to reduced strength in the latter case. While generally abstract unconstitutionality rulings of the Portuguese Constitutional Court (PCC) have *erga omnes* and *ex tunc* effect, if the unconstitutionality ruling is the result of a concrete review, this decision only affects the parties involved (*inter partes* effect) and does not directly lead to the unconstitutional provision being erased from the legal system. Hence, unconstitutionality rulings in concrete review procedures mean a considerably weaker restraint on the legislature than in abstract review procedures. However, it should be noted that if a given legal provision has been deemed unconstitutional three times, the Public Prosecutor's Office has an obligation to initiate abstract constitutional review (Chapter 9).

13.3.3 Temporal effect

While overriding mechanisms implied neither stronger nor weaker decisions, the types of procedures did in fact affect judicial decisions leading to more restraining rulings in *a posteriori* than in *a priori* review processes, at least in France. Concerning the impact of the temporal effect of judicial decisions, mixed results are discernible. While constitutional provisions which predetermine an *ex tunc* temporal effect implicated stronger rulings in some countries, in other ones the courts rather refrained from squashing down legislation too frequently, fearing drastic consequences of the *ex tunc* temporal effect on the legal system.

The default settings in the temporal effect of constitutional courts' rulings vary across Western Europe. However, alongside legal provisions determining the general rule regarding the temporal effect of the decisions, some constitutional courts have a wider room for manoeuvre in this regard. There are countries where *ex tunc* effect is the general rule. For instance, in Belgium,

unconstitutionality rulings of the Belgian Constitutional Court (BCC) have retroactive (*ex tunc*) effect; however, the law on the BCC at the same time states that, when declaring unconstitutionality of a given law, the BCC has a discretionary power to decide that some of the annulled provisions shall be provisionally maintained for a given period, effectively allowing for even *pro futuro* decisions. In practice, the BCC deviated from the general rule of *ex tunc* effect in close to one-third (30%) of unconstitutionality rulings. Notably, this rate was higher in federal competence issues (40%) and slightly lower in non-federal competence disputes (28%) (Chapter 3).

Ireland presents a more complex case regarding temporal effects. The constitutional provision determining the temporal effect of judicial declarations of unconstitutionality prescribes *ex tunc* effect; however, there is no explicit prohibition of deviating from this rule. Under exceptional circumstances, and only in recent years, Irish high courts sometimes decide to suspend the declaration of invalidity for a given period, in order to give the legislature more time to replace the legislation in question, which, in practice, means *pro futuro* effect. However, as the constitutional provision is quite straightforward in this matter, and the Irish courts tend to be against creative remedies, this departure from the written legal provision remains a rarity. While creating a new legal tool and deviating from the legal text can be considered self-empowerment, considering the sometimes tough effects of annulling legislation retroactively, in practice, courts rather refrained from striking down legislation, thus avoiding the drastic effects of *ex tunc* rulings (Chapter 7). Similarly, the case of temporal effects in Cyprus is not as clear-cut, as for example in Spain, where the Spanish Constitutional Court's rulings have *ex tunc* effect (Chapter 10). The reason for ambiguity in Cyprus might be that the legal provisions only clarify temporal effects with regard to rulings on competence conflicts, and in other cases, the temporal effect of the Supreme Court's decisions is not always evident. The situation is further complicated by the fact that, in the Cypriot system, a declaration of unconstitutionality does not render the legislation invalid, but it is in fact the legislature's task to rectify it. However, as a precedent, the ruling of the Supreme Court will be followed by other courts even in pending cases, *de facto* leading to retroactive effect. Still, *de iure*, the unconstitutionality comes into effect *ex nunc*, when delivering the decision (Chapter 4).

In contrast to the above examples, where the institutional design (i.e. mandatory *ex tunc* temporal effect) counterintuitively leads to a rather lenient attitude of the judges vis-à-vis the legislator, meaning that instead of striking down legislation the Irish courts rather refrained from quashing legislative acts to avoid drastic effects on the legal system, the Portuguese Constitutional Court insisted on the original intent of the founding fathers and softened its decisions rather rarely, even though some legal provision provided them leeway. When the Portuguese Constitutional Court (PCC) declares unconstitutionality, its rulings have *ex tunc* effect as a general rule – however, with a few, but notable exceptions. One exception is that when the constitutional

provision entered into force later than the legal provision incompatible with it, the latter will be null and void from the entering into force of the constitutional provision. Another exception is a peculiarity, which allows the PCC to limit the effects of its own decision when it reaches the conclusion that reasons like public interest, equity or legal certainty would justify reticence. Considering that *ex tunc* temporal effect is more restraining towards the legislature, the use of these exceptions would mean a more restrained approach by the PCC – however, unconstitutionality rulings in abstract review procedures show that the PCC usually applies the *ex tunc* effect, as only 11.5% of these rulings deviated from this general rule (Chapter 9). Consequently, the Portuguese example shows that even if the institutional design provides some leeway for the court to be less stringent, judges of the PCC did not take the opportunity granted for them to be more lenient towards the legislator.

In the case of the French Constitutional Council, one peculiarity must be mentioned regarding the *pro futuro* effect of its unconstitutionality rulings. When the FCC decides to delay the effect of the ruling, it occasionally at the same time prescribes the applicable rules during the period between the dates of rendering the unconstitutionality decision and the actual abrogation. From one perspective, this temporary prescription might not limit the legislature heavily, as it is only a fill-in until the legislator is able to replace the unconstitutional legal provisions. In legalist terms, the legislator has the ability to enact a wholly different set of rules and has no obligation to comply with the FCC's transitional interpretation. However, in practice, this might result in a soft-law constraint on the legislature, because to avoid the legislation being struck down again, it might be advisable to adapt to the FCC's opinion. On the one hand, the decision therefore may not include any legal prescription for the legislator to be adopted, but, on the other hand, it directly amends the applicable law (by interpretation) for a transitional phase, which is reminiscent of positive legislation. This example shows again that even if the formal settings seem to provide a soft tool for the judges, this soft tool, if combined with the court's authority, leads to a heavy constraint on the legislator which is, by the way, not reflected in the JUDICON-EU dataset (Chapter 5). This phenomenon sheds light once again on the need for research based on mixed methods using quantitative and qualitative evaluations at the same time.

13.3.4 Reviewing constitutional amendments

Another example that proves that strong formal empowerment does not imply strong courts and court decisions is the right to review constitutional amendments. To be sure, this is a highly controversial power (Roznai 2013, 2019; Barak 2011, Albert 2015; Albert et al. 2019; Abeyratne and Biu 2023) and courts are rarely entrusted with the task of being a negative constituent power. In Central and Eastern Europe, the only exceptions are the Romanian Constitutional Court, which has the formal power to review constitutional amendments, and the Lithuanian Constitutional Court, which has expanded

its jurisdiction to review not only ordinary laws but also, among other things, laws amending the constitution, constitutional laws or laws adopted by referendum (Kuti 2024; Pūraitė-Andrikienė 2024). Likewise, there are only two courts in Western Europe which moved to the rather swampy terrain of reviewing constitutional amendments, but, seemingly, there is no connection between the constraint they exerted on the legislature and their self-empowerment and practice of reviewing constitutional amendments. In Austria, for a long time, the grand coalition had the formal power to amend the constitution and made use of this power quite frequently until the last decade (sometimes even including statutory law provisions that had been found to be in violation of the constitution by the ACC, in *the Bundes-Verfassungsgesetz*, i.e. the Austrian Constitution). After realizing that this practice might lead to a "creeping total revision" of the Austrian Constitution (*Schleichende Gesamtänderung der Bundesverfassung*), the ACC – for the first and only time – found an ordinary constitutional provision to be unconstitutional as violating those higher-ranking basic principles in 2001 (Chapter 2). While happening once, the ACC refrained from declaring further constitutional amendments as unconstitutional, which means that while self-empowerment happened, the ACC did not make use of this special competence, and, consequently, there is no sign that this act of self-empowerment had any serious effect on the constraint on the legislator.

In Cyprus, while the Supreme Court's rulings have been the strongest ones on average among the constitutional courts under scrutiny, and it even introduced the basic structure doctrine to the Cypriot legal order, there is again no relation between the act of self-empowerment to review constitutional amendments and the strength of its rulings, partly because this notable decision was delivered in 2019, and partly because otherwise the Supreme Court of Cyprus acted as a self-restrained judicial institution, that refrained from entering the legislative arena and avoided issuing politically salient decisions (Chapter 4). Consequently, we can conclude that formal or informal power to review constitutional amendments does not have a direct effect on the strength of judicial rulings.

13.3.5 Self-empowerment

Nevertheless, the lack of certain competences in the institutional design does not necessarily imply that constitutional judges will adopt a passive and self-restrained approach. On the contrary, some courts can display remarkable creativity by utilizing their interpretive authority to empower themselves with tools the use of which the constitution or laws governing their operation do not explicitly allow.

By using the term "self-empowerment", we refer to the utilization of a specific ruling type, despite lacking explicit competence to do so, yet not being explicitly prohibited from doing so either. Naturally, a more unconcealed example of self-empowerment occurs when a court manages to use a

ruling type despite a clear statutory or constitutional prohibition to do so. An intriguing combination of self-empowerment and self-restraint can arise when, following an act of self-empowerment, the constitutional court only occasionally employs the self-created legal tools or shows considerable self-restraint when using them. Consequently, we are compelled to enquire whether acts of self-empowerment or the resulting legal instruments considerably influence ruling strength.

When discussing the self-empowerment of constitutional judiciaries across Western Europe, the case of the German Federal Constitutional Court (GFCC) must be included, as it established a prominent place for itself in the constitutional system shortly after its creation. In response to political challenges (by Chancellor Adenauer and his administration) to its self-proclaimed position as the "guardian of the constitution", the GFCC issued a memorandum in 1952, claiming a position equal to that of the legislature and the executive, even declaring that the law on the GFCC is partly unconstitutional as some provisions are incompatible with this self-definition. This self-empowerment played a crucial role in transforming the federal constitutional judiciary into a central authority within the German political system. Importantly, the GFCC's success in consolidating its position largely relied on citizens' trust in the court as a reliable guardian. However, this self-empowerment did not result in a consistent tendency of increasingly strong rulings. From the 1990s onwards, the GFCC has demonstrated changing dynamics, sometimes demonstrating power by strong rulings and on other occasions showing self-restraint, withholding the pressure on the legislature and other political actors (Chapter 6).

Contrary to Germany, the case of Austria shows a slower increase in the assertiveness of the constitutional judiciary. With the proliferation of human rights from the 1970s onwards, the ACC's jurisdiction has undergone a significant shift. Notably, the incorporation of the European Convention on Human Rights into Austria's rights catalogue played a crucial role in this transformation as the ACC became a more activist court by safeguarding a wide range of individual rights (Chapter 2). Another notable example of gradual self-empowerment is Italy, where the Italian Constitutional Court (ICC) has step by step acquired a central and influential position, reshaping the dynamics of Italian politics (Chapter 8). Similarly, in Belgium, the competence of the Belgian Constitutional Court (operating by the name of the Court of Arbitration prior to 2007) has evolved over time. Initially, its jurisdiction was limited to resolving conflicts of competences emerging in the relationship between the federal legislature and subnational entities. The BCC's powers were later extended to include the review of provisions concerning rights and freedoms; however, this legislative change did not result in a fundamental transformation of its activities, as it already practised such powers by the interpretation of equality and non-discrimination clauses. Likewise, when the parliament decided to rename the Court of Arbitration as the Belgian Constitutional Court in 2007, it effectively meant the mere legal recognition of the BCC's self-empowerment and therefore transformation into a regular constitutional court. As for the BCC,

it must be noted that the process of federalization clearly had a significant impact on its expanding jurisprudence, for example, through rights related to education. Federalism in itself can have some effect on the strength of rulings, as for instance the BCC's jurisprudence displays a more restrictive approach in federal competence disputes than in other issues (annulation is almost twice as likely in the former). However, this difference in ruling strength might be at least partially explained by the clarity of different legal provisions, taking into account that provisions on competences are usually precise and elaborate, while provisions concerning rights are often formulated in general terms, therefore violations are easier to identify in the former (Chapter 3).

Another notable example in Western Europe is the French Constitutional Council (FCC), as it has demonstrated a tendency in the 1970s to broaden its jurisdiction by exercising its authority beyond the text of the constitution. The FCC has notably assigned constitutional value not only to the constitution itself but also to other documents (for instance, the Declaration of the Rights of Man and of the Citizen of 1789). The creation of this so-called "constitutionality block" has expanded the constitutional frame of reference used by the FCC in its constitutional review process. However, on the other hand, the FCC likes to take on the image of a self-restraining court, and usually does not render as strong decisions as its activist approach in expanding its own powers would suggest. Alongside the establishment of the "constitutionality block", there are two other examples of self-empowerment by the FCC worth mentioning. As already mentioned above with regard to temporal effects, the transitory interpretation, which, in the case of unconstitutionality rulings with *pro futuro* effect (postponed abrogation), establishes the applicable law between the issuing of the ruling and the legislative replacement of the unconstitutional provision, can have a restraining effect on the legislature. Last but not least, while its competence for *a posteriori* review was only introduced in 2010, the FCC, starting from a case in 1985, has established a doctrine which created a limited power to review promulgated legal provisions affected by the law under examination in the *a priori* review procedure (Chapter 5).

As already mentioned, Irish courts displayed some creativity with regard to temporal effect of rulings, occasionally deviating from the default setting set forward by the constitutional text. However, arguably their self-conferred abilities do not result in a stronger restraint on the legislature partly due to their nature and their rare occurrence (Chapter 7).

In general, we can conclude that while constitutional courts in Western Europe strengthened their positions within the political system quite frequently by acts of self-empowerment, this, however, did not lead to a consistently stricter adjudication on constitutionality of legislative acts. While widening their competences, courts alternating relied on soft and hard tools depending on contextual factors. This implies that neither strong formal powers enshrined in the constitution or in other legal acts concerning the courts' competences, nor acts of self-empowerment necessarily implicate a practice severely limiting the room for manoeuvre of the legislation.

13.4 Political context of judicial decisions

13.4.1 Political fragmentation and changes in government

Multiple characteristics within the political environment possess the potential to influence the strength of constitutional court rulings. The fragmentation thesis proposes that increased fragmentation within the political landscape, particularly in terms of parliamentary parties, may provide the constitutional court with greater leeway, as the risk of political backlash diminishes (Magalhes 2003; Rios-Figueroa 2007; Brouard 2009; Hönnige 2007; Dyevre 2010). Political instability could yield similar effects, given the strong correlation between fragmentation and instability. However, it is important to note that fragmentation alone does not necessarily imply instability, and thus, other characteristics must also be studied. Another presumably influential factor might be the change of government, which can impact the behaviour of constitutional judges, as in response to these political shifts, judges may impose more stringent constraints on the new government or legislative majority (Spaeth and Segal 1992; Segal and Spaeth 2002; Gillman and Clayton 1999).

Generally, our findings show that these hypotheses are not supported by the data on ruling strength in most Western European countries. In Germany and Austria, lower fragmentation and frequent presence of grand coalitions are common features of the political landscape – however, the increase in fragmentation in recent years did not appear to have any significant impact on ruling strength, nor were such changes observable after changes in government (Chapter 2 and Chapter 6). In Spain and Portugal, where for a significant period under study the domination of two major parties characterized the political system, the question of fragmentation cannot be fully understood in such a framework, and its impact cannot be measured (Chapter 9 and Chapter 10). However, a high level of politicization is detectable in the case of the Spanish Constitutional Court, but ruling strength seems to reflect political affiliations and not fragmentation or instability (Chapter 10). Similarly, specific characteristics of the political system might preclude any effects of fragmentation on judicial behaviour, as for instance Ireland's consensual political culture, two-party political system and the generally deferent attitude of courts (Chapter 7). Furthermore, France's semi-presidential model renders the question of fragmentation irrelevant (Chapter 5).

As opposed to these examples, the positive effect of fragmentation or instability on ruling strength can be clearly established in Italy and Belgium. The Italian Constitutional Court demonstrated a visible tendency of exerting power during political fragmentation and taking strong decisions while the legislature struggles to come to consensus (Chapter 8). The Belgian Constitutional Court (BCC) also seems to be a manifestly strategic court in this regard. Rulings of the full bench of the BCC are significantly more restrictive than other rulings, and in times of volatility in politics a considerably higher rate of rulings is issued by the full bench compared to times of stability. The analysis reveals

that the BCC is more restrictive towards multi-party coalitions (consisting of more than five parties) or unstable, minority governments (Chapter 3).

13.4.2 Political affiliation of the judges

Another factor which might be considered as influencing the degree to which the constitutional court restrains the elected branches is the judges' presumed attachment to the political groupings that nominated or elected them to the bench, not necessarily because of their partisanship, but based on their supposed ideological congruity. The political affiliation thesis thus claims that constitutional judges form coalitions primarily based on their party affiliation and if the majority of the legislature and the court belong to the same political or ideological cluster, the restrictiveness of constitutional review decreases, and inversely, the court will follow a more stringent practice towards a legislative majority belonging to the opposing political/ideological camp. Consequently, some similarities can be identified with the government change thesis, as the political affiliation thesis suggests that judges elected by the political majority in the legislature will probably be more restrictive after this majority shifts to the opposing side. This thesis could be confirmed with regard to some of the Western European constitutional judiciaries; however, once again, a general pattern did not emerge, especially as in some countries political affiliation of judges is not evident.

With regard to the Spanish Constitutional Court (SCC), the analysis showed clear differences in the strength of rulings between times of ideological harmony and dissonance of the court and the legislature. Due to institutional variables, judges of the SCC are supported by either a progressive or a conservative majority; hence, the court is either balanced or clearly dominated by one of the two political sides. The data revealed that in times when the majorities of the court and the legislature belong to the same side, the SCC tends to use softer methods and is less likely to render hard unconstitutionality rulings (Chapter 10). Similarly, in Italy, the more stringent practice of the Italian Constitutional Court (ICC) during Berlusconi's third and fourth government might be explained by the political affiliation of the court's majority; however, connecting judges to political sides is not as evident in Italy as it is in Spain (Chapter 8). Some evidence was found with regard to the Belgian Constitutional Court (BCC) suggesting that the average strength of rulings can be influenced by the political affiliation of the court's majority, however, without pairing it to the political majority in the legislature. The results showed that when the majority of the BCC judges have either a liberal or Christian-democratic background, average ruling strength is significantly higher, while it decreases during socialist majorities (Chapter 3).

Conversely, no significant influence of political affiliation could be found, for example, in Ireland, which might be explained by the consensual nature of and the lack of clear divisions along ideological fault lines in Irish politics (Chapter 7). While in Ireland, the lack of influence of political affiliation is

generally the result of the political environment, in other countries, such as Cyprus, institutional variables can lead to the same result. In Cyprus, judges of the Supreme Court are picked from lower court judges essentially reducing the impact of political influence (Chapter 4).

In Austria, the analysis showed that generational shifts seemed to have exerted more influence on the strength of rulings than political affiliations. While not every change in the composition of the court led to any considerable shift in this regard, the average ruling strength underwent a significant decrease after a new generation of judges became members of the court after 2015 and started to follow a self-restrained judicial approach, in contrast to the activist practice of the previous generation (Chapter 2).

13.5 Event-related variables

In general, courts have historically been reluctant to intervene in legislative actions to correct fiscal imbalances. However, during and after the 2008 financial crisis, several authors and advocacy groups urged judges to take a more uncompromising stance against austerity measures (King 2012; Pernice 2016; Ragnarsson 2019; Hinajeros 2015; Fabbrini 2016; Beukers et al. 2017). The country studies in this volume also addressed this issue; therefore, it is worth summarizing whether the courts in Western Europe took a bolder stance and struck down laws that violated social rights, or whether they took a more lenient stance in times of financial crisis, arguing that legislators have wide discretion in addressing crisis situations. The results of this survey show that some courts were more lenient, while others were quite active in policing legislators during and after the financial crisis.

The Italian Constitutional Court's (ICC) behaviour after the financial crisis is an example of a bolder stance since it paid more attention to issues concerning national finances and taxation, as constitutionally protected principles such as the balance between revenues and expenditures allowed for exerting its own influence on such issues (Chapter 8). The Supreme Court in Cyprus had to deal with austerity measures following a financial crisis in 2012–2013, and while it ruled some special contributions unconstitutional in one decision, it had to face public backlash due to approving the double pension of high-ranking officials in times when a significant part of the population was adversely impacted by the crisis (Chapter 4). The case of the Portuguese Constitutional Court (PCC) is intriguing in this regard, as when it had to deal with austerity measures adopted between 2011 and 2014, the public image of the PCC due to its so-called "crisis jurisprudence" was one of a strong court intruding into the realm of politics. Therefore, the common perception of the PCC's rulings in these cases was that they were exceptionally strong and unaware of the heavy crisis. However, the analysis in Chapter 9 did not reveal any expansion in the PCC's activism and instead it showed a self-restrained, cautious approach, and even the political polarization of the court seemed to be decreasing.

13.6 Explaining dissenting opinions

In exploring the internal dynamics of constitutional courts, one crucial aspect to analyze is the statistics on dissenting opinions (Kelemen 2013, 2018). While statistics on public dissents provide valuable insights into the court's internal politics and divisions, they sometimes indicate more than only the court's internal workings, as public display of disagreement or unity might play a role in decreasing or enhancing the court's authority and legitimacy in the eyes of its audiences. The examination of dissenting opinions is not a relevant issue for all Western European countries, as not all constitutional courts provide judges with the possibility of publicly sharing their disapproval of the majority ruling. The reason for prohibiting public disagreement may be to increase the social acceptability of decisions, by reinforcing the presumption that the decision of the constitutional court is the only right interpretation of the constitutional provision in question. Public dissents are prohibited in countries such as Belgium, Italy, Austria or France.

Furthermore, both quantitative and qualitative analysis suggests that judges at the German Federal Constitutional Court (GFCC) usually strive for inclusiveness and consensual decisions, and almost half of the cases are decided by unanimity and more than one-third by a clear majority (Chapter 6). In this context, it is also noteworthy that in Central Europe where dissent was introduced only later than the establishment of the constitutional court, the dissent rate was relatively high after its introduction. However, it did not seem to be the case in Western Europe. The late introduction of public dissents did not result in considerably higher dissent rates in Germany (where public dissents were introduced in 1971) or in Ireland (where dissenting and concurring opinions have been allowed only since 2013) (Chapter 6 and Chapter 7).

In general, it can be concluded that in the case of Western European constitutional courts, party affiliation is not the most decisive factor in how judges form coalitions. Nevertheless as it has been pointed out, the Spanish Constitutional Court (SCC) is pronouncedly politicized and more responsive to external political factors, and political affiliation is proving to be a determining factor in judicial coalitions. Both progressive and conservative judges unmistakably display a strong association, and furthermore, all other voting coalitions can be traced back to the judges' political background. While it is true that a few judges were exceptions to this general observation, their activities were characterized by a lower-than-average willingness to dissent (Chapter 10).

13.7 Conclusions

Drawing on an original dataset, created by the JUDICON-EU project, authors of this volume tried to answer two basic questions: first, how differentiated are judicial decisions in Western Europe? Second, to what extent have Western European constitutional courts constrained the room for manoeuvre of the legislator? While analyzing the data, we asked the authors to follow the same

structure and present the main characteristics of the 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. Second, the chapters provided a general overview of the activities of the relevant court and at the same time clarified whether there are any country-specific phenomena relating to the selection of cases, the coding process, dissenting opinions, court decision-making processes or other phenomena that differ from consistent coding rules. Third, the chapters evaluated the trends in majority decisions – the preferred or missing ruling types or the trends thereof – and gave explanations to these trends. The authors also determined whether changes in the ruling types and ruling strengths are related to changes in political circumstances or changes in the composition of the courts. Some chapters used descriptive statistical analysis, while others used more advanced quantitative methods for evaluating and seeking explanations. The analysis of dissenting opinions provided information on whether trends are apparent in the publication of dissenting opinions. The qualitative assessment of selected cases concluded the country studies, which focused mainly on the most salient cases.

As a first summary of the research project, in this comparative chapter we have selected three questions on the determinants of judicial behaviour and presented the main findings based on the country studies. While judicial-legislative relations might be analyzed from the perspective of the constraint exerted by the courts on the legislatures, in this final chapter we looked for judges' motives in taking heavily constraining or, contrary, more lenient decisions. We checked whether *institutional settings*, like the legislators' formal competence to overturn court decisions, different types of procedures, the courts' competence to review constitutional amendments or judicial self-empowerment had any effect on the ruling strength of the courts, but we also surveyed whether the *political context* (political fragmentation, political instability or change in government) influenced judicial decision-making. Furthermore, we were also interested in how judges reacted to austerity measures in the aftermath of the financial crisis of 2008/2009.

As noted earlier, these are only the first steps, and we still have a long way to go in analyzing the project's original dataset through more refined quantitative methods and/or in nuancing the key findings of the quantitative research through qualitative studies. While this volume, along with its counterpart *Constitutional Review in Central and Eastern Europe* close one chapter of the research project, they also open new avenues that could provide more nuanced answers about judicial behaviour in Europe. We hope that researchers have been inspired by the first result of our research project and will take advantage of the project's potential.

References

Abeyratne, Rehan, and Ngoc Son Bui. 2023. *The Law and Politics of Unconstitutional Constitutional Amendments in Asia*. London/New York: Routledge.

Albert, Richard. 2015. 'The Theory and Doctrine of Unconstitutional Constitutional Amendment in Canada', *Queen's Law Journal* 41, no. 1: 143–206.

Albert, Richard, Malkhaz Nakashidze, and Tarik Olcay. 2019. 'The Formalist Resistance to Unconstitutional Constitutional Amendments', *Hastings Law Journal* 70, no. 3: 639–670.

Barak, Aharon. 2011. 'Unconstitutional Constitutional Amendments', *Israel Law Review* 44, no. 3: 321–341.

Batagelj, Polona, 2024. 'The Slovenian Constitutional Court: Courage in times of political instability', in: *Constitutional Review in Central and Eastern Europe. Judicial-Legislative Relations Incomparative Perspective*, edited by Kálmán Pócza. London/New York: Routledge, Chapter 11.

Beukers, Thomas, Bruno de Witte, and Claire Kilpatrick. 2017. 'Constitutional Change through Euro-Crisis Law: Taking Stock, New Perspectives and Looking Ahead', in: *Constitutional Change through Euro-Crisis Law*, edited by Thomas Beukers, Bruno de Witte, and Claire Kilpatrick. Cambridge: Cambridge University Press, 1–24.

Brouard, Sylvian. 2009. 'The Politics of Constitutional Veto in France: Constitutional Council, Legislative Majority and Electoral Competition', *West European Politics* 32, no. 2: 383–403.

Bumin, Kirill M. 2017. 'Judicial Institutionalization and Judicial Activism of the Post-Communist Constitutional Courts', *Journal of Politics and Law* 10, no. 2: 54–72.

Dyevre, Arthur. 2010. 'Unifying the Field of Comparative Judicial Politics: Towards a General Theory of Judicial Behaviour', *European Political Science Review* 2, no. 2: 297–327.

Fabbrini, Federico. 2016. *Economic Governance in Europe – Comparative Paradoxes and Constitutional Challenges.* Oxford: Oxford University Press.

Gardbaum, Stephen. 2018. 'What Makes for More or Less Powerful Constitutional Courts?', *Duke Journal of Comparative & International Law* 29, no. 1: 1–40.

Gillman, Howard, and W. Clayton Cornell. 1999. 'Beyond Judicial Attitudes: Institutional Approaches to Supreme Court Decision-Making', in: *Supreme Court Decision-Making. New Institutionalist Approaches*, edited by C. Clayton, W. Cornell, and Howard Gillman. Chicago: Chicago University Press, 1–12.

Gyulai, Attila, Gábor Dobos, and Kálmán Pócza. 2024. 'The Hungarian Constitutional Court: Dialogue in Practice', in: *Constitutional review in Central and Eastern Europe. Judicial-legislative relations incomparative perspective*, edited by Kálmán Pócza. London/New York: Routledge, Chapter 5.

Hinarejos, Alicia. 2015. *The Euro Area Crisis in Constitutional Perspective.* Oxford: Oxford University Press.

Hönnige, Cristoph. 2007. *Verfassungsgericht, Regierung, und Opposition – Die vergleichende Analyse eines Spannungsdreiecks.* Wiesbaden: VS Verlag.

Kelemen, Katalin. 2013. 'Dissenting Opinions in Constitutional Courts', *German Law Journal* 14, no. 8: 1345–1371.

———. 2018. *Judicial Dissent in European Constitutional Courts: A Comparative and Legal Perspective.* Abingdon: Routledge.

King, Jeff. 2012. *Judging Social Rights.* Cambridge: Cambridge University Press.

Krõõt Tupay, Paloma. 2024. 'The Estonian Supreme Court: Strength by pragmatic collegiality', in: *Constitutional Review in Central and Eastern Europe. Judicial-Legislative Relations Incomparative Perspective*, edited by Kálmán Pócza. London/New York: Routledge, Chapter 4.

Kuti, Csongor. 2024. 'The Romanian Constitutional Court: Layers of constitutional adjudication', in: *Constitutional Review in Central and Eastern Europe. Judicial-Legislative Relations Incomparative Perspective*, edited by Kálmán Pócza. London/New York: Routledge, Chapter 9.

Magalhes, Pedro. 2003. *The Limits of Judicialization: Legislative Politics and Constitutional Review in the Iberian Democracies*. Dissertation. Ohio State University, Colombus.

Pernice, Ingolf. 2016. 'Domestic Courts, Constitutional Constraints and European Democracy: What Solution for the Crisis?', in: *The Constitutionalization of European Budgetary Constraints*, edited by Maurice Adams, Federico Fabbrini, and Pierre Larouche. Oxford: Hart Publishing, 297–319.

Pócza, Kálmán, Márton Csapodi, Gábor Dobos, and Attila Gyulai. 2024: 'Explaining the Big Picture: Central and Eastern European Courts' Performance in Comparative Perspective 1990–2020', in: *Constitutional Review in Central and Eastern Europe. Judicial-legislative Relations in Comparative Perspective*, edited by Kálmán Pócza. London/New York: Routledge, Chapter 12.

Pūraitė-Andrikienė, Dovilė. 2024. 'The Lithuanian Constitutional Court: The Gradual Emergence of a Strong Guardian', in: *Constitutional Review in Central and Eastern Europe. Judicial-Legislative Relations Incomparative Perspective*, edited by Kálmán Pócza. London/New York: Routledge, Chapter 7.

Ragnarsson, Kári Hólmar. 2019. 'The Counter-Majoritarian Difficulty in a Neoliberal World: Socio-economic Rights and Deference in Post-2008 Austerity Cases', *Global Constitutionalism* 8, no. 3: 605–638.

Rios-Figueroa, Julio. 2007. 'Fragmentation of Power and the Emergence of an Effective Judiciary in Mexico, 1994–2002', *Latin American Politics & Society* 49, no. 1: 31–57.

Roznai, Yaniv. 2013. 'Unconstitutional Constitutional Amendments—The Migration and Success of a Constitutional Idea', *The American Journal of Comparative Law* 63, no. 3: 657–719.

———. 2019. *Unconstitutional Constitutional Amendments. The Limits of Amendment Powers*. Oxford: Oxford University Press.

Segal, Jeffrey, and Harold J. Spaeth 2002. *The Supreme Court and the Attitudinal Model Revisited*. Cambridge: Cambridge University Press.

Spaeth, Harold J., and Segal Jeffrey. 1992. *The Supreme Court and the Attitudinal Model*. Cambridge: Cambridge University Press.

Taylor & Francis
Taylor & Francis Group
http://taylorandfrancis.com