NATIONAL UNIVERSITY
OF PUBLIC SERVICE
EÖTVÖS JÓZSEF RESEARCH CENTRE
RESEARCH INSTITUTE FOR POLITICS AND GOVERNMENT

CONSTITUTIONAL REVIEW IN EUROPE

Judicial-legislative Relations in Comparative Perspective
JUDICON-EU Final Conference

Program

28-29 September 2023

28 September, Thursday

9.30-9.50 Welcome speeches
Bernát Török (Director, Eötvös József Research Centre, UPS)
Kálmán Pócza (Principal Investigator, JUDICON-EU research project)

Constitutional Review in Western Europe I.

9.50-10.10 The German Federal Constitutional Court: An Unbounded Court?
Oliver W. Lembcke

10.10-10.30 The Belgian Constitutional Court and the Law-Maker: Navigating between Constitutional Rights and Consociational Politics
Patricia Popelier – Laura Martens

10.30-10.50 The Supreme Court of Cyprus: The Centre of Gravity within the Separation of Powers
Constantinos Combos – Athina Herodotou

10.50-11.20 Coffee break

Constitutional Review in Western Europe II.

11.20-11.40 The French Constitutional Council: The Gradual Emergence of a Co-Legislator?
Servane Le Dû

11.40-12.00 The Austrian Constitutional Court 1990-2020: A Human Rights Stronghold Despite Increasing Judicial Restraint
Konrad Lachmayer – Susanne Gstöttner

12.00-12.20 The Irish Supreme Court: Judicial Restraint in a Stable Political Environment
Brian M. Barry

12.20-14.00 Lunch

Constitutional Review in Western Europe III.

14.00-14.20 The Italian Constitutional Court. A Powerful Political Institution
Luigi Rullo

14.20-14.40 The Portuguese Constitutional Tribunal
Paula Fernando – Ana Pinhal

14.40-15.00 The Spanish Constitutional Court: The Judicial Politics of Constitutional Review and Interpretation
Joan-Josep Vallbé

15.00-15.30 Coffee break

Constitutional Review in Central and Eastern Europe I.

15.30-15.50 The Croatian Constitutional Court: From a Potentially Powerful Court to a Court of Rejections
Monika Glavina

15.50-16.10 The Czech Constitutional Court: Selective self-constraint as a bulwark against the executive capture
Katarina Šipulová - Alžbeta Králová

16.10-16.30 Constitutional Review in Estonia: A Significant Force that Aims at a Pragmatic Outcome
Paloma Krõõt Tupay

16.30-16.50 The Hungarian Constitutional Court: Dialogue in Practice
Kálmán Pócza – Gábor Dobos – Attila Gyulai

18.30-21.00 Dinner

29 September, Friday

Constitutional Review in Central and Eastern Europe II.

9.30-9.50 Constitutional Court of the Republic of Latvia: Dialogue and Cooperation among Constitutional Bodies
Anita Rodiņa – Dita Plepa

9.50-10.10 The Lithuanian Constitutional Court: A Strong Guardian of the Constitution that Has Gradually Consolidated its Position in the State
Dovilė Pūraitė-Andrikienė

10.10-10.30 The Polish Constitutional Tribunal Encounters with Politics: Negative Legislator and the Third Chamber
Artur Wolek – Iga Kender-Jeziorska

10.30-11.00 Coffee break

Constitutional Review in Central and Eastern Europe III.

11.00-11.20 The Romanian Constitutional Court: Layers of Constitutional Adjudication in the Case Law of the RCC
Csongor Kuti

11.20-11.40 The Slovak Constitutional Court: Towards a New Era?
Max Steuer – Erik Láštic

11.40-12.00 The Slovenian Constitutional Court. Thirty Years of the Constitutional Court of the Republic of Slovenia
Polona Batagelj

12.00-13.30 Lunch

ABSTRACTS

1. The Austrian Constitutional Court 1990-2020: A Human Rights Stronghold Despite Increasing Judicial Restraint

Konrad Lachmayer – Susanne Gstöttner

Since its establishment over 100 years ago the Austrian Constitutional Court (ACC) has acted as a guardian of the constitution and has not shied away from restricting the legislator in this capacity. This chapter takes a closer look at the strength of the ACC's decisions from 1990 to 2020 based on empirical data collected in the JUDICON-EU project. The time span analysed indicates different levels of strength of decisions, starting from a high level in the beginning. Coming from the 1980s, the Court could be characterised as highly judicially activist, based particularly on an increasing and expanding human rights and rule of law case law. However, the collected data indicates that the ACC has entered a new phase in recent years. A qualitative analysis shows that the ACC can, nevertheless, be considered a strong constitutional court, since it is still ready and willing to interfere in politics when rights and rule of law are at stake. Therefore, while it now exerts more judicial restraint overall, it does still occasionally take an activist approach – often in cases of great legal and political relevance. This ambivalence between overall judicial restraint and limited but important judicial activism could be referred to as the post-activist era of the ACC. This paper analyses the particular Austrian situation on the basis of the collected data and offers new findings on the development of the ACC's judicial approach and the strength of its decisions.

2. The Belgian Constitutional Court and the Law-Maker: Navigating between Constitutional Rights and Consociational Politics

Patricia Popelier – Laura Martens

The present study demonstrates that the Belgian Constitutional Court is a strategic actor. The severity of the rulings depends on the government in power. For example, the Court is more likely to be stricter if the federal government is either a minority or an oversized government. In addition, the Court more often refers cases to the full bench in times of political instability. Instability causes the Court to react differently. Under external threats, the Court will give more leeway to the coalition to work out solutions. If instability comes from within the coalition, the Court will act more stringently. This study also reveals that the personality of the president and the political preference of the majority in the bench play a role in how the Court rules. The findings help us to conclude that the Court seeks to protect individual rights without upsetting the delicate balance of Belgium's consensus democracy.

3. The Supreme Court of Cyprus: The Centre of Gravity within the Separation of Powers

Constantinos Combos – Athina Herodotou

The Republic of Cyprus functions as a unitary presidential representative republic, with a strong presence of the principle of separation of powers. Moreover, it has adopted a mixed legal system, coupled with the element of strict adherence to the principle of judicial precedent akin to the common law system. In this context, the Cypriot judiciary has placed itself in the centre of gravity in the application of the separation of powers, ensuring that State power is exercised according to the Constitution. This chapter proceeds to an empirical analysis of constitutional adjudication in order to evaluate for the first time the strength or weakness of the judicial decisions of the Supreme Court of Cyprus (acting as a constitutional court) taken against the legislature and the extent to which its decisions infiltrate the field of competence of the legislative branch. The analysis suggests that the peculiarities of the Cypriot

example (such as the presidential system, the adherence to the separation of powers and to the principle of judicial precedent) limit the possibility of political considerations or specific affiliations to affect the rulings. It is argued that the Supreme Court employs conventional tools when constraining the legislature in constitutional adjudication, adhering to a type of "negative legislator"; thus, the Supreme Court maintains its position in the centre of gravity in the trias politica, by safeguarding the Constitution and preserving the balance between the three branches in the Cypriot legal and political order.

4. The French Constitutional Council: The Gradual Emergence of a Co-Legislator?

Servane Le Dû

The history of the French Constitutional Council is quite unique. When it was created, the institution had limited jurisdiction and was mainly responsible for ensuring that Parliament did not encroach on the executive. This mission was inherited from the failings of the Third and Fourth Republics. Its role and competences (if not powers) have later evolved in unexpected and exponential ways. Against this background, how has the relationship between Parliament and the French Constitutional Council evolved? More specifically, has the Council maintained a supervisory and, perhaps, coercive function over the Parliament? While the Council is very active and has a definite influence on the final production of legislation, its relationship with Parliament is nonetheless tenuous. The constitutional judge has very little dialogue with the legislator, although he sometimes reshapes legislation in a daring manner. As a result, the reader of this chapter will be confronted with two interpretations of the Council's attitude: it may appear either deferential to the legislator (the hypothesis of an assistant to the legislator) or competitive with the latter (the hypothesis of a co-legislator). In addition to the obvious legal prism, the degree of constraint of the Council on the Parliament must also be sought at a political level. Though the Council wishes to remain politically neutral, one will see it cannot be completely so, as it is responsible for reviewing the acts of a governing and democratic institution.

5. The German Federal Constitutional Court: A Court Unbounded?

Oliver Lembcke

Germany's Federal Constitutional Court is widely regarded as a powerful court. This view is held not only by the general public but also in professional literature. In this context, reference is made again and again to the essential cases of the court's jurisdiction. The judges have drawn boundaries for politics and acted as policy-maker to make crucial sociopolitical decisions, most recently in the subject area of environmental policy. This "judicial activism" has repeatedly met with criticism, especially in German constitutional law scholarship. The term "unbounded court" has been making the rounds for years now. This article is the first to subject whether the court is expanding its power to a thorough empirical examination by tracing the constitutional court jurisprudence of the last thirty years. One focus is on the instrument of constitutional requirements, which critics see as a particularly effective tool for constitutional judges to advance the expansion of their institutional power.

6. The Irish Supreme Court: Judicial Restraint in a Stable Political Environment

Brian M. Barry

Constitutional litigation in Ireland is characterised by remarkably high levels of judicial restraint and deference to the legislative branch compared to other European jurisdictions. The main findings of the Irish study indicate that Irish courts' approach to constitutional remedies is relatively uniform and lacks diversity and, overall, the average strength of rulings is low. This chapter analyses the data on Irish courts' decision-making and examines the

factors that explain why these clear trends emerge. First, the text of the Irish Constitution imposes quite prescriptive rules that restrict the relationship and interactions between the judicial and legislative branches and constrain judicial creativity in constitutional remedies. Second, the courts have self-imposed high levels of deference vis-à-vis the legislative branch since the Constitution was introduced in 1937. Finally, Irish politics during the period analysed has been characterised by stability and a centrist political agenda. The chapter also contextualises the data in light of significant reform to the architecture of the courts system in Ireland in 2014. A new Court of Appeal was established to serve as the *de facto* court of final appeal, while the Supreme Court now enjoys discretionary, rather than mandatory jurisdiction to entertain constitutional law appeals.

7. The Italian Constitutional Court. A Powerful Political Institution

Luigi Rullo

This chapter aims to understand the most recent developments of the role of the Court in Italian politics and to explain how its rulings affect the broad political system and particularly its relationship with the legislature. It presents the main characteristics of the Court and the institutional settings of the Italian constitutional review. Then, it assesses the role of the Court from a quantitative viewpoint using a new and extensive dataset (generated within the JUDICON project), and pays attention to the characteristics of the rulings of the Constitutional Court related to policy duly enacted by the parliaments from 1990 to 2020. In this respect, it investigates to what extent the Constitutional Court constrains the room for manoeuvre of the legislature, and how differentiated are the rulings. Then, it focuses on the specific conditions that, over time, have strengthened the role of the Constitutional Court vis-à-vis the legislative branch. Lastly, the chapter gives an insight into the most politically influential decisions in the recent history of the Court. All in all, the chapter underlines how – and why – the Constitutional Court represents a powerful political institution in contemporary Italian politics, and emphasizes its key-role to understand the ongoing transformations of the whole political system.

8. The Portuguese Constitutional Tribunal

Paula Fernando – Ana Pinal

The current model for the review of constitutionality and the creation of the Portuguese Constitutional Court, which began operating in April 1983, are essentially the result of the 1982 constitutional amendment to the Constitution of the Portuguese Republic approved in 1976. The Constitutional Court emerged as an institution with a countermajority bias, even though it is endowed with a set of counterweights that aim to limit its power to constrain, in an excessive way, the efficient functioning of the legislative and executive powers. The creation of the Constitutional Court and the definition of the model for the review of constitutionality have thus never been autonomous from the political processes and the transformation of the state. This chapter will explore the relationship established between the Constitutional Court and the legislative branch, seeking to analyse to what extent the current model results in a collaborative model in which the Constitutional Court does not overstep its jurisdictional and constitutional boundaries. Particular attention is paid to the decisions laid down between 2011 and 2014, when Portugal was under a financial bailout from the European Commission, the European Central Bank and International Monetary Fund (the so-called "Troika"), conditioned by the fulfilment of the terms settled by the Memorandum of Understanding on Specific Economy Policy Conditionality (MoU) agreed between the "Troika" entities and the Portuguese government. During this period, the debate around the place

occupied by the judiciary and by the Constitutional Court, in relation to the legislative power, gained centrality, since the Constitutional Court was called upon to rule on the constitutional conformity of some of austerity measures, which led to the production of decisions that came to be known as the crisis jurisprudence.

9. The Spanish Constitutional Court: The Judicial Politics of Constitutional Review and Interpretation

Joan-Josep Vallbé

The Spanish Constitutional Court (SCC) is a central actor of Spain's legal and political system since the approval of the democratic constitution in 1978 after 40 years of dictatorship. Following the Kelsenian model of constitutional review, the SCC has exclusive power to determine whether laws and regulations are contrary to the constitution and thus to delete unconstitutional norms from the Spanish legal system. This and the political dynamics behind the appointment of its judges (dominated by the larger political parties) has given the SCC a special status within the Spanish legal and political system. This chapter explores the judicial politics of the Spanish Constitutional Court focusing on both the internal and external aspects of its decisions—including majority decisions and dissenting opinions—and how they impact the national legislature. By adopting the ruling instead of the decision as the unit of analysis, this work intends to contribute to the literature in three. First, it analyzes the constitutive elements of decisions made by the SCC en banc, focusing not only on the direction of the provision, but also on other elements that improve our understanding of the strength of the SCC as a constitutional court. Second, the chapter also empirically explores the patterns of dissenting opinions in the SCC in the last 30 years, identifying clusters of dissenting justices. Finally, the work also presents the first empirical assessment so far of the determinants of interpretive decisions made by the SCC.

10. The Croatian Constitutional Court: From a Potentially Powerful Court to a Court of Rejections

Monika Glavina

The creation of the 1990 Croatian Constitutional Court (CRCC) marked a new era in the Croatian constitutional history. Giving the newly established Court the power of judicial review changed its relationship vis-à-vis the legislator and pawed a way for an 'independent and potentially powerful court'. The present chapter explores empirically and systematically the decisions of the CCRC from the period of its creation in 1990 until 2020 to assess to what extent the behaviour of the Court constrained the room for manoeuvre of the legislative power in Croatia. The analysis shows that while the Court has moved from a careful, self-restraining approach that dominated its practice in the 90s to a more activist approach, the influence of the Court over the legislator has been, at best, only average. With as much as three-fourths of all the CRCC's rulings ending in a rejection and with the Court leaving the legislator a considerable room for manoeuvre, it seems that the CRCC has not lived up to the expectations to become 'a potentially powerful court'. Yet, as I discuss in the chapter, the growing trend of dissenting opinions in the recent years and greater ideological differences among the judges could potentially change the Court's position vis-à-vis the legislative branch in the future.

11. The Czech Constitutional Court: Selective self-constraint as a bulwark against the executive capture

Katarina Šipulová

Compared to its Central European counter-parts, the Czech Constitutional Court (CCC) represent an interesting example of a court spared from the executive capture by a populist government – or any of the previous governments that attempted to interfere in the judiciary. This chapter argues that part of this resilience comes down to selective self-constrained behaviour of the Constitutional Court. While being a crucial actor of the democratic transition in early 1990s, the CCC typically left a wide margin for compliance to the political sovereign. Drawing on the JUDICON-EU data, the chapter offers both quantitative and qualitative analysis of Court's engagement in political processes and interaction with the Parliament. It first describes the arenas where the CCC most vigorously engaged in judicial review battles in its 3 decades of existence. It argues that CCC stepped in most actively in transitional justice, fair trial and electoral issues. Although the scope of agendas eventually broadened, it executed significant self-constraint and often responded to social needs and preferences of the public. Next, the chapter looks into the judicial networks at CCC. While the very first post-communist CCC acted typically in an unanimous way, the next two generations face problems with communication and overall fragmentation of individual justices' preferences. Using a network analysis, it demonstrates that individual justices of the CCC stand quite far away from each other (apart from judges from the same background). The increased fragmentation then led to more constraint and selective position of thee CCC, that eventually helped the it to raise the stakes for a potential political sovereign aiming to eliminate its powers.

12. Constitutional Review in Estonia: A Significant Force that Aims at a Pragmatic Outcome

Paloma Krõõt Tupay

After more than 50 years of Soviet occupation, Estonia regained independence in 1991. Today, Estonia looks back on a successful path back to freedom. Not rarely, it is referred to as an example of successful post-communism transition success, politically as well as economically. In Estonia, the power of constitutional review does not lie with a separate Constitutional Court but is assigned to the Chamber of Constitutional review at the Estonian Supreme Court, which is comprised of judges of the court's civil, criminal and administrative law chambers. During the period of the study, the court had a very small number of rulings. Although this makes it difficult to determine clear trends, the Estonian constitutional review procedure stands overall out for its high percentage of restraining rulings and significant strength of decisions. The strength of Estonian constitutional review can be regarded to be owed in no small measure to its procedural design, where a limited number of applicants and alternative norm control procedures meet the rather broad freedom of decision of the judges of constitutional review. One additional peculiarity of Estonian constitutional review is that not every significant constitutional issue is decided by the Supreme Court. The Chancellor of Justice often influences the legislature already in the process of the legislative procedure. Likewise, if the President decides not to promulgate a law, he must give the parliament the opportunity to amend the challenged legal act before turning to the court, which the parliament has done repeatedly.

13. The Hungarian Constitutional Court: Dialogue in Practice

Kálmán Pócza – Gábor Dobos – Attila Gyulai

This chapter focuses on the question of to what extent has the Hungarian Constitutional Court (HCC) constrained the room for manoeuvre of the legislature in politically salient issues in the period 1990-2015. After separating three different periods of the Hungarian Constitutional

Court, it explores what kind of relationship could be discerned between the political activism of the court and the strength of its decisions. One of the main findings of our quantitative research is that political polarization of the court started well before the 2010 elections and that the first court led by László Sólyom constrained less the room for manoeuvre of the legislature in politically salient issues than previously supposed in the literature. We conclude that it was rather the third court after 2010 which actively interfered in the legislative process and constrained more heavily the legislature than any other court previously. While becoming increasingly severe in politically relevant cases, the Hungarian Constitutional Court has been transformed from a cohesive one to a more divided one – well before the court-packing and struggle with the government after the 2010 election.

14. Constitutional Court of the Republic of Latvia: Dialogue and Cooperation among Constitutional Bodies

Anita Rodiņa – Dita Plepa

The chapter, by analyzing the Constitutional Court rulings in accordance with Judicon methodology from the first judgement in 1997 until 2020, presents the relations between the Constitutional Court and the Latvian parliament. The investigation is done by taking into consideration specifics of Latvian type of constitutional review, such as for example, so-called narrow competence, cycle of persons who can stand before the court, procedural and substantive constitutional review. The analysis suggests that the average strength of rulings is not characterized by stability but rather by frequent ups and downs. Such vacillation points out various periods in the relations between the Court and the legislator. Data also reflects that in the period from 2015 Court has had to decide on very substantial matters that has led to certain polarization of Justices' opinions. Data shows that the Constitutional Court always has tried to maintain a respectful dialogue with the legislator. Until 2017, the substantive aspects of a law validity prevailed in the constitutional review, whereas in the last years the procedural aspects have gained relevance. Case law also demonstrates the Court as self -restraint Court in specific questions (tax regulation, social fundamental rights). But it also includes constitutional requirements in the rulings which obligates the legislator.

15. The Lithuanian Constitutional Court: A Strong Guardian of the Constitution that Has Gradually Consolidated its Position in the State

Dovilė Pūraitė-Andrikienė

After the collapse of the totalitarian system, constitutional courts in the states of Eastern and Central Europe, including Lithuania, were established with the aim of ensuring democratic constitutional stability in order to avoid the denial of democratic values. Lithuanian Constitutional Court (LCC) has already for almost three decades successfully carried out this historical mission. Yet there has been a lack of research on its decision-making, and the differences between the periods of LCC 's activity. This chapter uses a dataset (generated within the JUDICON project) that allows to identify how the LCC positioned itself in the State during three periods of the LCC 's activity: 1)1993-2000; 2) 2001-2010; 3)2011-2020. The analysis reveals that the position of the LCC in the State has gradually strengthened through the periods of the Court's activity. After each constitutional justice case, the country seemed to climb up another step on an endless ladder of development. The rulings of the LCC, although sometimes causing controversy, dissatisfaction and strife, after some time has elapsed and the passions have calmed down, were finally accepted as the undisputed truth both in society and political circles. However, this does not mean that the LCC did not face any challenges

conditioned by the political and economic development of the country at all. Although, the LCC did not experience such drastic restrictions on powers or activity, as its Hungarian or Polish counterparts, nevertheless it has come under more intense pressure from the political authorities in times of social upheavals (economic or epidemiological crises).

16. The Polish Constitutional Tribunal Encounters with Politics: Negative Legislator and the Third Chamber

Artur Wolek – Iga Kender-Jeziorska

The chapter focuses on the Polish Constitutional Tribunal (PCT) encounters with politics and the scope and means by which the PCT restricts the parliament guide the explanation. The chapter argues that since the PCT judges nomination process is highly partisan it is the political/partisan change that explains best the fluctuations of the judicial behavior as reflected in the PCT decisions vis-a-vis parliament. The Tribunal was activist when there was no clear majority in the parliament and more deferential when parliamentary majorities succeeded in electing judges more amenable to the requirements of political governance. For most of the 1993-2020 period the PCT acted as a Kelsenian negative legislator and a neutral professional adjudicator following its self-proclaimed legitimacy doctrine. However, during crises and the period of bi-polar politics (2005-2020) the PCT judges acted as the third chamber of parliament and apparently took into account political–partisan considerations. This behavior of the PCT was used as a justification for packing the Tribunal with loyalists of the government after 2016 who effectively converted the PCT into an obedient tool of the ruling majority. This PCT story might be considered a stress test for the method of judicial politics analysis proposed in the whole volume. Its assumption is that judges take seriously formal rules of the constitution, of the court operation and the legal order as a whole and therefore does not fit a political environment where the written law is significantly different from actual practice as it is the case in the post-2016 Poland.

17. The Romanian Constitutional Court: Layers of Constitutional Adjudication in the Case Law of the RCC

Csongor Kuti

The various competences of the Romanian Constitutional Court in reviewing normative acts adopted by Parliament, produce disparate outcomes under the aspect of success rates and strength of rulings, demonstrating divergence in the role and positioning of the RCC in particular procedures, which therefore may be described as different layers of constitutional adjudication. While in a posteriori review procedures one cannot demonstrate a constitutionalization of the politics, the RCC mostly refraining from overriding Parliaments' normative choices and leaving it up to them to correct faulty legislation, in a priori review procedures the RCC demonstrates a high degree of willingness in censoring legislative attempts. The existence of distinct layers of constitutional adjudication might be explained by contextual factors, such as general political (in)stability or political affiliation of constitutional judges, however, perhaps more significantly, it might also be considered the product of a conscious design and of the general perception – endorsed and to some extent enforced by the RCC – with regard to its' role in the blueprint of the government. The Court is gradually becoming a stronger player, especially as what regardes the settling of political disputes through adjudicating "juridical conflicts of constitutional nature", i.e. disputes of competence between various branches of government. Giving up some of its' initial cautiousness, the RCC

is shifting from general recommendations towards more concrete remedies, in certain cases already dictating the desirable conduct.

18. The Slovak Constitutional Court: Towards a New Era?

Max Steuer – Erik Láštic

This chapter revisits and continues the story of the Slovak Constitutional Court's interactions with the Slovak parliament. The study of the period from Slovakia's independence in 1993 until 2015 (Láštic and Steuer 2018) demonstrated that the SCC has nominally issued rulings constraining the legislator more than some of its regional counterparts. Yet, a critical perspective on significant rulings shows a reluctance to challenge political majorities or the opposition with wide public support on key issues, particularly during the term of President Macejková. The present chapter captures the final years of the Court under Macejková's presidency as well as the period of sustained vacancies at the Court due to struggles with the appointment of constitutional judges, culminating in the completion of the bench under new President Fiačan in 2019. It shows the Court's capacity to stand up for the protection of some fundamental rights, but continuing to struggle to respond to legislative advances encroaching on institutional independence and preventing concentration of powers. This can be explained in part with the Court's limited ability to engage with key political concepts in a thoroughly interpretive manner. The analysis also indicates the limits posed by focusing on legislative-judicial relationships: instead, a broader range of actors interact with the Court, a palette that has continued to diversify given the Court's range of competences and new challenges posed to constitutional adjudication, including in the context of the COVID-19 pandemic.

19. The Slovenian Constitutional Court. Thirty Years of the Constitutional Court of the Republic of Slovenia

Polona Batagelj

In 2021, the Constitutional Court of the Republic of Slovenia, which previously functioned as the federated Constitutional Court of SFRY (until 1991), celebrated thirty years of its existence. Thirty-eight constitutional judges marked this period and significantly contributed to the transition from an undemocratic regime to a new socio-political system based on the rule of law, human rights, and dignity protection. Following the JUDICON project's methodology, this chapter addresses the question of to what extent the SCC has constrained the room for manoeuvre of the legislator in Slovenia, taking into account changes in the government and parliamentary majorities. Regarding new findings of each of the four constitutional courts, we can observe that rulings were the strongest (and thus the most constraining to the legislator) in times of political instability caused by political fragmentation. Furthermore, the SCC very rarely decides to annul the complete law but often uses some kind of prescription and adds a remedy. It thus plays an active role as a positive legislator while still giving great importance to the principle of separation of powers. On the other hand, due to the small proportion of the dissenting opinions, we cannot draw clear conclusions and reasons for individual judges' attitudes. Still, we can conclude that "party affiliation" did not influence the issuance of dissenting opinions or the formation of coalitions between Slovenian constitutional judges.

BIOS

Konrad Lachmayer is the Vice Dean of Research and Professor for Public Law, European Law and Foundations of Law in the Faculty of Law at Sigmund Freud University (SFU) in Vienna. He visited the University of Cambridge (UK), the Max Planck Institute for Comparative Public Law and International Law (Germany) and the CEU (Hungary). He held positions at the Institute of Legal Studies, Centre for Social Sciences at the Hungarian Academy of Sciences and as a research fellow at Durham Law School (UK). His research and teaching focuses on comparative constitutional law as well as Austrian and European public law. His most recent publications address the impact of the pandemic on democracy in Europe (*Pandemocracy in Europe*, Hart Publishing, co-editor together with Matthias C. Kettemann) and the temporality of constitutional adjudication (Judging, Fast and Slow. Constitutional Adjudication in Times of COVID-19, in: Saša Zagorc / Samo Bardutzky (eds), *Constitution on the Brink of a State of Emergency*, forthcoming).

Susanne Gstöttner is a research assistant at the Chair of Public and European Law (Prof. Dr. Konrad Lachmayer) at the Sigmund Freud University (SFU) in Vienna. She studied law at the University of Vienna and the University of Nottingham. Her main research areas lie in the fields of constitutional law, especially fundamental and human rights, as well as technology and traffic law.

Patricia Popelier is professor of Constitutional Law at the University of Antwerp, spokesperson for the Government and Law research group, senior research fellow at the University of Kent, Centre for Federal Studies, and co-supervisor of the interdisciplinary Centre of Excellence GOVTRUST. She is also vice-president of the International Association of Legislation. Her research focuses mainly on federalism, constitutional principles, the quality of legislation, and constitutional review. Her most recent publications include the monograph *Dynamic federalism: a new theory for cohesion and regional autonomy* (New York: Routledge, 2021).

Laura Martens is currently a PhD Fellow at the Faculty of Law (University of Antwerp) and the Faculty of Business Economics (Hasselt University). She is about to defend her interdisciplinary doctoral research on the quality control throughout the Flemish legislative cycle. Apart from papers published in Belgian legal journals, several international papers on quality control in the legislative cycle and on the quality of impact analysis and litigation before the Constitutional Court, are upcoming.

Constantinos Kombos is currently an Associate Professor of Public and EU law at the University of Cyprus and Chairman of the Department of Law. He has authored 6 books and numerous articles and chapters on EU, Constitutional, Comparative Public Law, Human Rights and Constitutional theory. His work has been published in English, Greek, German, French, Italian and Japanese. Constantinos has presented his work in a plethora of conferences and has secured research funding for five projects. He has advised the President of the Republic and the House of Representatives and in 2014 he was appointed by the Attorney General of the Republic as Agent for the Republic of Cyprus before the CJEU for Opinion 2/13, Accession of the EU to the ECHR. He has also conducted research for the Supreme Court on the impact of appeals on the Court's workload. He was called as expert to give evidence before the EU Scoping Mission for the Reform of Cypriot Courts. He contributed as expert in the Civil Procedure legislative reform and he was appointed

By the Supreme Court as the only non-judicial member of the Board for the Judicial Training Academy.

Athena Herodotou is currently a Counsel to the Ministry of Foreign Affairs of the Republic of Cyprus and a PhD Candidate in Public International Law at the Department of Law of the University of Cyprus. Previously, she had worked as a researcher at the Department of Law of the University of Cyprus in the fields of public international law, constitutional law, employment law and human rights law. Her research interests include public international law, law of treaties, law on state responsibility and constitutional law. Her publications include 'Removal of Officials' (2022) Max Planck Encyclopedia of Comparative Constitutional Law (together with Constantinos Kombos); 'Cyprus' in: Schneider S. M., Petrova T., Becker U. (eds.), Pension Maps: Visualising the Institutional Structure of Old Age Security in Europe and Beyond (2nd ed., MPISOC, 2021) (together with Constantinos Kombos); 'A 'bail-in' of social rights? The Cypriot experience of the financial crisis' in: Becker, U., Poulou, A., (eds.) Social Rights after the European Financial Crisis: The Constitution of the Welfare State under Pressure (Oxford University Press, 2020) (with Constantinos Kombos).

Servane Le Dû is currently a PhD student at the Institut Louis Favoreu in Aix-en-Provence. Her doctoral work focuses on the relationship between the judge and the Parliament in France and in the United Kingdom, under the co-direction of professors Aurélie Duffy-Meunier and Xavier Magnon. Her research areas include constitutional law and comparative law. Last and upcoming conference participation: "L'antiparlementarisme" on 27 and 28 May 2021 (Aix-en-Provence) and "Les droits fondamentaux : quels enjeux pour le Parlement ?" on 23 and 24 June 2022 (Aix-en-Provence). Other publication: commentary on Decision no. 2021-825 DC of the French Constitutional Council, entitled "Le refus du Conseil constitutionnel d'enjoindre au législateur : moins de pouvoirs, plus de déférence ?", published in the Revue française de droit constitutionnel.

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