

A SHORT GUIDE
to the methodology of the
JUDICON research project

1. Case selection - which decisions?

- Only the important decisions: published by the constitutional courts (CC) in official gazettes
- Only the relevant decisions: acts of the parliaments only (relevant ≠ politically relevant)

2. Coding process – which decision parts?

- Majority decisions
- Dissenting opinions
- No concurring opinions

3. Unit of observation: rulings

A decision of the CC might contain several rulings – a ruling is an autonomous and coherent part of the decision (determined by the CC), which can be classified unequivocally based on the ground the law has been found (un)constitutional (for ruling types, see 4.1.)

4. Coding of the rulings

4.1. Provision

- *Refusal/rejection*: the legal regulation under review is completely in accordance with the constitution (the provision does not constrain the legislature at all).
- *Unconstitutionality by legislative omission*: the CC does not annul any acts of parliament but calls upon the legislation to regulate something which is not regulated.
- *Procedural unconstitutionality*: provisions which abrogate a law due to the failures of the legislative process (e.g. violation of the procedural rules of legislation; violation of the principle of the hierarchy of legal sources etc.).
- *Constitutional requirement*: the CC gives directives or guidance on the text of the law under review without the annulment of any of its parts.
- *Substantive unconstitutionality*: the CC declares a law unconstitutional based on its content and disharmony with the constitution.
- *Constitutional interpretation in abstracto*: the CC has been asked to explain and, consequently, to expand the text of the constitution.

4.2. Completeness

- *Qualitative partial annulment*: the CC finds the law unconstitutional as far as the legislative act might have an interpretation which is unconstitutional (however, there might be some other interpretation of the same legislative act that is in harmony with the constitution).
- *Quantitative partial annulment*: not only a certain interpretation of some parts of the law but all possible interpretations and meanings of that part of the law are unconstitutional, while the constitutional court annuls only one or some parts (paragraph, section, some words) of the law.
- *Complete annulment*: all paragraphs of the law are annulled.

4.3. Timing

- *Pro future*: the ruling grants a transitional period.
- *Ex nunc*: the ruling comes into effect immediately.
- *Ex tunc*: the ruling annuls a law retroactively.

4.4. Prescription

- *No prescription*
- *Non-binding prescription*: call upon legislation with offering alternatives for legislation or with declaration of constitutional requirements in the justification.
- *Directive*: call upon legislation with offering alternatives for legislation or with declaration of constitutional requirements in the headnote (Leitsatz).
- *Binding prescription*: prescriptions which are placed in the operative part of a judicial decision, thus they have a clear-cut, legally binding effect (they are functionally equivalent to a constitutional requirement).

5. Diversity of decisions

- Weak, average and strong rulings:
 - Weak ruling: provision + qualitative partial (IIa) and/or pro futuro (IIIa) + no prescription (IVa)
 - Average ruling: provision + quantitative partial (IIb) + ex nunc (IIIb)
 - Strong ruling: provision + complete (IIc) and/or ex tunc (IIIc) and/or any prescription (IVb-IVd)

6. Strength of the decisions – the scale

- Scale: 0-10
- Heuristics to determine the values:
 - The weakest form of substantive unconstitutionality must be stronger restraint than any other decision based on procedural unconstitutionality, omission or constitutional requirement.
 - procedural unconstitutionality (Ic) + complete annulment (IIc) + ex tunc timing (IIIc) + binding prescription (IVd) → 5 points
 - substantive unconstitutionality (Ie) + qualitative partial annulment (IIa) + pro futuro timing (IIIa) + no prescription (IVa) → 6 points
 - The constitutional interpretation in abstracto must be at least as strong restraint as the strongest form of substantive unconstitutionality.
 - substantive unconstitutionality (Ie) + complete annulment (IIc) + ex tunc timing (IIIc) + binding prescription (IVd) → 10 points

6. Diversity of decisions and strength of restraint

I. Provision	(Ia) Rejection or refusal [0]	(Ib) unconstitutionality by legislative omission [0,5]	(Ic) procedural unconstitutionality [1]	(Id) constitutional requirement [2]	(Ie) substantive unconstitutionality [6]	(If) constitutional interpretation in abstracto [10]
II. Completeness	(IIa) qualitative partial annulment [0]		(IIb) quantitative partial annulment [0,5]		(IIc) complete annulment [1]	
III. Timing	(IIIa) pro futuro [0]		(IIIb) ex nunc [0,5]		(IIIc) ex tunc [1]	
IV. Prescription	(IVa) no prescription [0]	(IVb) non-binding prescription [1]		(IVc) directive [1,5]		(IVd) binding prescription [2]