

# JUDICON-EU: Judicial Constraints on Legislatures in Europe 1990-2020

Codebook

English version: v02 (30<sup>th</sup> March, 2020)

## DECISION

### A. ID of decision

Format (Hungarian CC): NUMBER/YEAR (DATE); e.g. 57/1994 (XI.17.)

The format may vary. Coders should follow the format conventions of the particular CC. Requirement: each decision ID needs to be unique, so every decisions can be identified unequivocally.

### B. Date

The date of the decision

Format: DAY/MONTH/YEAR (DD.MM.YYYY)

### C. Motion type

#### Code

- |   |  |
|---|--|
| 1 | A priori review  |
| 2 | A posteriori review  |
| 3 | Contradiction to an international agreement  |
| 4 | Constitutional complaint   |
| 5 | Legislative omission   |
| 6 | Collision of competence of central legislation with other state organs (Organstreitsverfahren; OS) |
| 7 | Constitutional interpretation in abstracto (CIIA)  |

In case of an *a priori* review the timing (3<sup>rd</sup> step) is always *ex nunc*. OS and CIIA are relevant *only if* they concern the competence of the central legislation.

### D. Motion type description (filled automatically)

## RULING

### E. Type of ruling

#### Code

- |    |                    |
|----|--------------------|
| DE | Decision           |
| DO | Dissenting opinion |

### F. Judge name

In case of "DE" → "NA"

In case of "DO" → the name of the given judge

If the dissenting opinion is signed by more than one judge, each name has to be listed in different rows and the values (which are coded at the first judge) have to be copied in the respective cells.

### G. Number of the ruling

In case of "DE": the first ruling of the decision is "1", the second ruling is "2" etc.

In case of "DO": the number of the respective DE ruling

If the dissenting opinion is about more than one ruling, each of them has to be coded in separate rows.  
If a judge claims in his/her dissenting opinion that the CC should decide on an issue that is not covered by the court (i.e. the DO cannot be connected to a DE ruling), the number of this ruling is the largest DE ruling number + 1.

### H. Subject of the ruling

The exact location of the ruled legislative act (e.g. "Act XCII of 2003, Sect. 6. sub-section (2), second sentence").

## 1ST STEP: PROVISION

### I. Provision code (1st)

#### Code

- 1000 Refusal
- 1100 Rejection / conformity with the constitution
- 1200 Rejection / political question doctrine
- 1300 Rejection / no competence
- 2000 Constitutional requirement or interpretation in harmony with the constitution
- 3000 Procedural unconstitutionality/ formal invalidity
  - a. violation of the procedural rules of legislation
  - b. violation of the principle of the hierarchy of legal sources
  - c. omission of prescribed consultation in the legislative process
  - d. omission of substantive debate in the legislative process
- 4000 Legislative omission
- 5000 Substantive unconstitutionality
- 5110 Substantive unconstitutionality/principle of rule of law: accessibility and publicity
- 5120 Substantive unconstitutionality/ principle of rule of law: clarity
- 5131 Substantive unconstitutionality/ principle of rule of law: calculability - preparation time
- 5132 Substantive unconstitutionality/ principle of rule of law: calculability - legal certainty
- 5133 Substantive unconstitutionality/ principle of rule of law: calculability - retroactivity
- 6100 Constitutional interpretation in abstracto restraining the room for manoeuvre of legislation
- 6200 Constitutional interpretation in abstracto extending the room for manoeuvre of legislation

Only at dissenting opinions:

- 1400 The dissenting judge does not make her/his argument clearly (the content of the DO cannot be coded)

- Refusals are not coded; the only exception is when a dissenting opinion refers to the given refusal (i.e. the judge claims that the constitutional court should decide the case on the merits)
- Contradiction to an international agreement → 5000
- Constitutional interpretation *in abstracto* will be coded only if they concern the competence of the national legislation.

### J. Provision code description (filled automatically)

## CODING OF STEPS 2-4 (DEPENDING ON THE CODING OF THE 1ST STEP)

1st step	2nd step	3rd step	4th step
Refusal/rejection	NA	NA	NA
Constitutional requirement	NA	NA	5
Procedural unconstitutionality	to be coded in line with the codebook		
Omission	NA	NA	to be coded in line with the codebook
Substantive unconstitutionality	to be coded in line with the codebook		
Constitutional requirement	NA	NA	5

### 2ND STEP: COMPLETENESS

#### *K. Completeness code (2nd)*

##### Code

- 1 Qualitative partial (annulment of one possible interpretation of a norm)
- 2 Quantitative partial (annulment of one norm of the law)
- 3 Complete (annulment of the complete law)
- NA Not applicable (e.g. in case of rejection)

#### *L. Completeness code description (filled automatically)*

### 3RD STEP: TEMPORAL EFFECT

#### *M. Temporal effect code (3rd)*

##### Code

- 1 Pro futuro
- 2 Ex nunc
- 3 Ex tunc
- NA Not applicable

#### *N. Temporal effect code description (filled automatically)*

### 4TH STEP: PRESCRIPTION

#### *O. Prescription code (4th)*

##### Code

- 1 No prescription
- 2 Non-binding prescription
- 3 Directive
- 4 Binding prescription
- 5 Constitutional requirement
- NA Not applicable

#### *P. Prescription code description (filled automatically)*

## Q. Reference code

- 1 No prescription
  - a) No prescription
  - b) Call upon legislation without substantive restrictions on legislative regulations
- 2 Non-binding prescription  
Prescription in the *justification*:
  - a) Call upon legislation with offering *exclusive* (i.e. exhaustively enumerated) alternatives for legislation or with declaration of constitutional requirements *and/or* determining a deadline
  - b) The CC rules unconstitutionality by legislative omission *and* indicates in the ruling a threat/warning *along with a deadline* for the removing this kind of unconstitutionality.
  - c) The CC rules substantive unconstitutionality ex tunc *and* indicates in the ruling a threat/warning *along with a deadline* for the legislation to act.
- 3 Directive  
Prescription in the *Leitsatz (headnote)*:
  - a) Call upon legislation with offering *exclusive* (i.e. exhaustively enumerated) alternatives for legislation or with declaration of constitutional requirements *and/or* determining a deadline
  - b) The CC rules unconstitutionality by legislative omission *and* indicates in the ruling a threat/warning *along with a deadline* for the removing this kind of unconstitutionality.
  - c) The CC rules substantive unconstitutionality ex tunc *and* indicates in the ruling a threat/warning *along with a deadline* for the legislation to act.
- 4 Binding prescription  
Prescription in the *provision*:
  - a) Any statements in the provision beyond annulment, refusal, rejection or suspension (but no simply deadlines!)
- 5 Constitutional requirement
  - a) The CC does not declare unconstitutionality but provides constitutional requirement in the provision (1st step = “2000”)
  - b) The CC rules in a process of constitutional interpretation *in abstracto*

Reference code: “number/letter” e.g. “2/a”

## R. Prescription description:

Short description of the prescription (copied from the decision text)

## REASONING

### S. Reasoning

Short description of the CC’s reasoning (including the specific section or paragraph of the constitution which served as a reference point of the ruling for the ruling or declaration of unconstitutionality).