Do constitutional courts restrict government policy? The effects of budgetary implications and bloc-politics in the Hungarian Constitutional Court's decisions between 1990 and 2018

Abstract

In the past thirty years, with the global spread of judicial review, constitutional courts became important political actors. At the same time, evidence suggests that courts have been reluctant to adjudicate on issues with heavy budgetary implications. Furthermore, the political leaning of the judges influences decisions that make courts more cautious of criticizing governments or constraining the government's room to manoeuvre. The analysis looks at the decisions of the Hungarian Constitutional Court (HCC) between 1990 and 2018. We conclude that the potential budgetary consequences of a decision do not weigh in with the judicial output. Furthermore, right-leaning courts are more likely to declare a law unconstitutional that was passed by a left-wing parliamentary majority, whereas left-wing courts adjudicate unconstitutionality with about roughly the same likelihood in the cases of right- and left-leaning parliaments. Our results highlight that while the Hungarian Constitutional Court does not narrow the parliamentary majority's room to manoeuvre by blocking policies with serious budgetary consequences, bloc-politics is still not alien from its functioning.

Keywords

Constitutional courts; Policy-making; Judicial behaviour; Hungarian Constitutional Court; National budget

Word count: 9,542

Introduction

The literature on the judicialization of politics commonly argues that with the global spread of judicial review constitutional courts (CCs) became important political actors over the past thirty years (Ginsburg 2008; Lustig and Weiler 2018). Even in new democracies, CCs quickly adapted to the trend of the "judicialization of mega-politics" and got involved in politically salient issues (Hirschl 2008, 2011; Sadurski 2014). At the same time, CCs have been reluctant to adjudicate on issues with heavy budgetary implications such as social rights issues, the

state budget, or financial legislation (King 2012; Pernice 2016; Ragnarsson 2019). This kind of judicial deference in state finances has not only been prevalent in a descriptive sense, but it was also the normative disposition of the judges, as well as forming the expectations of constitutional experts on court decisions for a long time. Nevertheless, as commonly argued in empirical legal studies, the judges' behaviour is affected either by their policy preferences (judges as policy-seekers) or by strategic considerations such as institutional success (survival) or individual career strategies (Dyevre 2010). These explanations implicate that judicial restraint in state finances might be overwritten by policy preferences, strategic considerations, and – indirectly – party politics.

This article argues that if the nomination and election of CC judges occur in an institutional setting that is controlled by primary political actors (e.g., MPs, government majority in legislation), the political leaning of the court outweighs the potential budgetary consequences of a decision. Judges are not afraid to make decisions that have severe financial consequences, but, at the same time, are wary of laws legislated by a friendly parliamentary majority. Building on novel data, we ask, whether courts with a clear political leaning show more rigor towards laws passed by parliaments ruled by another political bloc, with no regard for the potential budgetary impact of their decision. For this, we only find evidence in the case of right-leaning courts.

The analysis uses data on the Hungarian Constitutional Court (HCC), which has been a reference point not only within the constitutional law scholarship but also for CCs in Central and Eastern Europe. It is commonly argued that the HCC played a crucial role in establishing the effective protection of fundamental rights and served as a model for several other CCs in the region (Halmai 2002; Sadurski 2002, 2014). Moreover, in the early 90s, the HCC took a bold stance against the austerity measures of the left-wing/liberal government which contributed to its high prestige and reputation among legal scholars and practitioners (Schwartz 2000; Scheppele 2005; Bugarič and Ginsburg 2016; Daly 2017).

The analysis looks at the decisions of the HCC on laws adopted by the Hungarian parliament between 1990 and 2018. A multivariate model explains the likelihood of the unconstitutionality of a law with its potential budgetary importance and the political leaning of the court. We conclude that the potential budgetary consequences of a decision do not weigh in with the judicial output. Furthermore, right-leaning courts are more likely to quash

laws that were passed at times of left-wing government majorities in parliament, whereas left-wing courts adjudicate unconstitutionality with about roughly the same likelihood in the cases of right- and left-leaning parliaments. Additionally, taking into account the budgetary consequences of a decision, the analysis finds no evidence for the popular hypothesis that the HCC became less restrictive of the government after 2010 (e.g. Sólyom 2015; Bugarič and Ginsburg 2016; Castillo-Ortiz 2019).

The present study seeks to contribute to the literature by carrying out a systematic and comprehensive analysis of CC decisions, which has been, until most recently, largely absent from the legal scholarship. While empirical legal studies based on quantitative methodological approaches are dominant in the US literature on courts, European scholarship has just started to investigate court decisions and judicial behaviour with methods commonly used in the social sciences.[1] This article speaks to this current trend of research on European constitutional courts. In the next sections, we develop three hypotheses. The first two (H1a and H1b) focus on judges as deferential actors, while the third (H2) tackles the judges' role as political players.

Judges as deferential actors?

The literature develops two rival hypotheses in terms of whether judges are deferential actors when it comes to decisions with potentially heavy budgetary implications. First, the traditional view of judicial roles maintains that CCs should not be involved in issues with heavy budgetary consequences, nor should they act as political actors who decide on financial matters (Komesar 1994; King 2012; Fabbrini 2014). According to the literature, the deferential attitude of the judges when it is "big money" at stake rests on several factors. First, being legal experts or scholars, judges lack the expertise in highly complex financial and economic questions. Second, judges typically do not dispose of a large staff, and cannot afford to offer permanent employment for financial and economic experts. Third, in economic and financial governance, a proactive approach is desirable, but CCs are traditionally reactive

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

institutions lacking the means to participate in financial planning. Fourth, judges are not popularly elected, thus lacking the democratic legitimacy to influence issues with financial consequences. Fifth, supranational institutions of economic and financial governance (such as IMF, World Bank, etc.), the dominance of neoliberalism and the globalized economy constrain the CCs' room to manoeuvre regarding state finances (King 2012:4; Fabbrini 2014:116; Ragnarsson 2019:631). In empirical terms, a deferential position appears as a negative relationship between the potential budgetary implication of a law and the chance that it is ruled unconstitutional.

H1a: *The larger the potential budgetary implication of a law, the less likely it is that it is ruled unconstitutional by the CC.*

Second, after the worldwide financial crisis and a series of austerity measures in the 2010s, a growing literature challenged judicial deference by arguing that defending social rights and resisting the globalized market-dominated view of state finances should be a major role for high courts, especially for CCs (Tushnet 2009; Bönnemann and Jung 2017; Kilpatrick 2017; Ragnarsson 2019). Compiling evidence from five European countries, Fabbrini (2014) finds that there is a clear trend of increasing judicial involvement in the fiscal domain. Additionally, various international institutions and the global network of legal scholars and NGOs are pushing for the high courts to have their say in state finances and to guarantee the social rights of the middle classes and the poor. The expectation of more activism, does, of course, not mean that courts should go after all laws that heavily influence the budget. It only means that we should not find a negative association between the budgetary consequence of the law and its fate before the CC. Thus, if judicial deference is challenged, the potential budgetary implication of a law does not affect the decision on the respective law.

H1b: The potential budgetary implication of a law does not weigh in on the CC's decision.

H1a and H1b are rival hypotheses in that they cannot be both confirmed by the data. Additionally, we argue that in a politicized institutional setting where the nomination of the judges is directly (and exclusively) dependent on legislative (super)majorities, the party political affiliation is what primarily explains the outcome of judicial adjudication. When the primary motivation of the judges originates in their political affiliations, judges cannot shy away from decisions with potentially heavy budgetary consequences if they want to appear as

loyal to their political bloc. Therefore, under such circumstances, it is more likely that we find evidence for H1b, that is there is no significant relationship between a law's budgetary implications and the court's decision. In the next section, we further develop the argument that depicts judges as primarily partisan actors.

Judges as partisan actors

The *attitudinal model* of judicial behaviour explains the behaviour of judges of the US Supreme Court and has dominated the literature on judicial politics since the 1960s (Ulmer 1970; Spaeth and Segal 1992, 2002). Its central proposition is that judges decide on cases in light of their ideological and/or policy preferences, which are influenced by their social background and personal attitudes. The US context provides a perfect opportunity to test the attitudinal model because the judges' individual opinions and justifications are disclosed during and after the process of judicial review, thus enabling researchers to measure the judges' ideological and/or policy preferences. In the European context, however, the secrecy of judicial deliberation and the prohibition of separate opinions make it difficult to test the model's rigidity (Stone Sweet 2000:49). Nevertheless, in the past 30 years, judges are allowed to form dissenting opinions in an increasing number of countries along with the practice of disclosing their votes, which allows researchers to verify the attitudinal model even in the European context (Magalhes 2003; Hönnige 2007; Dyevre 2010). It should be noted, however, that it is not easy to disentangle the sincere policy preferences of the judges from strategic incentives based, for example, on their party political affiliations (Garoupa and Kantorowitz 2016). Judges' sincere policy preferences coincide most of the time with the policy preferences (and interests) of their nominating parties since parties try to pick candidates close to their ideological positions. Nevertheless, this overlap does not mean that judges might not be incentivized by other factors - as highlighted by the strategic model of judicial behaviour.

The *strategic model* of judicial behaviour proposes that judges have sincere policy preferences, but these preferences might be modified by internal and external factors (Gillman and Clayton 1999). As to the internal context, the collegial nature of judicial decision-making implies that judges must compromise during the review process: they take the preferences of other judges into account and make coalitions that move them away from their original preferences (Epstein and Knight 1998; Maltzman, Spriggs and Wahlbeck 2000). The outcome

of the decision-making process is a result of deliberation, which, again, is easier to observe in the US. In the European context, the process of decision-making is not officially documented and, hence, researchers can only rely on the judges' recollections of the events.

Concerning the external factors, both the struggle for institutional survival and the judges' career goals play a key role in influencing judicial behavior. Regarding institutional survival, constitutional rigidity, and the overriding potential of the constituent power, the number of veto players, as well as the level of political fragmentation and polarization, are considered key in explaining judicial behaviour (Dyevre 2010:304). For instance, if it is relatively easy for the government or parliament to change the powers of the CC, to avoid the weakening of the court, judges are encouraged to play in favour of the actors initiating such changes. Concerning the judges' career-related strategic considerations, re-eligibility may play an important role (Ginsburg and Garoupa 2009). Assuming that judges are seeking re-appointment (if it is permitted by law), compliance with the interests of the nominating principal (such as political parties) may be crucial. This strategy might be important for retiring judges too. On several occasions, former constitutional judges continue their careers by being nominated to other public positions. Strategic thinking implies that judges keep an eye on the policy preferences of the nominating party and cast their votes accordingly.

Based on the above, our second hypothesis tests a modified version of the attitudinal model complemented by some aspects of the strategic model - as presented by Garoupa and Kantorowitz (2016). This model does not care about whether judges' ideological preferences are derived from their sincere policy positions (attitudinal model), or they are the outcome of strategic thinking about their future career (strategic model). It argues that both motivations have the same consequences: judges vote in line with the preference of their nominating parties. Therefore, this model uses a proxy for determining the judges' ideological preferences, by relying on the "political affiliation" of the judges. Although judges occasionally vote against the majority decision *without* publishing a dissenting opinion, strictly from an external point of view the court's majority decisions are aggregations of non-dissenting judges' positions.

Consequently, we agree with Garoupa and Kantorowitz (2016) and argue that the political leaning of the court's majority is an explanative factor for majority decisions. Importantly, along with other factors listed in the literature (Feld and Voigt 2003; Voigt et al. 2015) the

political affiliation of the judges is more likely to influence the judges' behaviour in countries where the election of judges is highly politicized, i.e. determined by political actors (Volcansek 2007; Garoupa and Ginsburg 2015:98; Hausegger and Riddell 2015). As presented below, this is certainly the case in Hungary.

H2: Laws legislated by a parliament not sharing the political affiliation of the CC's majority are more likely to be ruled unconstitutional by the CC.

The Hungarian case

To test the hypotheses of the article, we look at the decisions of the Hungarian Constitutional Court between 1990 and 2018. Three arguments support the selection of the Hungarian case.

A powerful court

First, it is widely argued that the HCC became one of the most powerful constitutional courts in Europe shortly after the democratic transformation in 1989. It has been a reference point not only within the constitutional law scholarship but also for CCs in Central and Eastern Europe. According to several experts, the HCC played a crucial role in establishing the effective protection of fundamental rights and served as a model for other CCs in the region (Schwartz 2000; Halmai 2002; Sadurski 2002, 2014). During its first decade, the HCC achieved unparalleled self-empowerment. Under the leadership of László Sólyom, the HCC acted as a guardian of the democratic transition's values and served as a measure of constitutionality. Supplementing the written constitution, the HCC developed the doctrine of the "invisible constitution" (Halmai 2018). Importantly, relying on its formal and informal powers, the HCC played an active role in matters of policymaking as well. The court became famous partly due to some of its decisions striking down the austerity measures of the left-wing liberal parliamentary two-thirds majority in the mid-90s. It had both the willingness and power to influence public policy. Astonishingly, no systematic research has been done so far on the policy impact of this powerful court.

A highly politicized nomination process

Second, the HCC has been traditionally viewed as an institution that resisted all kinds of political influence and adjudicated exclusively based on legal principles – at least until 2010.

In legal scholarship, the first two decades of the court are diametrically contrasted with the court packed by the right-wing two-thirds majority after 2010 (Scheppele 2015; Sólyom 2015; Chronowski and Varju 2016; Chronowski 2021). While the former had been depicted as a strong bulwark defending individual rights irrespective of the government's political affiliation, the last decade of the court has been heavily criticized on the ground that it served the political interest of the right-wing government. Some argue that constitutional adjudication in Hungary has been eliminated after 2010, the court fell into the captivity of party politics, and judges became partisan players in the political field (Bencze and Kovács 2014).

Nevertheless, the politicization of the HCC has always been imminent. The HCC was established outside the realm of the ordinary judicial system, and it has always been more politicized than the regular courts. This is so by design. Constitutional court judges are elected by the unicameral legislature and the process has been a subject to party politics. That is, unlike in many other CEE countries, the nomination and the election of the judges is not a shared competence of the different branches of the government (e.g. parliament and the head of state) but remains entirely in the hands of the legislators. And because the legislature has been acting according to a strengthening logic of party discipline since the transition (Ilonszki 2007; Mansfeldová 2011), the parties' role in electing the judges is undeniable.

The judges of the HCC are elected for 12 years[2] by a two-thirds majority of the legislators. In a parliament with no two-thirds majority, a consensus is needed between the parliamentary party groups to elect a judge. Legislators vote on the individual nominees separately. Importantly, because positions were initially filled in waves, the judges' terms of office do not expire simultaneously. Therefore, not all judges are elected at once. From 1990 and 2018, the number of incumbent judges oscillated between eight and fifteen. When a judge served their term, the nomination and election procedures begin. An ad hoc committee selects the candidates ahead of the plenary voting. Before 2010, the selection committee was a key player because its composition was based on parity (i.e. 50 percent government, 50 percent opposition) which limited even the parliamentary supermajority's power to elect their candidates uncontested. For instance, the left-liberal parliamentary two-thirds majority between 1994 and 1998 had to compromise with the opposition to nominate and elect judges.

[2] Before 2010, judges were elected for 9 years.

As the election of the judges required a parliamentary supermajority, candidates of the government usually needed the support of opposition parties, and vice versa. It became a tradition to nominate and elect judges in pairs: one brought forward by the government, and one by the opposition. Vacant seats were only filled if both government and opposition parties had the opportunity to nominate their candidates. Importantly, the appointment of the judges was an integral part of party politics before 2010. Against this background, an important question emerges: to what extent does the party affiliation of the judges influence their decisions? One could assume that due to the politicized nature of the selection process, party affiliation and the individual strategic considerations of re-election or party-affiliated career advancement are strong incentives for voting on petitions and laws.

Changes after 2010

Third, the general elections of 2010 and the landslide victory of Fidesz marked a clear threshold in Hungarian constitutional politics in general, and in the composition and practice of the HCC in particular. The composition of the selection committee was modified. From 2010 on, parties participate in the committee by their parliamentary seat shares. As a consequence, whoever has the supermajority in parliament, has the power to control the nomination procedure. The government parties Fidesz and KDNP did not shy away from promoting their own candidates. By 2013, after three rounds of filling up the vacant seats, the composition of the HCC changed to the point of a steady government majority.

Nevertheless, court-packing was not the only intervention in the functioning of the court. After 2010, still, with the majority of the judges elected before 2010, the HCC frequently clashed with the new Orbán government. While the government enjoying a two-thirds majority embarked on a fundamental reshaping both of the political system and the social-economic context (Körösényi, Illés and Gyulai 2020), the HCC had preserved its capacity to counter government efforts. A famous example in a series of conflicts was when the HCC resisted Fidesz's attempt to retroactively tax the severance pay for the outgoing civil servants with ties to the former government. As a reaction, the government supermajority limited the courts' competence to review acts "on the central budget, the implementation of the central budget, central taxes, duties and contributions, customs duties and the central conditions for local taxes". Nevertheless, this change did not deprive the court of the competence to adjudicate cases with heavy financial consequences. The limitation concerned rather the legal

basis of the review of the previously mentioned acts since the court has been allowed to review them "exclusively in connection with the rights to life and human dignity, to the protection of personal data, to freedom of thought, conscience, and religion, or the rights related to Hungarian citizenship" (see Article 37 para (4) of the Fundamental Law). Furthermore, acts that did not fall under the above-mentioned categories might also have heavy financial implications and the court still has full competence to review them. It is also true, that it was this conflict in 2010 that triggered the backlash on the composition and competencies of the HCC and this is when the court started to lose its counter-majoritarian role.

After 2010 and with the adoption of a new constitution, the competencies of the HCC have been heavily curtailed. Established already before the transition, the HCC enjoyed a wide variety of competencies: except for the constitutional complaint all forms of constitutional review were available for the judges (Dezső 2010:184). Beyond *a priori* and *a posteriori* norm control, the constitutional interpretation *in abstracto* was also among the powers of the court allowing the HCC to play an especially active role in shaping the constitutional rules and norms following the transition. In terms of the petitioners, no restriction was stipulated (Dupré 2003:37). Even ordinary citizens not directly affected by the challenged law were able to submit a petition (*actio popularis).* This guaranteed that there was virtually no obstacle in the way of relevant issues being brought before the court.

In contrast, the regulations adopted after 2010 heavily restricted the range of petitioners to the government, 25 percent of the legislators, the President of the Supreme Court, the Prosecutor General, and the ombudsman – *actio popularis* was abolished. At the same time, however, *a priori* abstract review became more available, and as a new means of adjudication constitutional complaint against the decision of ordinary courts was introduced. Beyond shifting the competencies, the 9-year renewable mandates of the judges were changed to 12-year non-renewable ones. While on the one hand, it can be argued that such a rule contributes to the independence of the judges, on the other hand, depriving the court of electing its president (and placing this decision into the parliament's authority) diminished this independence.

Against this background, the question emerges how changes in the composition and competencies of the HCC after 2010 affected the court's attitude towards consequential

issues. Is there a significant difference between the court's behaviour before and after 2010 as far as decisions with potentially heavy budgetary consequences are concerned? Was the court bolder before 2010 when deciding on policy fields with big money? Does the party affiliation of the judges weigh more after 2010 as new, government-friendly judges started to dominate the work of the court? We reflect on these questions in the analysis.

Data and variables

To reveal how the budgetary implications of a law and the CC's political leaning affect the CC's rulings, we compile data on the HCC's activity between 1990 and 2018. To understand the structure of the data, a brief introduction to the HCC's decisions is in order.

Unit of observation: ruling-law pairs

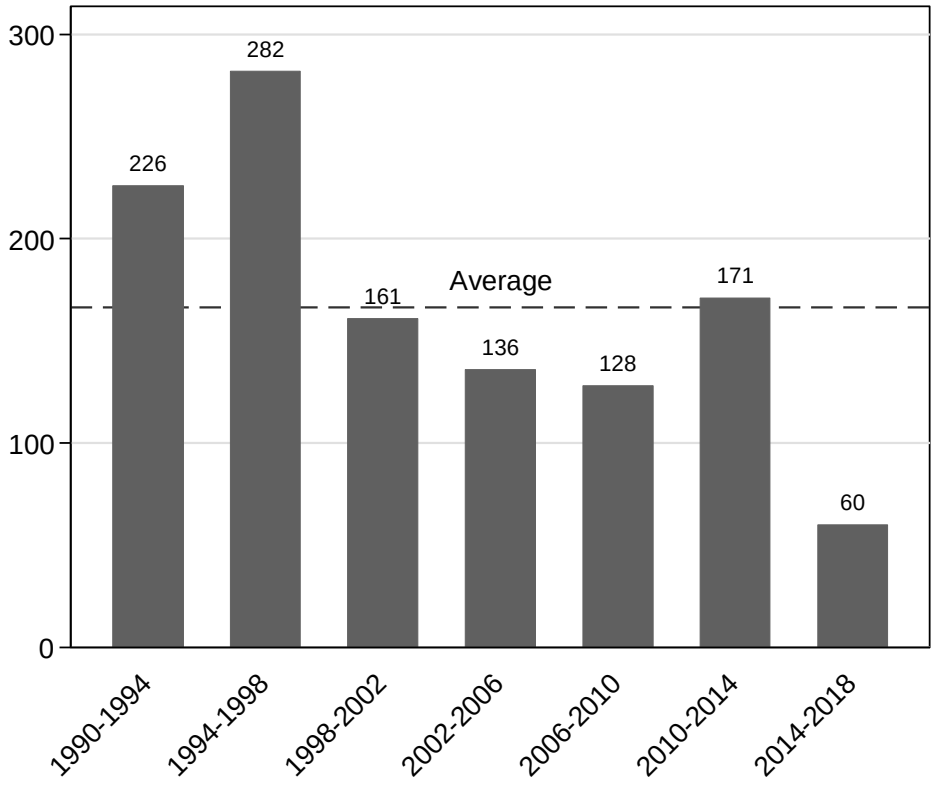
HCC *decisions* are complex judicial documents often consisting of multiple *rulings*. Each ruling may concern several different laws. We consider the affected law's latest modification as the subject to the ruling. To give an example, in Decision 47/2009 (IV.21.) we identified four different rulings. The HCC first held that "in the application of Section 12 para. (3) of the Act XXIII of 1992 on the Legal Status of Public Servants, it is a constitutional requirement based on Articles 59 and 60 of the Constitution that the deed of oath should not contain any data referring to the public servant's conviction of conscience or religion". This ruling is a constitutional requirement. As a second ruling in the same decision, the HCC rejected "the petitions aimed at establishing the unconstitutionality and the annulment of Section 12 and Section 13 para. (2) of Act XXIII of 1992 on the Legal Status of Public Servants". However, in this case, we consider the last modification of Act XXIII of 1992 (i.e. Act XXXVI of 2001). The third ruling terminated "the procedure aimed at the posterior review of the unconstitutionality of Sections 31/A–31/F of Act XXIII of 1992 on the Legal Status of Public Servants". This ruling we identified as a suspension that affects the modification (Act LXXXIII of 2007) of the original law. The fourth ruling rejected "the petition aimed at establishing the unconstitutionality and the annulment of Section 13 para. (1), Section 65 para. (2) item d) and Section 102 para. (8) of Act XXIII of 1992 on the Legal Status of Public Servants", and it refused other petitions as well.

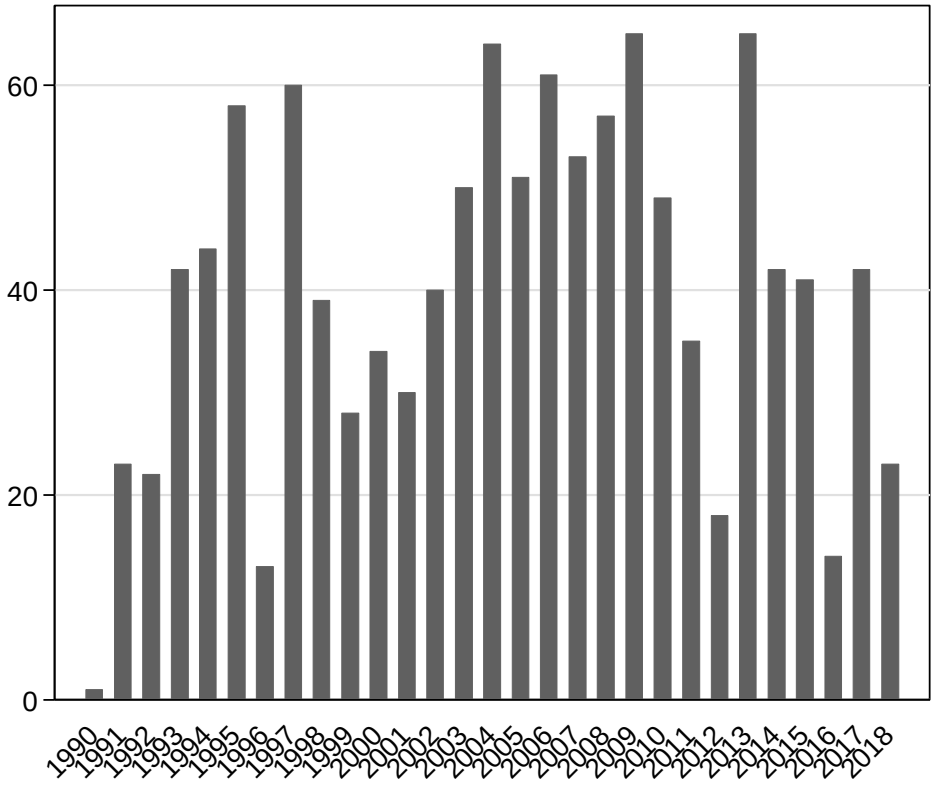
Sometimes one ruling in a decision declares the substantive unconstitutionality of *several* laws. The HCC declared Sections 35, 35/A, 35/B, 35/C, and 36/A para. (1) item a) point ab),

Section 39 para. (1) item g), the text “and crime prevention control” in Section 92 para. (2), and the text “pertaining to ordering crime prevention control, and” in Section 101 para. (1) item h) of Act XXXIV of 1994 on the Police unconstitutional and annulled them in Decision 47/2003 (X.27). Additionally, the above-mentioned sections and paragraphs of the original Act XXXIV of 1994 on the Police were *separately* modified with four different laws (Act LXXV of 1999; Act X of 2000; Act XVIII of 2001, and Act XXXIX of 1994), which further complicates the case.

To summarize the above, (1) each ruling refers to one or more respective laws, and (2) one law may be examined by multiple rulings. Therefore, to learn if a decision declares constitutionality or unconstitutionality concerning a *specific* law, we have to disaggregate decisions into *ruling-law pairs*, which is the unit of observation in our analysis. The data consists of 1163 ruling-law pairs from 945 rulings concerning 516 laws and their last modifications. Figure 1 displays the number of ruling-law pairs over the parliamentary terms and years. No firm tendency is prevalent. The number of ruling-law pairs is exceptionally large in the first two terms, which is followed by a sharp decline during the next three terms. Between 2010 and 2014 we report a figure that is slightly above average and reflects the conflict between the court and the government. In the 2014-2018 parliamentary term the number of ruling-law pairs drops dramatically. However, the second panel of Figure 1 also indicates that this inactivity is not without precedent during the earlier periods of the HCC, particularly in 1996 and between 1999 and 2002.

Figure 1 The number of decisions over parliamentary terms and years

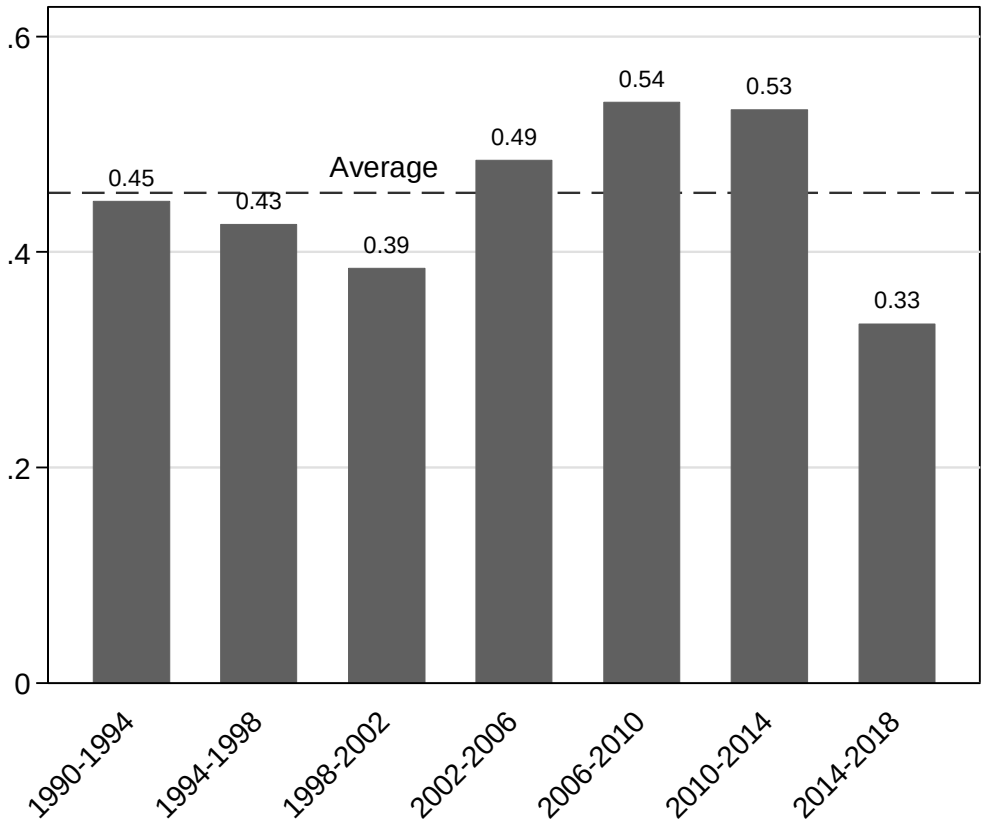

300
200
100
0
226
282
161
136
128
171
60
Average
1990-1994
1994-1998
1998-2002
2002-2006
2006-2010
2010-2014
2014-2018

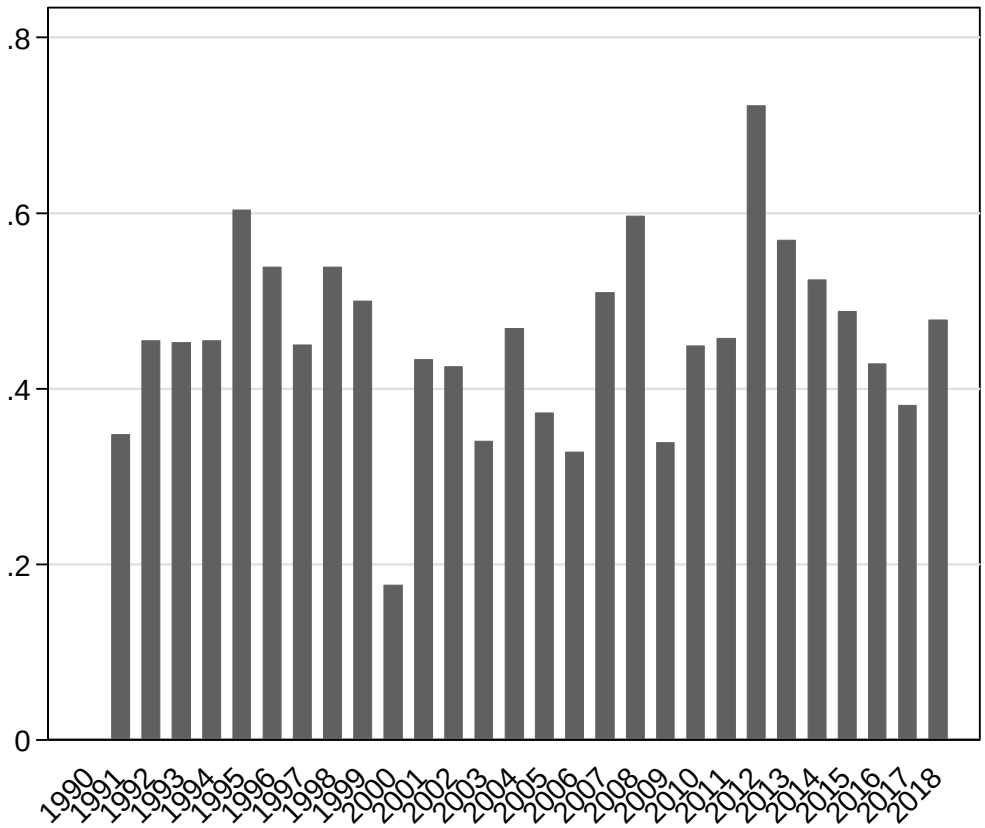

60
40
20
0
1990
1991
1992
1993
1994
1995
1996
1997
1998
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016
2017
2018

Provisions

The dependent variable of the analysis is the *provision* identified in a ruling-law pair and differentiates between constitutionality (0) and unconstitutionality (1). 45.5 % (N=529) of the ruling-law pairs declare unconstitutionality. Figure 2 shows the share of the provisions of unconstitutionality over time. Data does not indicate a clear trend: a slight decrease is followed by a sharp increase in unconstitutionality after 2002 only to plummet in the 2014-2018 parliamentary term. The second panel in Figure 2 reveals that after an exceptionally high share of unconstitutionality provisions in 2012, the HCC gradually became more deferential to the government over the following years. The exception is 2018 when the share of unconstitutionality provisions climbed back above the average value. A possible explanation for the decreasing tendency after 2012 is that it was in 2013 when judges elected after 2010 formed a majority, which allowed for the court to be more friendly with the parliamentary majority. While the HCC had a right-wing majority from 2010 on, the main cleavage was not between the judges of different ideological leaning but between the more experienced judges with a more critical attitude vs. newcomers (Szente 2016; Pócza, Dobos and Gyulai 2019). We reflect on these patterns in the analysis.

Figure 2 The share of unconstitutionality decisions across parliamentary terms and years


.6
.4
.2
0
Average
0.45
0.43
0.39
0.49
0.54
0.53
0.33
1990-1994
1994-1998
1998-2002
2002-2006
2006-2010
2010-2014
2014-2018


.8
.6
.4
.2
0
1990
1991
1992
1993
1994
1995
1996
1997
1998
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016
2017
2018

The budgetary implications of a law

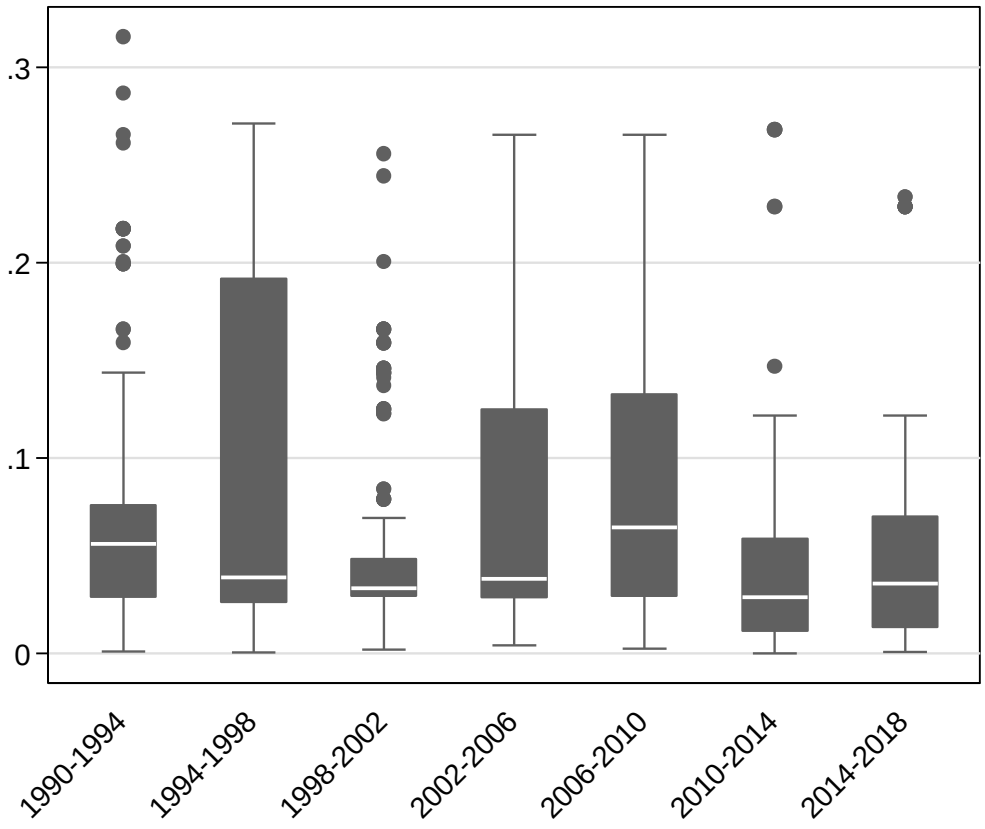
Unfortunately, the size of the budgetary implication of a law is not easy to estimate. Although prior research provides important reference points, they are either theoretical or approach the problem from the perspective of legal reasoning or legal doctrines (King 2012; Pernice 2016; Ragnarsson 2019). We acknowledge that we are not able to directly assess the financial consequences of the rulings and use a *proxy variable*: *Budget.* It represents the annual budgetary share of the primary policy area affected by the respective law. Our implicit assumption is that the share of a policy field in the annual budget correlates with the budgetary implications of a law. However, to the extent to which this correlation is imperfect, our conclusions are precarious.

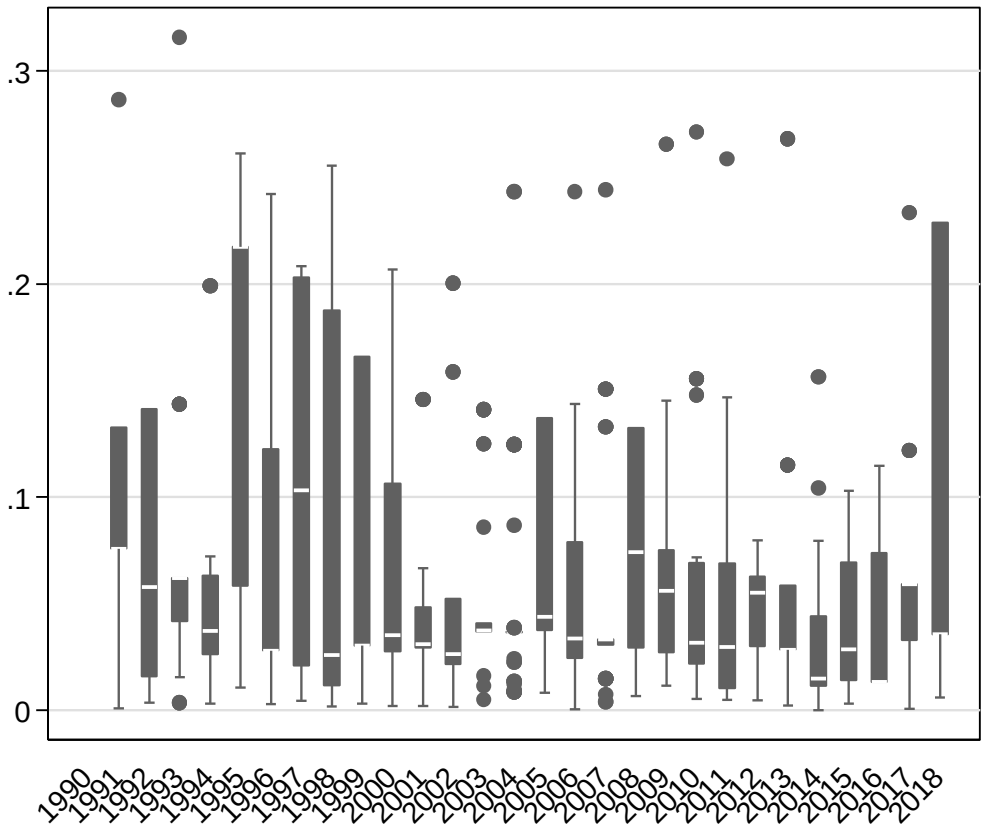
We create the *Budget* variable in three steps. First, each ruling-law pair is coded along the policy field of the respective law. For this purpose, we borrow the data from the Hungarian Comparative Agendas Project (HCAP) (Boda-Sebők 2018). Coders of the HCAP categorised all laws into policy fields (see *major topics* in the CAP codebook[3]). Second, using the HCAP data, we aggregated the annual budgetary figures for each policy field and calculated their share in the total annual budget. Third, we assigned a value representing the budgetary share of the respective policy field in any given year to each ruling-law pair. The first panel of Figure 3 displays the distribution of the *Budget (%)* variable for each parliamentary term. Again, we report no clear tendencies over time. The mean value of *Budget* is the largest during the 1994-1998 parliamentary term (9.2 %), and the lowest between 2010 and 2014 (4.1 %). Looking at the second panel of Figure 3, we see that in the first half of the period under investigation, the potential budgetary implications of the provisions were larger on average. In the second half of the period, larger budgetary implications are identified as outliers not fitting into the general picture.

As to the policy fields, social welfare eats up the largest part of the annual budget on average (23.5 %), followed by macroeconomics (16.2 %) and health care (13.5 %). Culture, civil rights, public lands, and the environment are amongst the least expensive policy fields.

Figure 3. The distribution of the Budget (%) variable over parliamentary terms and years

[3] https://www.comparativeagendas.net/pages/master-codebook


.3
.2
.1
0
1990-1994
1994-1998
1998-2002
2002-2006
2006-2010
2010-2014
2014-2018


.3
.2
.1
0
1990
1991
1992
1993
1994
1995
1996
1997
1998
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016
2017
2018

The political leaning of the parliament and the HCC

For the test of our second hypothesis, for each ruling-law pair, we identify the parliament's and the HCC's political affiliation. In the case of the parliament, this task is straightforward: a left-wing parliament is a parliament with a left-wing majority. Following the same logic for right-wing parliaments, the 1990-1994, the 1998-2002, the 2010-2014, and the 2014-2018 parliaments are coded right-wing, while the 1994-1998, the 2002-2006, and the 2006-2010 left-wing.

More complicated is to establish the HCC's political leaning. For that, we have to take into account the party affiliation of the individual judges. Since Hungarian judges are nominated by political parties, this may sound like an easy task. However, sometimes, we lack hard evidence of the judges' party affiliation, especially under the "nominating in pairs" tradition. In such cases, we relied on parliamentary committee records, news media sources, and expert interviews with HCC staff members. To establish the HCC's political leaning at the time of the respective decision we simply aggregated the party affiliation of the judges who were present at the deliberation. 517 ruling-law pairs can be ascribed to a left-leaning HCC (44.4 %), 287 (24.7 %) to a right-leaning court, and in 360 cases (30.9 %) neither political side had a majority in the HCC (i.e. a balanced HCC).

Results

To test the hypotheses of the paper, we apply multivariate regression techniques. As ruling-law pairs (level 1) are embedded in decisions (level 2), we opt for a random-intercept multilevel model. Traditional regression assumes that rulings included in the same decision are independent of each other, and thus underestimates standard errors. In our data, very often there is only one ruling per decision, and the average number of ruling per decision is low. This questions the applicability of a multilevel model. Nevertheless, as the analysis does only focus on level 1 effects, it does not estimate slope variations across level 2 groups, and the sample size on level 2 is sufficiently large (Maas & Hox 2005), multilevel models are reported in the paper. For each model presented in this section, likelihood-ratio (LR) tests suggest that the multilevel models are more appropriate than the traditional regression approach. Intercepts also significantly vary across decisions (level 2). Furthermore, given that the dependent variable is a binary response, multilevel binary logistic models are estimated.

Table 1 shows model results. The effect of the budget (H1a and H1b) is tested in Model 1, while Model 2 provides a test for H2 (i.e. the combined effect of the political leaning of the parliamentary majority and HCC). Positive coefficients indicate that a variable increases the probability of unconstitutionality, while negative coefficients suggest the opposite. Although observations are available for the whole population of decisions and rulings, statistical tests are reported, and p-values are used to assess the validity of the hypotheses with a threshold of 0.05.

Table 1 Random intercept binary logistic models explaining provisions in the ruling-law pairs (0 – Constitutional, 1 – Unconstitutional)

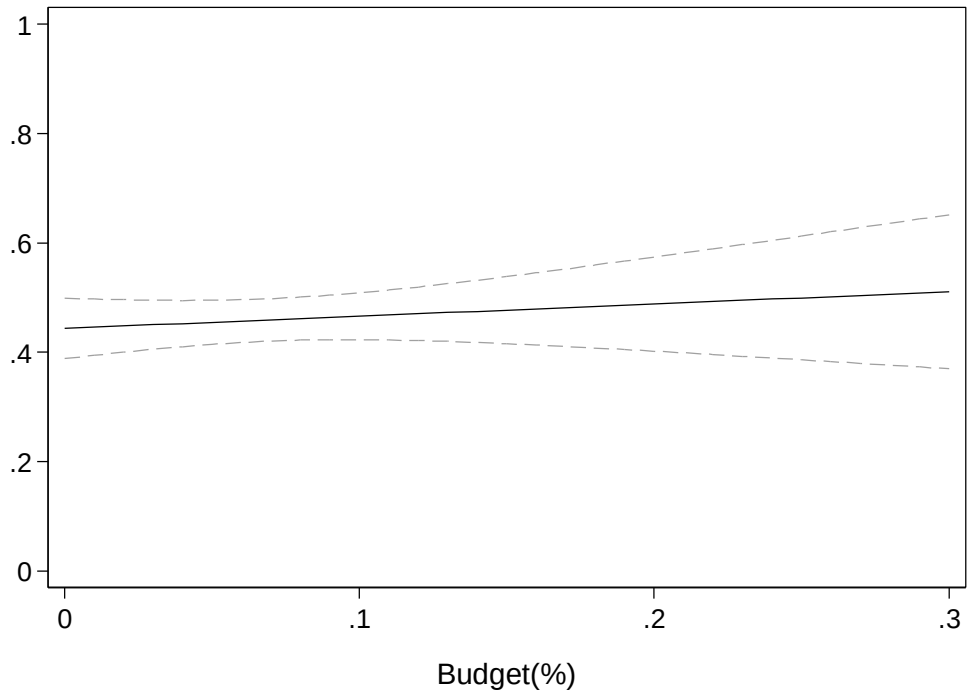
	Model 1	Model 2	Model 3	Model 4	Model 5
	Coef (S.E.)	Coef (S.E.)	Coef (S.E.)	Coef (S.E.)	Coef (S.E.)
Budget (%)	0.90 (1.21)	1.03 (1.21)	a	1.10 (1.19)	1.62 (1.34)
HCC majority: Balanced	Reference	Reference	Reference	Reference	Reference
HCC majority: Left	-0.18 (0.19)	-0.24 (0.29)	-0.21 (0.19)	-0.14 (0.20)	-0.13 (0.20)
HCC majority: Right	0.43 (0.29)	0.12 (0.34)	0.47 (0.29)	0.19 (0.35)	0.15 (0.35)
Parl. majority: Right	Reference	Reference	Reference	Reference	Reference
Parl. majority: Left	0.23 (0.17)	0.03 (0.29)	0.31 (0.17)	0.20 (0.16)	0.20 (0.16)
HCC majority: Left × Parl. majority: Left		0.05 (0.36)			
HCC majority: Right × Parl. majority: Left		1.09* (0.51)			
Year	-0.01 (0.01)	-0.01 (0.01)	-0.01 (0.01)		
Period: pre-2010				Refererenc e	Reference
Period: Post-2010				0.18 (0.33)	0.36 (0.39)
Period: Post-2010 X Budget					-2.42 (2.88)
Policy field: Macroeconomics			Reference		
Policy field: Civil rights			-0.25 (0.38)		

Policy field: Healthcare			-0.65 (0.43)		
Policy field: Agriculture			0.07 (0.55)		
Policy field: Labour			-0.31 (0.45)		
Policy field: Education			-0.48 (0.54)		
Policy field: Environment			-1.46* (0.69)		
Policy field: Law and crime			0.05 (0.25)		
Policy field: Social welfare			-0.77 (0.40)		
Policy field: Housing			-0.65 (0 .49)		
Policy field: Domestic commerce			-0.69 (0.41)		
Policy field: Defence			-0.65 (0.43)		
Policy field: Technology			-0.50 (0.49)		
Policy field: International affairs			-1.07 (0.67)		
Policy field: Government operations			-0.60* (0.25)		
Policy field: Public lands			-1.05 (0.55)		
Intercept	17.57 (29.82)	13.28 (29.75)	19.73 (29.61)	-0.37 (0.21)	-0.41 (0.21)
Var(_cons)	0.91* (0.27)	0.88* (0.26)	0.73* (0.25)	0.92* (0.27)	0.92* (0.27)
N	1163	1163	1159	1163	1163
Wald Chi2	7.20	12.07	29.30	7.11	7.79
Log-likelihood	-781.82	-779.07	-757.84	-781.84	-781.49

Entries are multilevel binary logit regression coefficients. Cluster robust standard errors in parentheses.
* $p < 0.05$
a. Excluded because of multicollinearity (VIFBudget = 12.93)

Looking at Model 1, the effect of the budget is not significant. This suggests that *judges do not take the potential budgetary implications of a ruling into account when assessing the constitutionality of a law.* Having said that, on the sample level, the analysis reveals a positive effect. Figure 4 visualizes the predicted probabilities[4] of unconstitutionality over the potential budgetary implications of the policy field. The effect is rather tiny: on average, a ruling regarding a policy field with a 10 percent share in the national budget promotes unconstitutionality with a 0.47 chance, with only an increase of 0.02 if the policy field represents 20 percent. Hence, the effect of the budget is not only insignificant in the statistical sense, but also substantively negligible. In the context of our study, this finding confirms H1b and depicts judges as non-deferential actors.

Figure 4. The predicted probability of unconstitutionality over the budgetary implications of the policy field (Model 1, 95 % CI))



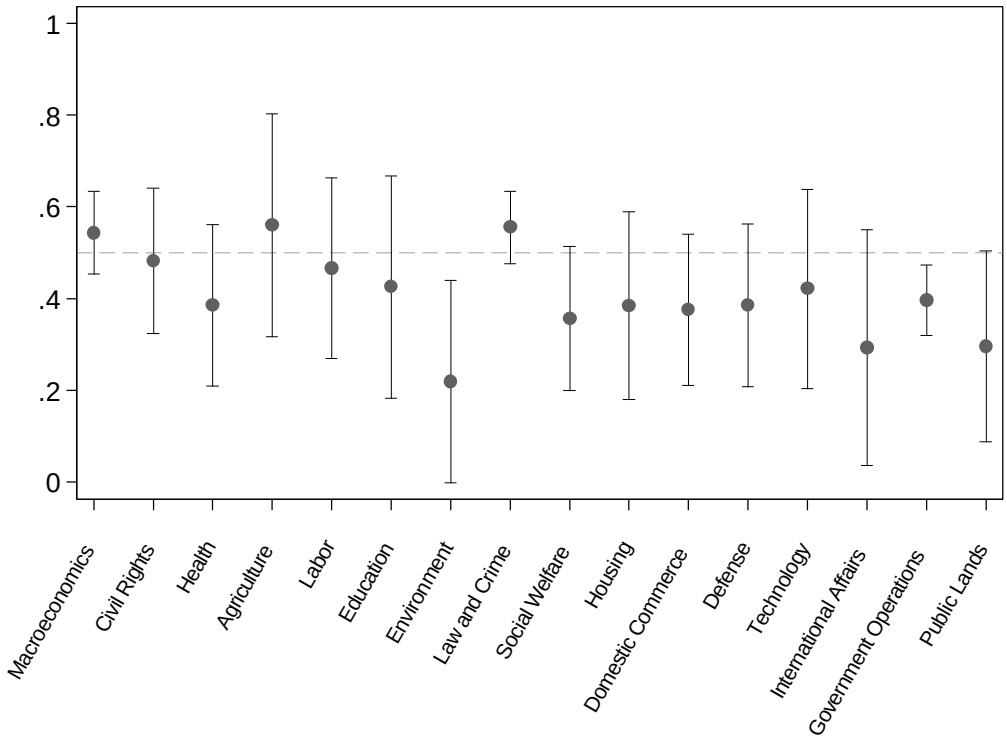
To completely sort out the effect of the policy field on the decision of unconstitutionality, Model 3 (see Table 1) includes a categorical variable distinguishing between the various policy fields. We excluded the budget variable because of the strong correlation between the

[4] For this exercise, all other variables were fixed at their mean values.

policy field and the potential budgetary implications of the decision which lead to severe multicollinearity in the model (VIF = 12.93). Rulings on transportation, energy, and culture are removed from the sample due to insufficient sample sizes (9, 6, and 3 decisions respectively).

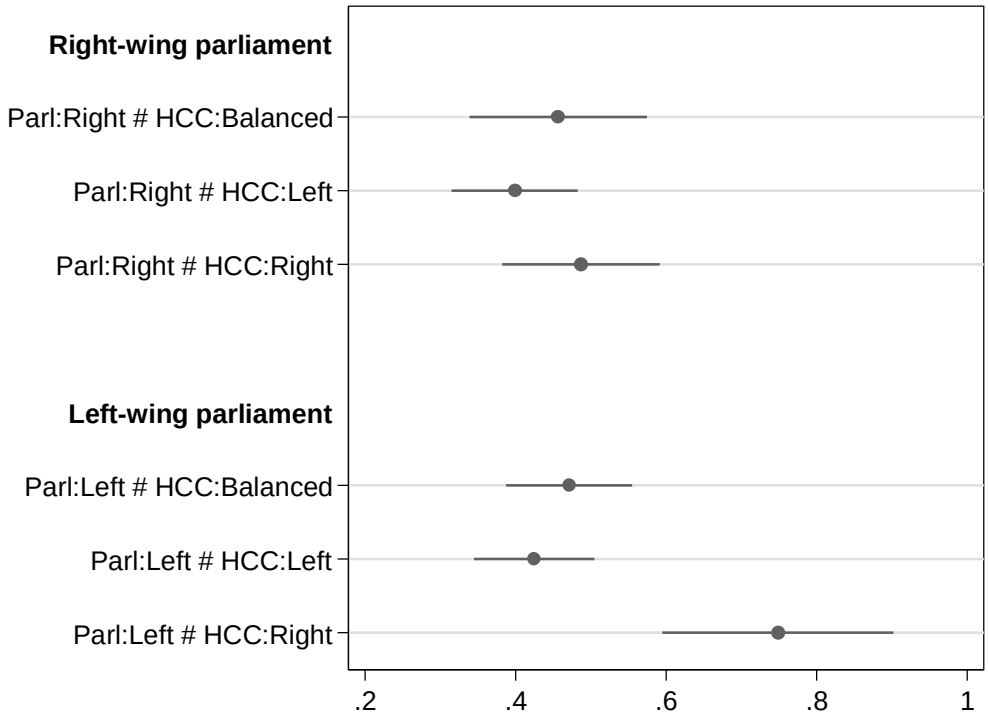
Figure 5 shows the predicted probability of unconstitutionality across the various policy fields. Results indicate significant differences between the policy fields. In the cases of macroeconomics (Predicted probability = 0.54), civil rights (0.48), agriculture (0.56), and law and crime (0.56) there is a probability of above 0.5 that the law is ruled unconstitutional. On the other hand, laws related to the environment (Prob. = 0.22), international affairs (0.29), or public lands (0.30) are not likely to be quashed. Consequently, it seems that there is an issue salience in the decisions of the HCC, but, evidently, it does not rely on the potential budgetary consequences. Although two of the most expensive policy fields, healthcare (13.4 % of the annual budget on average) and social welfare (23.5 %) tend to invite more judicial deference (Prob = 0.39 and 0.36 respectively), the rather expensive field of macroeconomics (16.2 %) is subject to more rigour.

Figure 5. The predicted probability of unconstitutionality across policy fields (dashed vertical line at the predicted probability of 0.5; 95 % CI)



Moving on to testing that the court makes more favourable decisions on laws passed by a parliamentary majority of the same political side, Model 2 (see Table 1) includes an interaction of the HCC majority and the political leaning of the parliamentary majority. Figure 6 helps interpret the significant combined effect of the two variables. First, in the cases of balanced and left-leaning courts, no differences are detectable between rulings about laws passed by right-wing and left-wing parliamentary majorities. Second, with a right-wing majority, the HCC is significantly more likely to rule a law unconstitutional if it was passed by a left-wing parliamentary majority.

Figure 6. The predicted probability of unconstitutionality across HCC and the parliamentary majority (95 % CI)

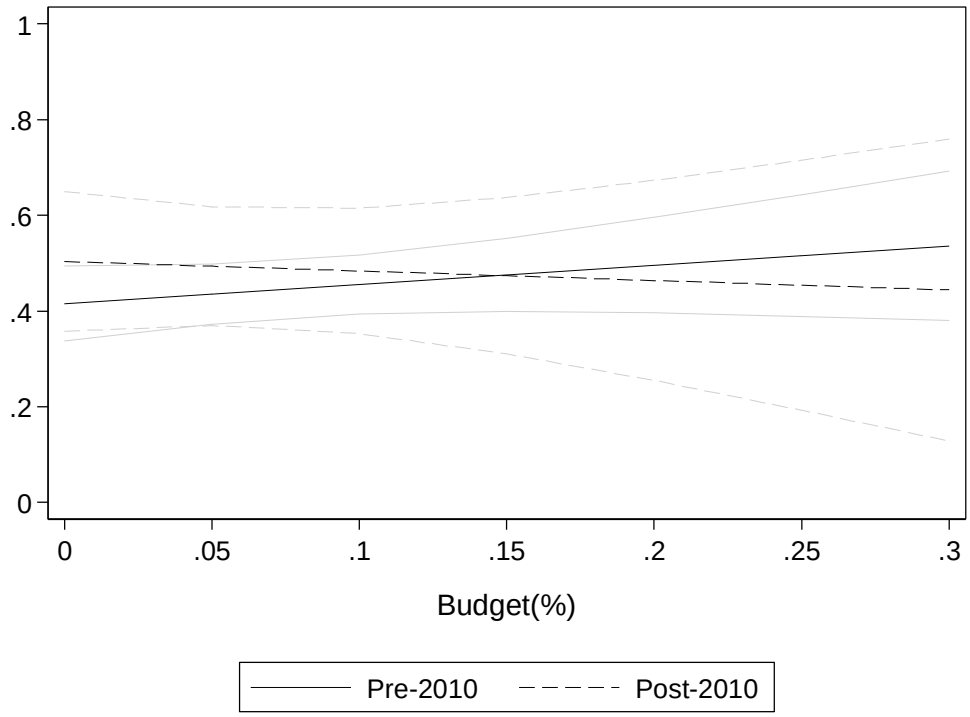


Last, but not least, the effect of time is not significant. Its negative coefficient suggests that the earlier courts were more rigorous and issued unconstitutionality with a greater probability. For example, in the mid-1990s, amidst a deep economic crisis, the austerity measures introduced by the left-wing liberal government were severely cut back by the HCC. To address the question about a potential change in the practice of the HCC after 2010, we included a binary variable separating the pre- and post-2010 periods into the model (Model 4),

and its interaction with *Budget* (Model 5). Results of Model 4 suggest no significant effect of the period on the HCC's decisions. Before 2010, the probability of unconstitutionality is 0.45, while the post-2010 value is only slightly larger (0.49). Hence, our multivariate analysis does not support the picture of a less restrictive HCC after 2010.[5]

Following up on the effect of the period, the interaction term in Model 5 tests if the potential budgetary implications of a decision affect the rulings differently before and after 2010. The interaction is not significant (p = 0.399) which indicates that there is no difference between the two periods: *Budget* does not affect the probability of unconstitutionality either before or after 2010. On the sample level, we observe only slight differences (see Figure 7). After 2010, a ruling of unconstitutionality became more probable with increasing budgetary implications, whereas during the pre-2010 period the opposite tendency is detectable. But again, this difference is neither significant nor meaningful.[6]

Figure 7 The predicted probability of unconstitutionality over the budget and across the two periods (95 % CI)



[5] We find similar results if we take the year 2013 as threshold instead of 2010 (B = 0.05, SE = 0.41, p = 0.91)
[6] Again, the selection of the year 2013 as threshold does not change results.

Overall, the models presented in the paper provide a poor fit for the data. The reason for this may be lying in the subject's nature. There is sizeable heterogeneity in the cases before the HCC, which is difficult to collapse into a restricted number of categories. Nevertheless, the quantitative approach is certainly useful to recover tendencies in the data, which then can be further disentangled by qualitative research.

Discussion and conclusions

In this article, we investigated the decisions of the Hungarian Constitutional Court from two perspectives. First, we tested two rival hypotheses regarding judges as deferential actors. We expected that in a politicized institutional setting where the nomination of the judges is directly (and exclusively) dependent on legislative majorities, judges step up as non-deferential actors, and do not shy away from squashing laws with significant budgetary consequences. Second, we theorized that bloc politics plays a significant part in the court's functioning. We compiled novel data on the HCC's decisions and tested our hypotheses with multivariate regression analysis.

Of course, at this point, there is no way of knowing how well our results travel to other European constitutional courts. Importantly, our argument is based on the general features of any constitutional court, which make our expectations highly logical for most constitutional courts. Nevertheless, a comparative analysis is needed to assess if the court's blindness to budgetary implications is a phenomenon specific to the Hungarian Constituency Court, or it is a widespread practice across Europe. A comparative perspective could also shed light on how the institutional features and political environment of the courts affect the judges' willingness to make financially far-reaching decisions.

Furthermore, our results also contradict the general view of the HCC which is based on several salient cases from the mid-90s. In 1995, various elements of the austerity measures of the left-wing/liberal government were found unconstitutional by the HCC. These decisions have always been very much appreciated by legal scholars (Schwartz 2000; Scheppele 2005), all the more since the left-wing cabinet had a two-thirds constitutional majority in the parliament at that time. The image of a bold court, which strikes down austerity measures while facing a government with the potential to circumvent or restrict the court should be, however, certainly corrected in light of the results of our analysis. While these decisions

might have shaped the image of the HCC, we find that financial consequences have been unimportant if we look at a longer period.

Concerning our second hypothesis, we found that the political affiliation of the judges is an important factor influencing court decisions. While legal scholarship argued that after the right-wing government's successful court-packing in 2010 and 2013 the HCC became highly government-friendly (Szente 2016; Halmai 2014), political science research on dissenting coalitions at the HCC shows that political polarization of the HCC started well before 2010 (Pócza, Dobos and Gyulai 2019). Interestingly, whilst Pócza and colleagues (2019) find that left-wing judges formed a quite cohesive group by publishing dissenting opinions together (and only together) well before 2010, the present analysis demonstrates that right-wing judges in a majority position were more inclined to strike down left-wing legislation in the last 30 years, than vice versa. Both studies hint in the same direction: the HCC's judges became politically sensitive and biased well before 2010 even if political bias did not prevail in all circumstances.

As for the differences between the pre- and post-2010 period of the HCC the results of our analysis show no significant differences in the probability of striking down legislation in general or striking down legislation with potential heavy budgetary consequences in particular. This might be a quite surprising result in light of the massive criticism and negative assessment of the HCC after 2010. As far as the declaration of unconstitutionality is concerned one might argue that our dataset is blind to the political salience of the reviewed cases. This means that further investigations, partly qualitative, might shed light on the question of whether judges were aware of the fact that specific cases were politically more relevant than others. Contrasting the pre- and post-2010 periods and focusing on politically salient cases, might uncover, for example, the judges' possible strategies in taking, on the one hand, strong rulings against (politically) less important legal regulations adopted by their respective nominating party and against (politically) more important regulations of the opposing side, and, on the other hand, being more permissive against (politically) more important legislative regulations adopted by their nominating party and against (politically) less important regulations adopted by the other side.

As to the generalizable nature of our findings, the second hypothesis is likely to travel only to countries with a political culture similar to Hungary, and where the selection or election of the

judges is prominently party-centered. We would argue that post-communist countries are logical candidates to generalize our results. Post-communist constitutional courts share common legal traditions and were subject to the same influences after the transition to democracy (Brunner 1992, Dupre 2003). The selection and election of judges follow roughly the same logic: post-communist countries apply some combination of presidential or prime ministerial appointment and parliamentary approval (Scheppele 2006; Brunner 1992). Importantly, post-communist CCs are considered political actors, and their presidents are depicted as major political figures (Scheppele 2006, Uitz 2007). Under such circumstances, the political leaning of the courts is very likely to play a role in the courts' decisions.

As with all empirical investigations, our analysis has also its limitations. First, observing only the court's aggregate position, and not the behavior of the individual judges, one must carefully avoid ecological fallacy. There is simply no information on the individual judges' opinions (unless a minority report was issued), and thus, can only infer the court's position, and not that of the judges. Second, the potential budgetary implication of a decision is only a proxy for the salience of the respective law, and it only measures one – perhaps not the most important – dimension. Future research should focus on trying to operationalize issue salience in the context of CC decision-making. Third, our approach could not reveal the mechanism which creates the observed effect of political leaning and the court's decision. One can only speculate that a certain type of reward structure (e.g. institutional stability, career opportunities) is in place which keeps courts loyal to a political bloc. Fourth, the problem of poor model fit strengthens the legitimacy of case-based research as opposed to the quantitative approach. Still, as demonstrated in this study, large-N techniques are useful to reveal tendencies, which then can be further disentangled by qualitative research.

Disclosure statement

The authors report there are no competing interests to declare.

References

Baumgartner, F. R., C. Breunig, and E. Grossman. 2019. "*Comparative Policy Agendas: Theory, Tools, Data*". Oxford: Oxford University Press.

Beukers, T., B. de Witte, and C. Kilpatrick. 2017. "Constitutional Change through Euro-Crisis Law: Taking Stock, New Perspectives and Looking Ahead". In *Constitutional Change*

through Euro-Crisis Law, edited by T. Beukers, B. de Witte, and C. Kilpatrick, 1–24. Cambridge: Cambridge University Press.

Bencze M., and A. Kovács. 2014. "Mission: impossible: alkotmánybíráskodás alkotmányos értékek védelme nélkül". ["Mission impossible: constitutional adjudication without protection of constitutional values"] *Jogtudományi Közlöny* 2014 (6): 273–284.

Boda, Z., and M. Sebők. 2018. "*A magyar közpolitikai napirend: Elméleti alapok, empirikus eredmények*". ["The Hungarian policy agenda: theoretical foundations, empirical results"] Budapest: MTA TK Politikatudományi Intézet.

Bönnemann, M., and L. Jung. 2017. "Critical Legal Studies and Comparative Constitutional Law". In *Max Planck Encyclopedia of Comparative Constitutional Law*, edited by G. Rainer, F. Lachenmann, and R. Wolfrum. https://oxcon.ouplaw.com/home/mpeccol (last access: 13/05/2022)

Brunner, G. 1992. "Development of a Constitutional Judiciary in Eastern Europe". *Review of Central and East European Law* 1992 (6): 535–553.

Bugarič, B., and T. Ginsburg. 2016. "The Assault on Postcommunist Courts." *Journal of Democracy* 27 (3): 69–82.

Canotilho, M., T. Violante, and R. Lanceiro. 2015. "Austerity Measures under Judicial Scrutiny: The Portuguese Constitutional Case-Law". *European Constitutional Law Review* 2015 (11): 155–183.

Castillo-Ortiz, P. 2019. "The Illiberal Abuse of Constitutional Courts in Europe". *European Constitutional Law Review* 15 (1): 48–72.

Chronowski, N. 2021. "The post-2010 'Democratic Rule of Law' practice of the Hungarian Constitutional Court under a rule by law governance". *Hungarian Journal of Legal Studies* 61 (2): 136–158.

Chronowski, N., and M. Varju. 2016. "Two Eras of Hungarian Constitutionalism: From the Rule of Law to Rule by Law". *Hague J Rule Law* 8: 271–289.

Daly, T. 2017. "*The Alchemists: Questioning our Faith in Courts as Democracy-Builders*". Cambridge: Cambridge University Press.

Dezső, M. 2010. "*Constitutional Law in Hungary*". Alphen aan den Rijn: Kluwer Law International.

Dyevre, A. 2010. "Unifying the field of comparative judicial politics: towards a general theory of judicial behaviour". *European Political Science Review* 2 (2): 297–327.

Dupre, C. 2003. "*Importing the Law in Post-communist Transitions: The Hungarian Constitutional Court and the Right to Human Dignity*". Oxford: Hart Publishing.

Epstein, L., and J. Knight. 1998. "*The Choices Justices Make*". Washington D.C: Congressional Quarterly Press.

Fabbrini, F. 2014. "The Euro-Crisis and the Courts: Judicial Review and the Political Process in Comparative Perspective". *Berkeley Journal of International Law* 32 (1): 64–123.

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

Feld, L. P., and S. Voigt. 2003. "Economic growth and judicial independence: cross-country evidence using a new set of indicators". *European Journal of Political Economy* 19 (3): 497–527.

Garoupa, N., and T. Ginsburg. 2015. "*Judicial Reputation. A Comparative Theory*". Chicago: The University of Chicago Press.

Garoupa, N., and J. Kantorowicz. 2016. "An empirical analysis of constitutional review voting in the Polish constitutional tribunal 2003–2014". *Constitutional Political Economy* 27 (1): 66–92.

Gillman, H., and C. Clayton. 1999. "Beyond judicial attitudes: institutional approaches to Supreme Court decision-making". In *Supreme Court Decision-making. New Institutionalist Approaches,* edited by C. Clayton, and H. Gillman, 1–12. Chicago: Chicago University Press.

Ginsburg, T. 2008. "The Global Spread of Constitutional Review". In *The Oxford Handbook of Law and Politics*, edited by G. A. Caldeira, R. D. Kelemen, and K. E. Whittington, 81–98. Oxford: Oxford University Press.

Ginsburg, T., and N. Garoupa. 2010. "Reputation, information, and the organization of the judiciary". *Journal of Comparative Law* 2010 (4): 226–254.

Halmai, G. 2002. "The Hungarian Approach to Constitutional Review". In *Constitutional Justice East and West*, edited by W. Sadurski, 189–212.The Hague/London: Kluwer Law International.

Halmai, G. 2014. "In memoriam magyar alkotmánybíráskodás". ["In memoriam Hungarian constitutional adjudication"] *Fundamentum* 18 (1–2): 36–64.

Halmai, G. 2018. "Silence of transitional constitutions: The 'invisible constitution' concept of the Hungarian Constitutional Court". *International Journal of Constitutional Law* 16 (3): 969–984.

Hausegger, L., and T. Riddell. 2015. "Unpacking the Debate on Judicial Appointments outside the United States". In *Making Law and Court Research Relevant: The*

Normative Implications of Empirical Research, edited by B. L. Bartels, and C. W. Bonneau, 142–154. New York/London: Routledge.

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

Hirschl, R. 2008. "The Judicialization of Mega-Politics and the Rise of Political Courts". *Annual Review of Political Science* 2008 (11): 93–118.

Hirschl, R. 2011. "The Judicialization of Politics". In *The Oxford Handbook of Political Science*, edited by R. E. Goodin. Oxford: Oxford University Press.

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

Ilonszki , G. 2007. "From Minimal to Subordinate: A Final Verdict? The Hungarian Parliament, 1990–2002". *The Journal of Legislative Studies* 13 (1): 38–58.

Kilpatrick, C. 2017. "Constitutions, Social Rights and Sovereign Debt States in Europe: A Challenging New Area of Constitutional Inquiry". In *Constitutional Change through Euro-Crisis Law*, edited by T. Beukers, B. de Witte, and C. Kilpatrick, 279–326. Cambridge: Cambridge University Press.

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

Komesar, N. K. 1994. "*Imperfect Alternatives: Choosing Institutions in Law, Economics, and Public Policy*". Chicago: University of Chicago Press.

Körösényi A., G. Illés, and A. Gyulai. 2020. "*The Orbán Regime: Plebiscitary Leader Democracy in the Making*". New York/London: Routledge.

Landau, D. 2011. "Political Institutions and Judicial Role in Comparative Constitutional Law". *Harvard International Law Journal* 51 (2): 319–377.

Landau, D. 2014. "The Promise of a Minimum Core Approach: The Colombian Model for Judicial Review of Austerity Measures". In *Economic and Social Rights after the Global Financial Crisis*, edited by A. Nolan, 267–298. Cambridge: Cambridge University Press.

Lustig, D., and J. H. H. Weiler. 2018. "Judicial review in the contemporary world – Retrospective and prospective". *International Journal of Constitutional Law* 16 (2): 315–372.

Maas, C. J. M., and J. Hox. 2005. "Sufficient Sample Sizes for Multilevel Modeling". *Methodology European Journal of Research Methods for the Behavioral and Social Sciences* 1 (3): 72–77.

Magalhaes, P. 2003. "*The limits of judicialization: legislative politics and constitutional review in the Iberian Democracies*". (dissertation) Ohio State University.

Maltzman, F., J. Spriggs and P. Wahlbeck. 2000. "*The Collegial Game: Crafting Law on the Supreme Court*". New York/Cambridge: Cambridge University Press.

Mansfeldová, Z. 2011. "Central European Parliaments over Two Decades – Diminishing Stability? Parliaments in Czech Republic, Hungary, Poland, and Slovenia". *The Journal of Legislative Studies* 17 (2): 128–146.

Pernice, I. 2016. "Domestic Courts, Constitutional Constraints and European Democracy: What Solution for the Crisis?". In *The Constitutionalization of European Budgetary Constraints,* edited by M. Adams, F. Fabbrini, and P. Larouche, 297–319. Oxford: Hart Publishing.

Pócza, K., G. Dobos, and A. Gyulai. 2019. "Dissenting Coalitions at the Hungarian Constitutional Court 1990-2018". In *The Role of Courts in Contemporary Legal Orders,* edited by M. Belov, 359–370. The Hague: Eleven Publishing.

Ragnarsson, K. H. 2019. "The counter-majoritarian difficulty in a neoliberal world: Socio-economic rights and deference in post-2008 austerity cases". *Global Constitutionalism* 8 (3): 605–638.

Sadurski, W. 2002. "*Constitutional Justice East and West*". The Hague/London: Kluwer Law International.

Sadurski, W. 2014. "*Rights Before Courts. A Study of Constitutional Courts in Postcommunist States of Central and Eastern Europe*". Dordrecht: Springer.

Scheppele, K. L. 2004. "A Realpolitik Defense of Social Rights". *Texas Law Review* 2004 82: 1921–1962.

Scheppele, K. L. 2005. "Democracy by Judiciary. Or Why Courts Can Sometimes Be More Democratic than Parliaments". In *Rethinking the Rule of Law in Post-Communist Europe: Past Legacies, Institutional Innovations, and Constitutional Discourses*, edited by W. Sadurski, M. Krygier, and A. Czarnota, 25–60. New York: Central European University Press.

Scheppele, K. L. 2006. "Guardians of the Constitution: Constitutional Court Presidents and the Struggle for the Rule of Law in Post-Soviet Europe". *University of Pennsylvania Law Review* 154 (6): 1757–1851.

Scheppele, K. L. 2015. "Understanding Hungary's Constitutional Revolution". In *Constitutional Crisis in the European Constitutional Area: Theory, Law and Politics in*

Hungary and Romania, edited by A.V. Bogdandy, and P. Sonnevend, 111–124. London: Hart/Beck.

Schwartz, H. 2000. "*The Struggle for Constitutional Justice in Post-Communist Europe*". Chicago: University of Chicago Press.

Sólyom, L. 2015. "The Rise and Decline of Constitutional Culture in Hungary". In *Constitutional Crisis in the European Constitutional Area: Theory, Law and Politics in Hungary and Romania*, edited by A.V. Bogdandy, and P. Sonnevend, 5–32. London: Hart/Beck.

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

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

Stone Sweet, A. 2000. "*Governing with Judges*". Oxford: Oxford University Press.

Szente, Z. 2016. "The Political Orientation of the Members of the Hungarian Constitutional Court between 2010 and 2014" *Constitutional Studies* 1 (1): 123–149.

Tushnet, M. 2009. "*Weak Courts, Strong Rights: Judicial Review and Social Welfare Rights in Comparative Constitutional Law*". Princeton: Princeton University Press.

Uitz, R. 2007. "Constitutional Courts in Central and Eastern Europe: What Makes a Question Too Political?" *Juridica International* 13 (2): 47–59.

Ulmer, S. S. 1970. "Dissent behavior and the social background of Supreme Court justices". *Journal of Politics* 98 (3): 580–598.

Voigt, S. 2015. "Economic growth and judicial independence, a dozen years on: Cross-country evidence using an updated set of indicators". *European Journal of Political Economy* vol. 38: 197–211.

Volcansek, M. 2007. "Appointing Judges the European Way" *Fordham Urban Law Journal* 34 (1): 363–385.