New Challenges to Constitutional Adjudication in Europe; edited by Zoltán Szente and Fruzsina Gárdos-Orosz
Format: Royal (156 × 234 mm); Style: A; Font: Galliard;
Dir: {Desktop}New folder/9781138057890_text.3d;
Created: 22/12/2017 @ 10:07:15

1 Introduction

Contemporary challenges of constitutional adjudication in Europe

Zoltán Szente and Fruzsina Gárdos-Orosz

1 Research questions and presumptions

At the very end of the twentieth century, after the defeat of the communist regimes in Central and Eastern Europe, in the course of gradually deepening European integration, and as a result of the technical revolution that has created unlimited access to information, one may hope that a new age of rationality and prosperity would come about worldwide or, at least in the Western world, as all the conditions for well-informed decisions on essential social and political issues appear to be given.

Yet, today there is quite a general belief that we live in a post-rational epoch. From the spread of populism and 'illiberal democracies' even in the modern constitutional states to Brexit, or from the earth-shaking effects of the world economic crisis to Al-Qaeda, several factors cause fear and uncertainty today.

Whatever we might think about the real grounds for these fears, it is true that in recent years modern governments have had to face many serious and new challenges.

Not surprisingly, the challenges discussed in this book have become the subject of mainstream academic literature. A substantial amount of books and journal articles have dealt with such new challenges as the world financial crisis, terrorism, inland security, migration and other country-specific issues as well as their effects on the national and supranational legal systems. As these challenges have arisen fairly recently, the first general or comparative books have just started to be published. Usually, such works concentrate on a specific topic, for example, the world financial crisis,[1] terrorism[2] or migration.[3] These have raised a number of ongoing and open discussions worthy of attention and further consideration in an era explicitly referred to by some scholars as the 'century of challenges', wherein transformative changes in the natural and social world are triggered by technological and industrial developments that are 'increasing cultural and social tensions among peoples within and between states'.[4]

Though the subject matter of this book is not a new or a further inquiry into these societal problems, it focuses on their constitutional effects. We examine how these challenges have affected the constitutional jurisprudence of the courts in some European countries and also the jurisprudence of the European courts. Our

focus is not on exploring the challenges themselves, but on investigating the related constitutional adjudication – in relation to these current worldwide challenges.

In the past few years constitutional courts and other national high courts adjudicating constitutional matters have had to cope with these new challenges. The world financial crisis, the new wave of terrorism, mass migration and other particular problems have wide-ranging effects not only on public policy and the day-by-day life of people but also on the old and embedded constitutional standards and judicial constructions as well. Our book examines how, if at all, these developments have affected the constitutional review in Europe. In new situations constitutional courts have to give responses to the constitutional questions of unprecedented social, economic and political problems. Furthermore, all the answers must conform with EU law and with some pieces of international law. Therefore, our analysis extends to the related jurisprudence of the European Court of Justice and the European Court of Human Rights.

Courts inevitably have had to reconsider their own older ideas and legal doctrines and arguments in their case-law that had been elaborated to handle other challenges in the past decades.

And, although the outcome of these judicial processes might differ depending on the subject matter, the international context, national traditions and constitutional conventions and other factors, our underlying assumption is that all constitutional courts and other high courts have some basic options:

- to use the existing and/or traditional judicial constructions, doctrines and interpretive tools based on the well-elaborated and permanent jurisprudence;
- to modify some well-established practice or adjust it to the new circumstances; or
- to seek essentially new approaches, abandoning or reinterpreting some constitutional principles and practices.

In fact, these are not exclusive alternatives that can be clearly separated from each other but, rather, they indicate some of the basic directions or choices that the courts may have made. Thus, the next basic research question of this project is whether these courts have changed their jurisprudence in order to meet these new challenges, or have they have resisted this. If constitutional jurisprudence has changed, the nature and extent of these changes need to be studied.

Finally, the book aims to give general and contextual explanations for the examined constitutional jurisprudence at two different levels. First, the country studies seek to highlight the reasons for the change or continuity of constitutional adjudication. Beyond analysing national solutions, some comparative chapters examine the effects of multilevel constitutionalism – for instance, the role of judicial dialogue, or the influence of the European Court of Justice and the European Court of Human Rights in related constitutional matters. Second, the comparative part of the book aims to identify general European trends and characteristics.

In sum, the core questions of our book are: Have the 'new challenges' in the various European countries changed the constitutional jurisprudence of constitutional, European and other high courts, or not? If yes, how did the interpretation

of these courts change? What factors and circumstances determine whether a court has modified its case-law and how can the change or stability of the constitutional jurisprudence in the different countries be explained?

Ultimately, the book is an invaluable contribution to the contemporary scholarly debate on the values of European constitutionalism studying the well-embedded principles and requirements under specific, and sometimes, extraordinary circumstances. Our underlying argument is that we can learn much about modern constitutional values by testing their stability and viability in times of unprecedented pressure. The book provides an insight into the contemporary ideas on constitutional justice and the present role of constitutional adjudication in Europe. Beyond this, the eventual way of how judicial bodies react to the unprecedented pressures and modern challenges can be an excellent test for the suitability and adaptability of both the constitutional review as a process and the constitutional (or other equivalent) court as an institution, and, in this way, our results contribute to the everlasting scholarly debate on their legitimacy. The range and volume of literature on constitutional comparison has been increasing and some researchers even speak about the 'Renaissance' of this method.[5] One of the most frequently discussed topics is constitutional adjudication including its institutional aspects[6] and methodology.[7] However, very recent constitutional jurisprudence on contemporary challenges has yet to be explored from a comparative perspective.

2 Conceptualising 'challenges' to contemporary constitutional justice

This book focusses on 'new challenges' and 'pressures' as social phenomena which can potentially affect constitutional adjudication in the various European countries. In our understanding, the relevant challenges are those that have brought about serious social, political and/or economic/financial difficulties in recent years and that have had constitutional implications. These are, primarily:

- the world economic/financial/debt crisis,
- terrorism and inland security,
- migration;

complex concepts themselves that can be divided into further (partial) problems. In fact, all the 'challenges' discussed here have caused diverse and complex crises with multiple societal, political, economic and cultural effects. For example, the economic and financial depression that began in 2008[8] has several different dimensions like fiscal, financial and debt crisis. In addition, other challenges, which most European countries have had to cope with, have engendered further crises and problems; migration waves, for example, have raised financial, cultural and social difficulties in the transit as well as the host countries.

However, this is not a full list. There are some other pressures that affect European countries selectively, or even particular problems which occur only in one or a few countries, such as political secessionism or the controversial relationship between national and European Union law. Furthermore, there are some other global

challenges, from climate change to the endangering of biodiversity, that do not have primary constitutional implications in Europe.

Constitutional systems evidently must face, from time to time, special challenges – products of the constantly developing societies. Constitutional justice evolves along this change as it is the main function of the constitutional courts and other judicial bodies conducting reviews to reconcile the opposing societal interests and ambitions with established standards of constitutionality or in particular cases arbitrate these conflicts. The constitutional review of legal acts, and the adjudication of individual complaints against arbitrary legislative, governmental or judicial actions, are specialised legal instruments to fulfil these tasks. Thus, at a first glance, there is nothing special in the fact that nowadays the courts deal with different matters than before. Yet, the problems listed above represent special challenges, as they embody a whole series of social, political and economic problems which are not limited to one or two countries, but raise general concerns that most European countries must cope with. Moreover, as new challenges frequently entail great risks and dangers, their treatment often calls for extraordinary policy measures and special legal tools. Under such circumstances, courts are under tremendous pressure to give a green light to these unusual, and sometimes extraconstitutional, measures that are necessary to remedy the apparent dangers.

As we have emphasised already, our work concentrates on the constitutional jurisprudence in relation to certain selected challenges where the criterion of selection was the constitutional relevance of the particular problems in the reference states. The same phenomenon can trigger different constitutional responses in the various jurisdictions. If we want to understand the reasons for the different judicial responses to the same challenges, we should take the differences of legal structures, etc, into consideration. The constitutional relevance of these major contemporary problems cannot be denied, even if it can emerge in different ways. One of the most general features of the relevant constitutional issues is that they frequently involve extraordinary measures or emergency powers. The most exigent social challenges can easily be transformed into a constitutional crisis when unusual legal tools are made permissible for the government. Most constitutions acknowledge the inevitability, or, at least, the possibility of crisis management tools and the need for expansive state powers to cope with them. The public interest to overcome these problems therefore can trump individual rights. Through the classical words of Thomas Jefferson,

> The laws of necessity, of self-preservation, of saving our country when in danger, are of higher obligation. To lose our country by a scrupulous adherence to written law, would be to lose the law itself, with life, liberty, property and all those who are enjoying them with us; thus absurdly sacrificing the end to the means.[9]

However, as John Finn shows, Jefferson's thesis is an answer to a wrong question, because

> [w]hether we should suspend a constitution in the interest of self-preservation is a different question than whether standards derived from the basic principles of constitutionalism restrain the exercise of powers of emergency.[10]

Studying the relevant constitutional jurisprudence, it can hardly be denied that the primary job of constitutional courts is to restrain the emergency powers of the government which might be extraordinary limiting basic rights and liberties in an unusual way, but cannot be extra-constitutional. As the German Federal Constitutional Court declared in a landmark decision, '[T]here are constitutional principles that are so fundamental … that they also bind the framers of the Constitution'.[11]

Although the use of extraordinary power can and has to be constitutional, as its exercise must be subject to legal control and restraint, it is certain that there is an inherent tension between the need for the rights limitation in order to handle special situations and problems, and the constitutional order aiming at safeguarding and widening the individual rights and liberties. Thus, the contemporary challenges claiming legal responses are also special challenges to the constitutional systems of the various countries in which constitutional and other high courts have a preeminent role.

Sometimes the constitutional implications of these special situations and challenges can easily be recognised, whereas in other cases the constitutional relevance is more indirect.

As to the world economic and financial crisis, since its beginning in 2008, constitutional courts have often been asked to resolve challenges on the constitutionality of various measures adopted by the political branches in the areas of budgetary constraints, financial stabilisation and other economic policy measures. The courts have been inescapably involved in the public debates about the relevant legislation, as the financial austerity programmes embraced, among others, liberalisation measures in the labour market, restrictions of welfare expenditures and the reduction or withdrawal of certain social rights and vested interests. These measures frequently inflicted or limited property rights, social and welfare rights and produced challenges to the principle of equality. Though in some countries property rights were severely restricted (e.g. by imposing special taxes or nationalisation of private pension funds), the public sector was often a primary target of austerity programmes by means of reducing the wages of public servants or curtailing social benefits in an effort to reduce public expenditure. Social policy considerations and social rights have proved to be the loser in the whole process of economic recovery in a number of countries.

Constitutional courts have been asked on multiple occasions to adjudicate not only the national legislation and domestic policies implementing measures of economic adjustment, but also on international agreements such as the Fiscal Compact, or the European Financial Stabilisation Mechanism, even if some legislation adopted in the EU legal framework has entirely escaped judicial review,[12] as the EU law may not be overruled by national courts. In some countries, like Greece or Germany, discussed in this book, the EU-level financial recovery programmes,

such as rescue packages and stability mechanisms, have given rise to heavy constitutional controversies, even though they had a different nature and depth in the various constitutional systems. For instance, in order to offer financial rescue to Greece, and, in this way, to preserve the stability of the Eurozone, some EU Member States established the European Financial Stabilisation Mechanism,[13] and the European Financial Stability Facility. According to these mechanisms, the financial assistance given to the participant countries was subject to specific conditions which affected the sovereignty of the respective Member States. These conditions require the respective countries to implement budgetary restrictions, to submit financial adjustment programs and empowered some EU institutions to control their economic and fiscal policy.[14] Since the EU is working on the perpetuation of the common economic policy, these mechanisms and many other tools of EU-level financial policy and control may encroach on all member countries' economic sovereignty, because these policy instruments entail not only policy transfer from the Member States to the EU but also the transfer of some financial competences from the nation states to the EU institutions falling traditionally within the scope of responsibility of national authorities, like the tightening of control over government deficit and state debt of all member states.[15] Fiscal policy and taxation have been traditionally integral parts of national sovereignty, so any change in the distribution of these powers affects unavoidably the legislative powers of national parliaments, the economic and financial policy-making competences of governments as well as the responsibilities of some other public bodies from constitutional courts to national banks. Moreover, all these national authorities may exercise their sovereign powers only within the existing legal frameworks, which guarantee not only the legality but also the legitimacy of these competences. The same issue raised different constitutional concerns in Germany, where the guarantees of the democratic decision-making process and the integrity of the budgetary powers of the Parliament (*Bundestag*) were at stake. The German Federal Constitutional Court expressed in its ruling on the Lisbon Treaty of the EU in June 2009[16] that the eternal clauses of the German Basic Law (*Grundgesetz*) contain the fundamental constitutional principles of Germany defining its constitutional identity which may not be violated by the transfer of sovereign rights to the EU institutions. One of these principles is democracy in which the Parliament has a special significance, among others in budgetary issues. This was the focal point of the later jurisprudence of the *Bundesverfassungsgericht* when it decided on the constitutionality of the Monetary Union Financial Stabilisation Act in 2011 (authorising the loans granted to Greece),[17] and in its judgement on European Stability Mechanism,[18] stressing that public revenue and spending belongs to the constitutional state by which it can shape public policy democratically. In Poland, as reported by the relevant chapter of this book, some other constitutional principles like equality and the social justice were challenged, whereas in Hungary the harsh restrictions of certain vested rights and property rights brought about constitutional controversies.

As a matter of fact, though certain legal tools were constitutionalised in order to avoid judicial review, some other new constitutional provisions that came about as

reactions to the financial crises have widened the scope of constitutional review. The former can be exemplified by the explicit limitations of the competence of constitutional court in public finance (such as in Hungary), the latter relates to the emergence of the principle of 'balanced budget' and debt-brake rules (designed to avert structural imbalances in state budget) in the constitutions.

All in all, the world financial crisis has been one of the major challenges raising the number of diverse constitutional issues with which the constitutional courts have been faced.

Terrorism as a threat to the inland security has been another great constitutional challenge. The social and political danger of terrorist attacks is beyond any doubt: These crimes are political actions which attempt to generate a state of affairs that can ultimately lead to the overthrow of government. and by producing massive intimidation, they have a social dimension generating fear in many people. All these features of terrorism explain why terrorist crimes are seen to inflict more harm than common crimes and why they should be punished more severely.[19] The new forms of terrorism, for example, suicide bombings, blind massacres that kill as many innocent people as possible understandably horrify citizens, as too does the new phenomenon of 'neighbour terrorism' where the terrorist attack is committed by a country's second- or third-generation own citizens rather than by foreigners who do not have any connection or emotional bond with the given country. Under such circumstances, the people are easily willing to accept that this sort of extraordinary threat justifies extraordinary measures in order to defend life and order. The remedy of the high risk of terrorism requires special precautionary measures which may legitimately limit fundamental rights. Therefore, the average person can easily be ready to give a broad mandate to the government to combat terrorism. In Hungary, for example, which has not been affected by terrorist acts so far, the Parliament adopted a constitutional amendment in June 2016 introducing the 'terrorism state of emergency' as a new form of special legal orders providing the government with the right to suspend existing laws and to take other 'extraordinary measures' that depart from existing laws in the event of a terrorist attack or a 'significant and direct danger of a terrorist attack'.

In addition, the danger of terrorist attacks, and especially those committed terrorist acts, incite immediate and hard counteraction by governments and politicians who try to meet real or deemed social expectations to provide a firm and determinate answer to terrorism. In France, only three days after the terrible terrorist attack in Paris on 13 November 2015, the French president made a proposal before both Houses of Parliament assembled in Congress at Versailles to amend the Constitution in a way that was inconceivable beforehand (such as the possibility to strip nationality from a French citizen, while all laws since the Third Republic prohibited the deprivation of nationality from those who had born in France).[20] However, this might lead to a vicious circle, with each successful attack creating a demand for more repressive laws, and so on.[21]

It is easy to see that the main constitutional risk is that in times of the danger of terrorism the balance can be shifted between freedom and security at the expense of individual rights. Although different countries follow different policies, the most

usual ways of combatting terrorism are as follows. The first strategy is based on the conventional wisdom that criminal law is an effective instrument in the fight against terrorism because harsher punishments will deter the terrorists from committing their actions. According to this deterrence-based argument, terror attacks should be separately criminalised, with punishments more severe than for common crimes.[22] Another strategy focusses on preventative tools and instruments that try to control the level and state of inland security; the idea is that the threat of terrorism can be successfully handled by early police intervention at the preparatory stage of a terrorist act, and thus focussing on detection and disruption of the ongoing actions. A third strategy – typically followed in the USA – rests on the attitude of treating all terrorists as enemy combatants, which justifies the war on terror using the military to strike at terrorist threats.[23] This strategy presumes that domestic laws and the normal operation of law enforcement authorities are insufficient to adequately combat and protect against the threat of terrorism.

As a matter of fact, all the usual antiterrorism strategies raise constitutional concerns. It is a common danger that fighting terrorism can lead to excessive and disproportionate limitation of individual rights or to unjustified restriction of freedoms of certain communities. Furthermore, the criminalisation of terrorism usually encourages the authorisation of the Government with extra policing powers to gather evidence, special processes to assist trials or imposition of enhanced penalties, and can result in the harsh and unfair treatment of defendants. The preventive strategies frequently applied are detention without trial, data-mining, the seizure of assets, arrest and interrogation[24] even in the case of simple suspicion. Perhaps the instruments of a US-style war on terror would be the greatest challenge to constitutional normality; however, the use of military forces is not typical in Europe, even if it is not unprecedented for certain tasks (e.g. for security services or border guards).

The core problem is what rights and to what extent should these be sacrificed to overcome a danger. The exaggeration of security risks can lead not only to the disproportionate use of state force but also to the exercise of the increased power for other purposes as well. Thus, privacy, due process rights, property rights and other liberties can be unreasonably restricted. Indeed, not only are the citizens' rights and freedoms at stake but also the rights of those who are suspected to be terrorists – however difficult it is to protect the rights of those who, let say, have committed attacks against random people. Likewise, special laws and extraordinary measures can undermine the legitimacy of the constitutional system and the protection of individual rights particularly when they are not only temporary responses but have long-term effects.

In sum, the basic constitutional question is how to keep a balance between the competing interests of safeguarding individual (and group) rights and increasing the effectiveness of law enforcement in fighting terrorism; constitutional courts frequently cannot escape from the responsibility to adjudicate the justification and proportionality of the applied methods and legal tools in the European constitutional democracies. Needless to say, allowing repressive laws for greater security is a primary political issue – nevertheless, courts must have the final say as to whether the particular legal tools are compatible with the constitutional order, or not.

The threat of terrorism and the claim for the protection of inland security are often linked to the problem of migration. The mass migration that has affected a number of recipient European countries in recent years has generated a lot of concerns. One of these fears is that the migrants can destabilise the political and economic order of the affected countries. Migration often generates security problems both in the transitory and the target countries; irregular migrants often violate border regulations and reside in the recipient states without registration and legal status and in these ways they challenge the rule of law and legal order. Their emergence and presence frequently bring about fear, anxiety and distrust and is a source of insecurity.[25]

Another common fear is that the strangers of foreign cultures may cause social and cultural conflicts even once they are accepted in a local community. In most cases, migrants have a different identity from that of the receiving society, which can represent a security threat to the societal identity of the recipient community.[26]

Besides these fears, there is an economic dimension to migration, with multiple effects on the recipient country. Hence, many fear that the newcomers will take away their jobs and acquire undeserved social and welfare services at the expense of local taxpayers. In fact, mass migration can put a major burden on a country's social welfare and health care system and cause a lot of administrative tasks and problems.

However, our interest involves the constitutional aspects of all these issues; more precisely in the stability or changeability or the relevant jurisprudence of constitutional courts. Evidently, several aspects of migration may raise constitutional questions and may be brought to courts. First, 'migration', as a general term, encompasses several groups of people whose members have different legal status. Refugees who have escaped from civil war and harsh oppression by authorities, and who seek protection outside their country of origin, have the universal human right for asylum, so they have a legal claim for being accepted at least in the first safe state. But even before somebody may attain refugee status, everybody has the right to apply for such legal standing as well as to a fair trial, and, beyond that, every migrant has obviously the right to be handled in a humane and fair way.

Because migrants can have several different legal statuses and rights, the governments may legitimately treat them differently. This is a sensitive issue in itself where it is particularly important to provide protection for fundamental human rights, because those who have left their home and seek a new life in a foreign country are by nature in a vulnerable position, especially if the recipient community looks at them with distrust and repugnance. The general mistrust and aversion towards migrants can easily be exploited by politicians for political gains, frightening the public with 'illegal immigration hordes' or to see terrorists in every migrant.

So, the legal conditions established for the respective procedures, the circumscription of the rights and freedoms of migrant people, or the delimitation of the European Union and its Member States' competences all are matters which reach constitutional courts. In this field, there must also be a delicate balance between the legitimate interests of the states for security and the reasonable and

non-discriminatory treatment of the various groups of migrants. The world economic crisis, international terrorism and mass migration are only representative examples of worldwide challenges that have constitutional implications and can trigger several constitutional controversies. Countries might have other modern challenges that demand judicial responses such as regionalisation or secessionist movements in Spain, or the controversial co-existence of the EU and the national law in Britain. The analysis of the judicial responses to these special problems can also be considered to be the proper tools for assessing the state of constitutional jurisprudence in the 'age of challenges'.

3 Research methods

This book analyses all these things from a European comparative perspective. In the course of the research design, we selected countries that have been deeply affected by the challenges we conceptualised for this project. For this reason, the following countries are examined:

- Croatia
- France
- Germany
- Greece
- Hungary
- Italy
- Poland
- Portugal
- Spain
- United Kingdom.

These countries represent different (common law and civil law) legal cultures and legal systems. Their judicial structures and systems of constitutional adjudication also differ from each other. Among them, there are old and well-established democracies and post-communist countries with moderate traditions of constitutional democracy. But all of them are members of the European Union (although the UK is currently in the process of leaving the EU) and they all share the fundamental principles and values of the European constitutionalism, where the legitimate power of government is constitutionally limited (even though in different ways and institutional settings). Therefore, they are undoubtedly comparable with each other when the legitimacy and performance of constitutional control is at stake.

Since the same challenges may occur in different ways and may have different constitutional effects in the various countries, which may face specific internal problems as well, the authors of the national studies were free to choose what judicial cases or problems they present and to analyse the change/stability of constitutional justice in their own countries. Some give a wide picture on very recent constitutional jurisprudence, as most challenges have already reached the constitutional court in their country. Others concentrate on a single major issue,

either because they consider it to be characteristic of the state and attitude of national system of constitutional adjudication, or because not all the problems listed here have been dealt with by the constitutional (or equivalent) court.

Certainly, there are no objective criteria to measure the changeability/stability of constitutional jurisprudence. In reality, it is often not possible to compare the old and new interpretive practices of the courts because the current challenges have no precedents in constitutional case-law. But even if this is the case, the structure of argumentation and the preferred method of constitutional interpretation can be compared with the previous practice, and the use of the earlier case-law can also establish an assessment of the change versus stability of constitutional adjudication. It is also true that constitutional amendments or the emergence of a new legal environment may be the source of changes in jurisprudence, even though the legal development and the improvement of interpretive practice of judicial tribunals are quite natural things. Consequently, the change or continuity/stability of constitutional jurisprudence cannot be evaluated in itself, but only when studying the whole context. Of course, if a court modifies its case-law just because of political pressure, or if the new wave of judicial deference is based on institutional (self)interest, the change can be objected for good reason. However, the alteration of the judicial practice can be the result of a justified correction or renewal of old and obsolete interpretive practices, or legitimate adaptation of jurisprudence to the new social circumstances. This is true also in the stability/continuity dimension. So, the justification of the maintenance versus reform of the previous judicial case-law has a crucial importance not only for the scholarship but also for the courts themselves that have to preserve their own legitimacy as ultimate guardians of constitutional values.

Acknowledgements

Finally, we owe special thanks to the French Embassy in Hungary, the Center for Social Sciences of the Hungarian Academy of Sciences and the Francophone University Centre of the University of Szeged which generously supported the preparation of this publication. This book reports on the results of an international research project that was financed and assisted by the National University of Public Service and the Institute for Legal Studies at the Center for Social Sciences of the Hungarian Academy of Sciences to which we are also grateful.

Notes

1 Contiades (2013); Iglesias-Rodríguez, Triandafyllidou and Gropas (2016); Morrison (2016).
2 Akhgar and Brewster (2016); Kaunert and Léonard (2013); Richards (2015).
3 Bilgic (2013).
4 Noonan and Nadkarni (2016) 2
5 See the new wave of literature on comparative constitutional law Hirschl (2013), Tushnet (2014).

6 Harding and Leyland (2009); Comella (2009); Brewer-Carías (2011); , Mazmanyan and W. Vandenbruwaene (2013); Hübner (2013); de Visser (2014).
7 Kapiszewski and Silverstein (2013); Groppi and Ponthoreau (2014).
8 Conventionally, the collapse of Lehman Brothers on 15 October 2018 is held as a definitive moment of the world financial crisis.
9 Jefferson (1893) 279–80.
10 Finn (1991) 22.
11 BVerfGE 1, 14 (1951).
12 Fabbrini (2016) 107.
13 The EFSM was activated not only for Greece, but in the early 2010s for Ireland and Portugal as well.
14 Tuori and Tuori (2014) 91.
15 Ibid 105.
16 BVerfG, 2 BvR 2/08.
17 BVerfG, 2 BvR 987/10.
18 BVerfG, 2 BvR 1390/12.
19 Meliá (2011) 119.
20 Duhamel (2016) 3.
21 Ackerman (2006) 2.
22 Meliá (2011) 116.
23 Beckman (2007) 165.
24 Walker (2007) 1400.
25 Bilgic (2013) 19.
26 Ibid. 163.

Bibliography

Ackerman, Bruce, *Before the Next Attack. Preserving Civil Liberties in an Age of Terrorism* (Yale University Press 2006).

Akhgar, Babak and Brewster, Ben (eds), *Combatting Cybercrime and Cyberterrorism: Challenges, Trends and Priorities* (Springer 2016).

Beckman, James, *Comparative Legal Approaches to Homeland Security and Anti-Terrorism* (Ashgate 2007).

Bilgic, Ali, *Rethinking Security in the Age of Migration: Trust and Emancipation in Europe* (Routledge 2013).

Brewer-Carías, Allan R. (ed.), *Constitutional Courts as Positive Legislators. A Comparative Law Study* (Cambridge University Press 2011).

Comella, Víctor Ferreres, *Constitutional Courts & Democratic Values* (Yale University Press 2009).

Contiades, Xenophon (ed.), *Constitutions in the Global Financial Crisis. A Comparative Analysis* (Routledge 2013).

de Visser, Marthe, *Constitutional Review in Europe. A Comparative Analysis* (Hart 2014).

Duhamel, Olivier, 'Terrorism and Constitutional Amendment in France' (2016). *European Constitutional Law Review*, Vol 12, No 1.

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

Finn, John E., *Constitutions in Crisis. Political Violence and the Rule of Law* (Oxford University Press 1991).

Groppi, Tania and Ponthoreau, Marie-Claire (eds), *The Use of Foreign Precedents by Constitutional Judges* (Hart 2014).

Harding, Andrew and Leyland, Peter (eds), *Constitutional Courts. A Comparative Study* (Wildy, Simmonds & Hill Publishing 2009).

Hirschl, Ran, *Comparative Matters – The Renaissance of Comparative Constitutional Law* (Oxford University Press 2013).

Hübner Mendes, Conrado, *Constitutional Courts and Deliberative Democracy* (Oxford University Press 2013).

Iglesias-Rodríguez, Pablo, Triandafyllidou, Anna and Gropas, Ruby (eds), *After the Financial Crisis – Shifting Legal, Economic and Political Paradigms* (Palgrave MacMillan 2016).

Jefferson, Thomas, 'Letter to John V. Colvin, September 10, 1810', in Paul Leicester Ford (ed.), *The Writings of Thomas Jefferson*, 10 vols (G. P. Putnam's Sons 1893), vol. 9.

Kapiszewski, Diana and Silverstein, Gordon (eds), *Consequential Courts: Judicial Roles in Global Perspective* (Cambridge University Press 2013).

Kaunert, Christian and Léonard, Sarah (eds), *European Security, Terrorism and Intelligence Tackling New Security Challenges in Europe* (Palgrave MacMillan 2013).

Meliá, Manuel Cancio, 'Terrorism and Criminal Law: The Dream of Prevention, the Nightmare of the Rule of Law' (2011). *New Criminal Law Review*, Vol. 14, No 1.

Morrison, Fred L. (ed.), *Fiscal Rules – Limits on Governmental Deficits and Debt* (Springer 2016).

Noonan, Norma C. and Nadkarni, Vidya, 'Introduction: A Century of Challenges', in Norma C. Noonan and Vidya Nadkarni (eds), *Challenge and Change. Global Threats and the State in Twenty-first Century International Politics* (Palgrave Macmillan 2016).

Popelier, Patricia, Mazmanyan, Armen and Vandenbruwaene, Werner (eds), *The Role of Constitutional Courts in Multilevel Governance* (Intersentia 2013).

Richards, Anthony, *Conceptualizing Terrorism* (Oxford University Press 2015).

Tuori, Kaarlo and Tuori, Klaus, *The Eurozone Crisis. A Constitutional Analysis* (Cambridge University Press 2014).

Tushnet, Mark, *Advanced Introduction to Comparative Constitutional Law* (Edward Elgar 2014).

Walker, Clive, 'Keeping Control of Terrorists Without Losing Control of Constitutionalism' (2007). *Stanford Law Review*, Vol. 59, No. 5.