Strength of the Constitutional Court's decisions

Codebook
English version: v05 (29th April, 2016)

Modified according to the outcomes of the
2nd JUDICON Workshop
on 12th February 2016

DECISION

A. ID of decision

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

B. Motion type

        <u>Code</u>

              1 *a priori* review
              2 *a posteriori* review
              3 contradiction to an international agreement
              4 constitutional complaint
              5 legislative omission
              6 collision of competence of central legislation with other state organs (*Organstreitsverfahren*; OS)
              7 constitutional interpretation *in abstracto* (CIIA)

> - In case of an *a priori* review the timing is always *ex nunc*
> - OS and CIIA are relevant <u>*only if*</u> they concern the competence of the central legislation.

C. Motion type description

D. Type of decision

        <u>Code</u>

        DE Decision
        DO Dissenting opinion

E-F. Judge name

- In case of "DE" → "NA"
- In case of "DO" → the name of the given judge

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

G. number of the ruling

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

> *Refusals* are not coded; the only exception is when a dissenting opinion refers to the given denial (e.g. the judge claims that the constitutional court should decide the case on the merits). Rejections will be coded.

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

> If the dissenting opinion is about more than one ruling, every rulings have to be coded in separate rows.

H. Subject of the ruling

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

1ST STEP: RULING

I. Ruling code

Code

1000	Refusal / Refusal no competence
1100	Rejection / conformity with the constitution
1200	Rejection / political question doctrine
1300	Rejection / no competence
2000	Constitutional requirement or interpretation in harmony with the constitution
3000	Procedural unconstitutionality/ formal invalidity

        a.   violation of the procedural rules of legislation
        b.   violation of the principle of the hierarchy of legal sources
        c.   omission of prescribed consultation in the legislative process
        d.   omission of substantive debate in the legislative process

4000	Legislative omission
4500	Preliminary ruling suspending the law coming into force
5000	Substantive unconstitutionality
5110	Formal unconstitutionality/principle of rule of law/accessibility and publicity
5120	Formal unconstitutionality/ principle of rule of law /clarity
5131	Formal unconstitutionality/ principle of rule of law / calculability/ preparation time
5132	Formal unconstitutionality/ principle of rule of law / calculability / legal certainty
5133	Formal unconstitutionality/ principle of rule of law / calculability /retroactivity
6100	Constitutional interpretation *in absracto* <u>restraining</u> the room for manoeuvre of legislation
6200	Constitutional interpretation *in absracto* <u>extending</u> the room for manoeuvre of legislation
NA	Not applicable

J. Ruling code description

> Extreme cases:
> - If the CC suspends the process without the declaration of unconstitutionality →1100
> - If the CC suspends the process and declares unconstitutionality → 1100 (since the given decision does not restrain the legislation)
> - If the CC suspends the process but defines constitutional requirements → 2000
> - If the CC suspends the law coming into force until substantial scrutiny (*preliminary ruling*) → 4500
> - Contradiction to an international agreement → 5000
> - Constitutional interpretation *in absracto* will be coded <u>*only if*</u> they concern the competence of the central legislation.
>
> IF THE RULING IS REFUSAL OR REJECTION:
> - Only steps 1-3 have to be coded – the rest of the cells need to be filled with "NA".

2ND STEP: COMPLETENESS

K. Completeness code

<u>Code</u>

1 Partial (annulment of one part of the norm)
2 Complete (complete annulment of the norm but partial annulment of the law)
3 Total (annulment of the total law)
NA Not applicable (e.g. in case of "rejection/constitutional")

L. Completeness code description

3RD STEP: TIMING

M. Timing code

<u>Code</u>

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

N. Timing code description

REASONING

O. Reasoning

- *Exact section of the constitution* which served as a reference point of the ruling for the declaration of unconstitutionality

4TH STEP: REMEDY

P. Remedy code

<u>Code</u>

1 No remedy
2 Minor remedy I
3 Minor remedy II
4 Broad remedy
5 Constitutional requirement
NA Not applicable

Q. Remedy code description

R. Reference code

1. *No remedy:*

a) Call upon legislation without substantive restrictions on substantive legislative regulations
b) No remedy

2. *Minor remedy I:*

a) Constitutional requirement in the *justification* (note: depth must be at least "moderate")
b) Call upon legislation with offering <u>exclusive</u> (i.e. exhaustively enumerated) alternatives for legislation or with declaration of constitutional requirements in the *justification*
c) The CC rules *unconstitutionality by legislative omission <u>and</u>* indicate in the *ruling* a *threat/warning <u>along with</u> a deadline* for the removing this kind of unconstitutionality*.*
d) The CC rules *substantive unconstitutionality ex tunc <u>and</u>* indicates in the *ruling* a *threat/warning <u>along with</u> a deadline* for the legislation to act*.*

3. *Minor remedy II.*

a) Constitutional requirement in the *Leitsatz (headnote)*
b) Call upon legislation with offering alternatives for legislation or with declaration of constitutional requirements in the *Leitsatz (headnote)*

4. *Broad remedy*

a) Constitutional requirement in the *provision*
b) Any statements in the *provision* beyond *annulment, refusal, rejection* or *suspension* (but no simply deadlines!)

5. *Constitutional requirement*

a) The CC does not declare unconstitutionality but provides constitutional requirement in the provision (1st step = "2000")
b) The CC rules in a process of constitutional interpretation *in abstracto*

> *Reference code:*
> "number/letter" e.g. "2/a"

S. Remedy description:

- Short description of the remedy (copied from the decision text)

5TH STEP: JUSTIFICATION

T. Justification code

<u>Code</u>

      1   moderate justification (all cases except if it is a maximalist justification)
      2   maximalist justification (innovative creation of a new right in the ruling or in the justification)
      NA Not applicable